

THE UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 662-8800

William W. Wilkins, Jr. Chairman
Michael K. Block
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Ronald L. Gainer (ex officio)



MEMORANDUM:

DATE: November 20, 1990
TO: Phyllis Newton
FROM: Jay Meyer *JM*
Work Group Coordinator
SUBJECT: Report on Criminal History Categories "0" and "VII"

Attached is the criminal history group's report on Criminal History Categories "0" and "VII", which will be presented to the Commission on November 27, 1990.

The criminal history working group, led by Commissioner Carnes, is comprised of Ron Everett, Susan Katzenelson, Pat Macdonald, Caryl Ricca, and Vince Ventimiglia.

CRIMINAL HISTORY WORKING GROUP
DISCUSSION CONCERNING
CATEGORIES "0" AND "VII"

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I. INTRODUCTION

As the courts and the field gain more familiarity with Chapter Four of the Guidelines Manual and as larger numbers of defendants are sentenced under the guidelines, some have questioned whether two of the six criminal history categories -- specifically, Categories I and VI -- are overly broad in their measurement of a defendant's past criminal conduct, or the lack thereof.

Presently, a defendant is placed in criminal history Category VI if he has 13 or more criminal history points.¹ Unlike the other five criminal history categories, Category VI has no upper limit on the number of criminal history points possessed by defendants in that category. Therefore, whether a defendant has 13 points or 24 points, he will be placed in Category VI. This open-ended feature of Category VI has led some to question whether the criminal history matrix of the sentencing table goes far enough for defendants with high numbers of criminal history points.

At the other end of the matrix, a defendant is placed in criminal history Category I with either 0 or 1 criminal history point. Because §§4A1.1 and 4A1.2 exclude certain types of conviction from the assignment of criminal history points, some defendants with 0 points actually have convictions that were not counted because of time frame or other definitional considerations. Therefore, Category I contains defendants with 1 criminal history

¹ A defendant may also be in Category VI if he is designated a career offender under §4B1.1 or an armed career criminal under §4B1.4(c)(2) (use of a firearm during described conduct or possession of certain type of weapon).

point and those with 0 points, the latter of which fall into one of three classifications:

- zero points and no prior record of arrests or convictions;²
- zero points and no convictions, but a history of arrests, dismissed charges, or pending charges; or
- zero points, but prior convictions that were not assigned points because of §§4A1.1 and 4A1.2.

As requested by the Commission, the criminal history working group has examined the feasibility and consequences of:

- 1) expanding the Sentencing Table to include a Criminal History Category VII; and
- 2) creating a category for the "first offender."

Before discussing the ramifications of altering the criminal history categories, it is important first to examine the current distribution of defendants within the existing six categories.

II. MONITORING INFORMATION

The following table (Table I) breaks down the 35,064 cases that were sentenced between January 19, 1989 and June 30, 1990 into criminal history categories.³ The distribution of defendants into the six criminal history categories is as follows:

² This classification is hereinafter referred to as "no criminal history," because that is the term used by the monitoring unit in coding cases.

³ These cases were coded by the monitoring unit. The criminal history category is taken from the presentence report. There were a total of 1,437 missing cases.

TABLE I

<u>CRIMINAL HISTORY CATEGORY</u>	<u>NUMBER</u>	<u>PERCENT</u>
I (0,1 pt.)	21,918	62.5%
II (2,3 pts.)	3,949	11.3%
III (4,5,6 pts.)	3,954	11.3%
IV (7,8,9 pts.)	1,954	5.6%
V (10,11,12 pts.)	1,136	3.2%
VI (13 or more pts.)	<u>2,141</u>	<u>6.1%</u>
	35,064	100%

Of particular interest to this discussion is the fact that 6.1% of all defendants sentenced were in category VI and that 62.5% of all defendants were in category I.

III. CONSIDERATION OF CATEGORY VII

A. DEPARTURES BASED ON THE INADEQUACY OF CATEGORY VI

1. Monitoring Data

According to MON690, which represents a 25% sample of 35,000 cases sentenced, there were a total of 111 cases in which the court departed upward due to §4A1.3 (Adequacy of Criminal History). Of these 111, thirteen (13) represented upward departures from Category VI.

2. Reported Appellate Cases

The working group reviewed eleven (11) reported cases which addressed in whole or part the adequacy of the criminal history category given the particular defendant's extensive criminal

record.⁴ The reported cases provide some perspective on the considerations courts in those cases looked to when departing on the basis of adequacy of criminal history.

We can first determine the number of criminal history points required to move the courts in the eleven (11) reported cases to depart. Of the eight (8) cases where criminal history points were discernible, three (3) cases involved defendants with 20 points or greater,⁵ four (4) cases involved defendants with 16-19 criminal history points,⁶ and one (1) case involved a defendant with 15 criminal history points. Note, however, that in most cases, inadequacy of Category VI penalties was cited as only one rationale for the departure.

In addition, in at least two (2) cases in which the defendant received 16-19 criminal history points, related cases were involved. Under most reasonable systems that would count related cases separately, these defendants would have considerably more than 20 criminal history points. Thus, five (5) of the eight cases involved defendants with 20 or more points.

⁴ See Attachment 2, which summarizes the eleven (11) cases reviewed. The attachment also reviews two Fifth Circuit cases involving Category V defendants which present opposing approaches to determining the reasonableness of the extent of a departure.

⁵ Defendants in these cases had 20 points, 25 points, and 29 points, respectively.

⁶ Defendants in these cases had 16, 17, 17 and 18 criminal history points, respectively.

B. OPTIONS

Category VI, unlike the other five categories, does not place an upper limit on the number of points that can be assigned to defendants in that category. Upward departures by courts and feedback from the field suggest that some view Category VI as insufficient for defendants who have a high number of criminal history points, yet, as a result of the open ended aspect of Category VI, are treated the same as those with only 13 points. Two options for a new Category VII are presented.

1. Category VI With A Three (3) Point Spread

As indicated in Table I, approximately 6.1% of all cases involve 13 or more criminal history points. If the Commission were to create a Category VII, a point spread would need to be established for Category VI. Assuming that it would be a three-point spread, as in Categories III, IV and V, Category VI would include cases with 13-15 points and the new Category VII would contain cases where there are 16 or more criminal history points.

The following table shows the distribution that would have resulted had there been a Category VII that included those cases having 16 or more criminal history points:⁷

⁷ The criminal history point total was taken from the presentence reports. The total number of cases in Table II is smaller than in Table I because in 5,454 cases the criminal history point total was not clearly stated in the presentence report. In such cases, it is coded as missing. NOTE: The new categories VI and VII, are created based on Criminal History points not including 424 identified career offenders who are included in the existing category VI (Table I) as per §4B1.1 but have 12 or less criminal history points.

TABLE II

<u>CRIMINAL HISTORY CATEGORY</u>	<u>NUMBER</u>	<u>PERCENT</u>
I (0,1 pt.)	19,456	62.7%
II (2,3 pts.)	3,496	11.3%
III (4,5,6 pts.)	3,568	11.5%
IV (7,8,9 pts.)	1,912	6.2%
V (10,11,12 pts.)	1,177	3.8%
VI (13,14,15 pts.)	677	2.2%
VII (16 or more pts.)	749	2.4%

2. Category VI With A Seven (7) Point Spread

The Commission could elect to have a wider point spread than three (3) points. For Category VI, for example, a seven point spread of 13-19 points, with Category VII beginning at 20 points.

A review of the 25% Departure Study and reported appellate cases tends to support an argument that, predictably, courts appear more willing to depart upward when criminal history points substantially exceed the cut-off point for entry into Category VI (no 13 points).

Of the thirteen (13) cases from the 25% sample in which courts departed upward from Category VI, seven (7) involved cases with 20 or more points.

As noted in the review of reported appellate cases, when extra points are allowed for related cases, five of the eight cases studied involved defendants with twenty (20) or more points.

The following table includes a category VII that contains those cases having 20 or more criminal history points.

TABLE III

<u>CRIMINAL HISTORY CATEGORY</u>	<u>NUMBER</u>	<u>PERCENT</u>
I (0,1 pt.)	19,456	62.7%
II (2,3 pts.)	3,496	11.3%
III (4,5,6 pts.)	3,568	11.5%
IV (7,8,9 pts.)	1,912	6.2%
V (10,11,12 pts.)	1,177	3.8%
VI (13 through 19 pts.)	1,089	3.5%
VII (20 or more pts.)	297	1.0%

C. IMPACT OF CATEGORY VII

1. Two Options

- a. Approximately 2.4% of All Cases Would Be in a Category VII that Begins at 16 Points.

Table II reveals that if a criminal history category VII were established for cases having 16 or more points, 2.4% of all cases would be placed in that higher category. More specifically, one-half of those in the present category VI would be placed in the new category VII. Accordingly, there would be an impact on the prison population.⁸

- b. Approximately 1% of All Cases Would Be in a Category VII that Begins at 20 Points.

Table III reveals that if a criminal history category VII were established for cases with 20 or more points, 1% of all cases would be placed in that higher category.

⁸ The working group will need assistance from the research staff in assessing the prison impact of any proposal.

2. New Category to Which to Depart Upward

The establishment of a category VII would create a new category to which a court might depart upward from a lower category due to §4A1.3, Adequacy of Criminal History. It seems plausible to infer that some courts might have refrained from departing beyond category VI in the past because of the uncertainty of structuring a departure beyond the sentencing table. With a Category VII, a court might more comfortably consider, in an appropriate case, a departure to a new Category VII, because a specified range of imprisonment exists.

3. Accommodation of Cases From the 25% Departure Study Involving An Upward Departure on this Ground

The working group reviewed the 13 cases from the 25% departure study where the court departed upward from category VI because of §4A1.3, Adequacy of Criminal History.⁹ After identifying the offense level and number of criminal history points assigned, the working group determined that twelve (12) of the thirteen (13) cases still received sentences of imprisonment that exceeded the imprisonment range that would be provided by the new category, no matter what number of points triggered the departure.¹⁰ Insofar as point totals were concerned, of the 13 cases, seven (7) had 20 or more points. Four (4) cases had between 13 and 15 points.

⁹ According to MON690 there were a total of 111 cases where the court departed upward due to §4A1.3, Adequacy of Criminal History. A total of 13 of these cases involved upward departures from Category VI.

¹⁰ This was based on the premise that the new category VII would have the staggered one level increase that is present throughout the sentencing table. See attachment #1.

4. Accommodation of Appellate Cases In Which Upward Departures Occurred

The working group also reviewed the fourteen (14) reported appellate cases addressing the adequacy of criminal history category VI.¹¹ Upon examination of the cases, it was determined that if category VII were constructed as shown in attachment #1, the sentences approved in all fourteen appellate court cases would still have exceeded the top of the new range in Category VII.¹²

Specifically, as noted in the attached memorandum, three methods of departure -- proportionality, analogy to career offender, and an artificial Category VII -- were most commonly used. In no reported cases would the new Category VII (assuming a 10-15% increase in penalties over Category VI) have accommodated the lower court departure. In the Seventh Circuit, and apparently in the Fifth Circuit, the departures permitted by those appellate courts would closely approximate the increased sentencing range permitted under a new Category VII.

Notwithstanding the fact that the new Category VII would not accommodate the upward departures that we have discovered, such a category would insure that all defendants with points substantially exceeding the present level VI receive an enhanced criminal history score.

¹¹ See attachment #2 in which the appellate cases are reviewed.

¹² This was based on the premise that the new category VII would have the staggered one level increase that is present throughout the sentencing table. See attachment #1.

Thus, a new Category VII would restrain the extent of departures otherwise entered in its absence. At the same time, the new Category VII would permit courts previously reluctant to depart to impose a greater sentence on defendants with a large number of criminal history points, without the necessity of a departure.

5. The Effect on Career Offender, §4B1.1

If a category VII were created, several other features in Chapter Four would need to be reconciled. First, defendants who meet the definition of a career offender in §4B1.1 are currently placed in category VI. If category VII is established, the Commission would need to decide whether to keep career offenders in category VI or to increase them automatically to category VII.

If the Commission decided to keep career offenders in category VI, the career offender guideline would need to be changed, however, to indicate that if a defendant has enough points to assign him to Category VII, he would remain in that Category. If the Commission decides that a career offender should be assigned to Category VII, the potential range of imprisonment for such offenders would increase dramatically. The Commission would likely wish to study the impact on the prison population of such a change. Further, the offense levels for career offenders were drafted with the understanding that the criminal history category would be a VI. Moving a career offender to a VII might require the adjustment of these offense levels.

IV. CONSIDERATION OF CATEGORY 0

A. MONITORING DATA

1. The Composition of Category I

One of the consequences of the guideline's method of assigning points, set out in §§4A1.1 and 4A1.2, is the placement of first offenders in the same category as those offenders (i) who have one countable prior sentence, (ii) who have prior sentences that, for a variety of reasons, are not counted, or (iii) who have dismissed or pending charges. As a result, defendants are considered similar, for the purposes of criminal history, even though they may have somewhat dissimilar levels of previous involvement in the criminal justice system.

As discussed in the introduction, defendants are placed in category I if they have 0 or 1 criminal history point. Those who have 0 points are ordinarily in one of three situations:

- They have no prior record; that is, no convictions, no arrests or dismissed charges, no pending charges [hereinafter referred to as "no prior criminal history"];
- they have arrests, dismissals, or pending charges, but no convictions or prior sentences [hereinafter referred to as "no convictions"];
- they have prior sentences, but those sentences are not counted under the guidelines because of the definitions and instructions under §4A1.2 [hereinafter referred to as "no countable convictions"].

As noted in Table I, 62.5% of all defendants fall into category I. The following table, Table IV, separates those defendants in category I who have 1 point from those who have none.

TABLE IV

<u>CRIMINAL HISTORY CATEGORY I</u>	<u>NUMBER</u>	<u>PERCENT</u>
Cases with 0 points	16,287	52.5%
Cases with 1 point	<u>3,169</u>	<u>10.2%</u>
	19,583	62.7%

Table III reveals that 52.5% of all defendants have no criminal history points.

To examine more closely this 52.5% of the population that had 0 points, the working group analyzed monitoring data that indicates whether the defendant had any criminal "history."¹³ The data revealed that 11,140 of the 16,287 with 0 points had no known "prior criminal history." These 11,140 cases represent 36% of all defendants. Accordingly, 36% of all defendants have neither prior convictions nor prior arrests or charges.¹⁴

2. Offense Type and Offense Levels for Cases Having 0 Points and No Prior Record

Having identified the 36% of the total population that had no prior criminal history, the working group looked at the offense types and levels of these defendants. (See attachment #3) The

¹³ Data technicians in the monitoring department code cases containing juvenile convictions, adult convictions, or some other criminal conduct, such as arrests or dismissed charges, as cases having "some prior criminal history."

¹⁴ Monitoring data does not reveal what percentage of Category I offenders with 0 points have only prior arrests, with no prior convictions.

table displays 15,050 cases with 0 criminal history points, but does not separate those defendants with no criminal history from those who have some criminal history, and it sorts the cases by primary offense types and offense levels.

a. Types of Offenses

Forty seven percent (47%) of the defendants with 0 points had primary offenses for drug distribution. The next largest group was fraud cases which represented 11% of the cases. Larceny cases represented 7% and embezzlement cases represented 6.9%. The next largest group is immigration offenses, which represent 5.1% of cases.

b. Offense Level Total for Offenses

The monitoring data revealed a fairly equal distribution of defendants along the offense level matrix. In summary, 52% of defendants with 0 criminal history points had offense levels of 14 or below. Approximately 75% of defendants with 0 criminal history points had offense levels of 24 or below.

B. DEFINITION OF "FIRST OFFENDER"

If the Commission wishes to create a new category, or transform an existing category, for the true "first offender", the Commission must first define this term.

1. Theoretical Considerations

Using an elimination process, it would appear clear that the defendant with one (1) point is not a first offender, even though he is categorized as a Category I offender. Second, it would also appear clear that the defendant with prior adjudications that are

not counted as a result of §4A1.2 -- for example, "old" convictions, tribal sentences, foreign sentences, expunged convictions, juvenile adjudications-- is likewise not a "true first offender."¹⁵

Whether the individual who has no prior convictions, but who has a history of arrests, dismissed charges, or pending charges, is a "true" first offender is a more complicated policy question. It would appear difficult for the Commission to justify a criminal history score enhancement as a result of unadjudicated charges on the ground that the existence of such charges suggests that the defendant has in fact been guilty of wrong-doing.¹⁶ Indeed, there would appear to be serious constitutional obstacles to the use of an arrest record, by itself, to enhance a criminal history score, although proof of the conduct underlying the charge arguably could be a basis for refusing to give "true" first offender treatment, just as it is now a ground for upward departure.

Further, even without constitutional impediments to an enhancement based on prior arrests, alone, the Commission has indicated to the Working Group its reluctance, on policy grounds,

¹⁵ Although as a conceptual matter, an individual with prior uncounted convictions or adjudications arguably should not be considered a first offender, as a practical matter, determination of the existence of such adjudications could be difficult. See discussion *infra*.

¹⁶ As now written, §4A1.3, provides that "a prior arrest record itself shall not be considered" as a ground for departure based on inadequacy of the criminal history.

to treat arrests or dismissed charges in this manner.¹⁷ Accordingly, it would appear that a person with no prior adjudications or convictions will generally be treated as a "true first offender," even if that person has prior arrests or dismissed charges. Nevertheless, if the Commission does create a first offender category, it could draft language that would permit the sentencing court to refuse to give first offender treatment to a defendant who has been proven to have committed the criminal conduct that was the subject of an arrest or a dismissed charge.

Finally, one remaining caveat is necessary. In discussing the interpretations that the Commission could choose to place on a new category for "first offenders", the Working Group has assumed that some prior contact with the criminal justice system--whether through prior convictions or arrests-- will be necessary in order to prevent a defendant from being classified as a first offender. Thus, an offender who has been committing crimes on a repeated basis over a period of years, but who has never been arrested or charged, will nevertheless be considered to be a "first offender"

¹⁷ One justification for an enhancement not based on the presumption that the defendant was guilty of the conduct for which he was arrested is the theory that, analogous to intervening arrests or to convictions, the defendant's commission of a crime following his exposure to the criminal justice system, even through an arrest for which he was not charged or convicted, suggests a greater prediction of recidivism. Yet, with the intervening arrest and conviction examples, the defendant has actually been found guilty of the crimes that precipitated his exposure to the system. Given the Commission's stated concerns about the use of prior arrests, exposure to the system, alone, likely should not be sufficient to prevent the unconvicted defendant from being treated as a "true first offender".

under the definitions discussed above.¹⁸

2. Practical Problems in Defining the True First Offender

It will be easy for the field to recognize the offender with one point and thus to disqualify that person from first offender treatment. Although probation officers should be able to determine easily the existence of "old" convictions, §4A1.2, it will be less easy, however, for the field to identify the individual with prior adjudications or convictions that §4A1.2 now precludes from being counted.

For example, certain kinds of juvenile adjudications are not now counted in calculating the criminal history score because the "differential availability of records" among jurisdictions would create disparities in criminal history scores for similar prior conduct. §4A1.2(d), App. Note 7. The same potential for disparity would be present now.

Sentences imposed by summary court martial or Article 15 proceeding are not counted now, but arguably should prevent first offender treatment if a new category were created. See §4A1.2(g). The Working Group is unsure whether it would be difficult for a probation officer to determine whether such adjudications had occurred. Similarly, the Group is uncertain how difficult it will

¹⁸ Of course, such an offender is also a Category I under the present guidelines, although a sentencing court may always depart if it feels that the criminal history score inadequately measures an offender's record. If the Commission decides to create a new category reserved for "first offenders", it must also decide whether to draft language permitting a departure for the Mafia-kingpin type of first offender.

be for probation officers to learn the existence of tribal convictions. See §4A1.2(i).

It would likely be difficult to find expunged convictions, since, by definition, they should have been expunged. See §4A1.2(j). Finally, the Commission would have to determine whether to exclude from first offender treatment a defendant who has a vacated conviction. See §4A1.2 App. Not 6. Clearly, if the conviction were vacated because of insufficient evidence or because of evidentiary error that undermined the credibility of the verdict, that conviction would likely not be counted.

Query, however, whether a conviction reversed on constitutional grounds, such as an invalid search under the Fourth Amendment, should be counted when it is clear that the defendant was factually guilty of the conduct for which he was charged. Are there constitutional impediments to using such a vacated conviction to deny first offender status to a defendant? If there are such impediments, the Commission must decide whether treating a defendant with no prior criminal history like a defendant who committed a crime, but who has been spared the creation of a criminal record only because of the exclusionary rule, accomplishes the goals of true first offender treatment.

C. DETERMINATION OF THE IMPACT OF THE SEPARATE TREATMENT OF THE TRUE FIRST OFFENDER.

Presuming that the Commission will define the "true" first offender as one who has no prior convictions or adjudications of criminal conduct, whether or not counted under §4A1.2, the

Commission likely would want to determine how many offenders will be affected by this new classification,

As discussed *infra*, monitoring data reveals that approximately 36% of the total defendant population appears to have no prior criminal history. Yet, for coding purposes, Monitoring includes in its definition of prior criminal history the existence of prior arrests, dismissed charges, or pending charges, whereas the Commission will likely not consider the latter to constitute the existence of criminal history for purposes of defining a first offender. Instead, the Commission's first offender will merely be a person with no prior convictions or adjudications of any sort; such a "first offender" could have had numerous arrests, without losing his first offender status.

Accordingly, then, because Monitoring's "definition" of a first offender is more restrictive than will be the Commission's, one can logically expect that the first offender under the Commission's new definition will represent more than the 36% of the total population. How much more is impossible to determine, however, inasmuch as Monitoring does not further break down its classifications into offenders with no convictions, as opposed to offenders with no prior arrests.

Because we do know that 52.5% of the total population have 0 points, however, we can safely estimate that 36-52% of the total population will be affected by the Commission's new definition of a first offender.

D. OPTIONS FOR CATEGORIZING DEFENDANTS WITH 0 POINTS

The following options will set forth general approaches to the treatment of the "true first offender", followed by the anticipated impact of the approach.

1. Placing Offenders With 0 and 1 Points Into Existing Categories.

a. Reserve Category I for Only 0 Points

This approach would reserve Category I for those defendants with 0 criminal history points. Category II would expand to include defendants with one point. This alteration would result in a one (1) category increase for the approximately 10% of defendants who have one point. See Table III, supra.

While this approach reserves a category for those defendants with no criminal history points, it still does not distinguish between those defendants who have no prior convictions and those who have prior sentences that are not counted because of definitional considerations. Consequently, the "true first offender" is still likened to those offenders who have documented past criminal conduct that merely did not result in a countable sentence.

Further, if the Commission wishes to distinguish "first offenders" from defendants with one point, by "bumping up" the latter to the next category, it might want to study the kinds of convictions that are earning defendants one (1) criminal history

point.¹⁹ If a substantial number of defendants are receiving one point because of a DWI/DUI conviction, the Commission must determine whether such defendants properly belong in the same criminal category as other offenders who have received two (2) and three (3) points and who now occupy a Category II. If on the other hand, a substantial number of defendants are receiving one(1) point for more serious types of crimes that were merely sentenced too leniently to qualify the offender for Category II, then the Commission might feel more comfortable placing such defendants in Category II.

b. Reserve Category I for Defendants with 0 Points and No Prior Convictions

This approach would place in Category I all defendants with 0 points and no prior criminal convictions, whether or not countable under §4A1.2. Defendants with 0 points who also have prior convictions and defendants with 1 point would be moved to present Category II.

As discussed in the previous section, such a change in classification would affect the 10% of the total population that has only one (1) point. In addition, it would affect that part of the population that has no points, but that has prior convictions. As discussed *supra*, however, the Working Group cannot determine what percentage of the population that would be and thus cannot

¹⁹ Monitoring data does not break criminal history points down by the type of prior conviction. Perhaps, a random sample of the individuals who have received one point would yield some answers.

determine how many persons with 0 points would be moved to Category II as a result of this new classification.

The same policy considerations, discussed above, that are relevant in determining whether to move the defendant with one point to Category II are relevant in determining whether to move the defendant with 0 points who has prior convictions.

2. Create A New Category, Or Otherwise Reduce The Offense Level, For Defendants With No Prior Record

a. Create a Category 0 for Defendants with No Prior Record

This approach would create a new criminal history category, lower than the present Category I, for those defendants who have 0 points and who have no prior criminal history.²⁰

If a Category 0 were established, a number of questions would need to be answered prior to delineating that category. For example, would the imprisonment ranges simply be staggered one level below the ranges in Category I, as in attachment #1? Would the lines for the sentencing options be drawn differently in this Category 0?

Although monitoring data reveals that about 11,000 defendants have 0 points and no prior criminal history, it also leaves approximately 5,000 of those defendants in Category I with 0 points and some criminal history. The term "some criminal history" can include a variety of circumstances such as dismissed charges, diversionary sentences, pending charges, juvenile status offenses, etc. If a category 0 were created for defendants with "no prior

²⁰ See attachment #1 for modified sentencing table.

criminal history", the category may also be used to place defendants with 0 points and unreliable criminal histories, if the sentencing court deems the defendant to be an individual with no prior record. Consequently, there is a potential for more than 32% of "0" point defendants to be placed in this category.

3. Create a Chapter Four Guideline that Reduces the Offense Level for the Defendant with 0 Points and No Prior Criminal History

This option would not alter the existing criminal history categories, but instead create a Chapter Four guideline that would reduce the adjusted offense level from Chapters Two and Three for those defendants with 0 points and no prior criminal history. This new guideline, allowing for a [1][2][3] level reduction, would be applied to cases where the defendant had 0 points according to §§4A1.1 and 4A1.2, and there was reliable information to conclude that he had no prior criminal history.

A new guideline in Chapter Four that serves to mitigate the instant offense by reducing the offense level for the defendant with no prior criminal history might be viewed as unfitting. However, supporters of such an approach might argue that three existing guidelines in Chapter Four, §4B1.1 (Career Offender) and §4B1.3 (Criminal Livelihood), and §4B1.4 (Armed Career Criminal) all serve to aggravate the instant offense for the defendant with a particular type of criminal history.

4. Modify §5C1.1 (Imposition of a Term of Imprisonment) so that Probation is Available for Certain Defendants Who Have No Criminal History

This approach would preserve the existing criminal history categories and sentencing table, but add language in §5C1.1 that would make some sentencing options available to the defendant who is a first offender and who has not been convicted of a crime of violence or an otherwise serious offense. ²¹

Under this approach a defendant with 0 criminal history points and no prior criminal history, who is not being sentenced for a crime of violence or an otherwise serious offense, would be eligible for [probation] [sentencing options]. Such an approach would necessitate a definition for "otherwise serious offense."

V. SUMMARY

The implications of adding a category VII to the sentencing table and somehow distinguishing the first offender present major policy decisions for the Commission. Although the two proposals pertain to distinct groups of defendants, the proposal to refashion the sentencing guidelines for either or both groups involves similar issues: the need for change, countervailing interests, prison impact, percentage of defendants affected, etc.

²¹ This language is taken from 28 U.S.C. § 994(j), which reads, "[t]he Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense..."

The working group is prepared to further examine other dimensions of the issues presented in this report should the Commission deem it desirable.

Attachment 1

SENTENCING TABLE
(in months of Imprisonment)

Offense Level	0 (no prior record)	Criminal History Category (Criminal History Points)						
		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI [(13, 14, 15)] [(13, 14, 15, 16, 17, 18, 19)]	VII [(16 or more)] [(20 or more)]
1	0-6	0-6	0-6	0-6	0-6	0-6	0-6	1-7
2	0-6	0-6	0-6	0-6	0-6	0-6	0-6	3-9
3	0-6	0-6	0-6	0-6	0-6	2-8	3-9	6-12
4	0-6	0-6	0-6	0-6	2-8	4-10	6-12	9-15
5	0-6	0-6	0-6	1-7	4-10	6-12	9-15	12-18
6	0-6	0-6	1-7	2-8	6-12	9-15	12-18	15-21
7	0-6	1-7	2-8	4-10	8-14	12-18	15-21	18-24
8	1-7	2-8	4-10	6-12	10-16	15-21	18-24	21-27
9	2-8	4-10	6-12	8-14	12-18	18-24	21-27	24-30
10	4-10	6-12	8-14	10-16	15-21	21-27	24-30	27-33
11	6-12	8-14	10-16	12-18	18-24	24-30	27-33	30-37
12	8-14	10-16	12-18	15-21	21-27	27-33	30-37	33-41
13	10-16	12-18	15-21	18-24	24-30	30-37	33-41	37-46
14	12-18	15-21	18-24	21-27	27-33	33-41	37-46	41-51
15	15-21	18-24	21-27	24-30	30-37	37-46	41-51	46-57
16	18-24	21-27	24-30	27-33	33-41	41-51	46-57	51-63
17	21-27	24-30	27-33	30-37	37-46	46-57	51-63	57-71
18	24-30	27-33	30-37	33-41	41-51	51-63	57-71	63-78
19	27-33	30-37	33-41	37-46	46-57	57-71	63-78	70-87
20	30-37	33-41	37-46	41-51	51-63	63-78	70-87	77-96
21	33-41	37-46	41-51	46-57	57-71	70-87	77-96	84-105
22	37-46	41-51	46-57	51-63	63-78	77-96	84-105	92-115
23	41-51	46-57	51-63	57-71	70-87	84-105	92-115	100-125
24	46-57	51-63	57-71	63-78	77-96	92-115	100-125	110-137
25	51-63	57-71	63-78	70-87	84-105	100-125	110-137	120-150
26	57-71	63-78	70-87	78-97	92-115	110-137	120-150	130-162
27	63-78	70-87	78-97	87-108	100-125	130-162	140-175	151-188
28	70-87	78-97	87-108	97-121	110-137	140-175	151-188	168-210
29	78-97	87-108	97-121	108-135	121-151	151-188	168-210	188-235
30	87-108	97-121	108-135	121-151	135-168	168-210	188-235	210-262
31	97-121	108-135	121-151	135-168	151-188	188-235	210-262	235-293
32	108-135	121-151	135-168	151-188	168-210	210-262	235-293	262-327
33	121-151	135-168	151-188	168-210	188-235	235-293	262-327	292-365
34	135-168	151-188	168-210	188-235	210-262	262-327	292-365	324-405
35	151-188	168-210	188-235	210-262	235-293	292-365	324-405	360-life
36	168-210	188-235	210-262	235-293	262-327	324-405	360-life	360-life
37	188-235	210-262	235-293	262-327	292-365	360-life	360-life	360-life
38	210-262	235-293	262-327	292-365	324-405	360-life	360-life	360-life
39	235-293	262-327	292-365	324-405	360-life	360-life	360-life	360-life
40	262-327	292-365	324-405	360-life	360-life	360-life	360-life	360-life
41	292-365	324-405	360-life	360-life	360-life	360-life	360-life	360-life
42	324-405	360-life	360-life	360-life	360-life	360-life	360-life	360-life
43	360-life	360-life	360-life	360-life	360-life	360-life	360-life	360-life

ATTACHMENT #2

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 626-8500
FAX (202) 662-7631

William W. Wilkins, Jr. Chairman
Julie E. Carnes
Helen G. Corrothers
Michael S. Gelacak
George E. MacKinnon
A. David Mazzone
Ilene H. Nagel
Benjamin F. Baer (ex officio)
Paul L. Maloney (ex officio)



MEMORANDUM

TO: COMMISSIONER CARNES
JAY MEYER
CRIMINAL HISTORY WORKING GROUP

FROM: VINCE VENTIMIGLIA

RE: REPORTED CASES ADDRESSING INADEQUACY OF CRIMINAL HISTORY
CATEGORY VI

DATE: OCTOBER 18, 1990

This memorandum will summarize the reported cases that have addressed the inadequacy of Criminal History Category VI, under U.S.S.G. § 4A1.3.

One category of interest in these cases is how appellate courts consider the reasonableness of the extent of departure.¹ The Circuits generally employ three analyses when determining the reasonableness of the extent of the departure: (1) a relatively undefined notion of reasonableness or proportionality relying primarily on the good judgment of the sentencing court or the appellate court; (2) applying the theoretically relevant career offender provision; and (3) constructing a "Category VII" based on a 10-15% increase over the applicable Category VI penalty.²

¹ Most circuits have adopted a three-part departure test similar to that provided in United States v. Gregory White, 893 F.2d 276 (10th Cir. 1990), requiring (1) that the factors relied on for departure not have been considered by the Commission, (2) that the factors exist in the case at hand, and (3) that the extent of the departure be reasonable.

² Four of the cases discussed below arise from the Western District of Oklahoma, and three of those cases were sentenced before Judge Russell.

A second category of interest is the number of cases in which the Defendant had substantially more than 16 criminal history points.

REASONABLENESS/PROPORTIONALITY ANALYSIS

This analysis appears to be the least defined of all three, relying on some notion of proportionality (Tenth Circuit), or on some notion of reasonableness. A number of cases do little more than state the extent of departure was reasonable under the circumstances. Some Circuits (Fifth Circuit) appear to reach contradictory results under the analysis.

United States v. Arminta Russell, 905 F.2d 1450 (10th Cir. 1990), cert. denied, ___ U.S. ___, 1990 WL 131833 (1990) (appeal from W.D. Okla., Thompson, C.J.)

Defendant was convicted of bank fraud, transporting stolen goods (100 tires), conspiracy to commit fraud, and falsely representing her social security number. Defendant had five prior theft convictions, ten priors (details not provided) excluded in the computation, eight pending criminal State charges (nature unknown), and seven charges of passing worthless checks (charges dismissed after she made restitution). Grounds for departure (inadequacy of criminal history due to 4A1.2(a)(2) consolidation of 16 unrelated counts in one case, inadequacy of Category VI level given 16-point offender, and likelihood Defendant would commit future crimes) were sustained. Reasonableness of extent of departure is bound by proportionality but is not constrained by any particular formula -- and the departure in this case is both proportional and reasonable.

Criminal History:	VI (16 points)
Guideline Sentence:	Level 14 (37-46 months)
Departure Sentence:	60 months consecutive to 60 months

United States v. Donald Bernhardt, 905 F.2d 343 (10th Cir. 1990) (appeal from W.D. Okla. Russell, J.)

Defendant was convicted of forging a check, under 18 U.S.C. § 1344. As a result, the bank lost \$21,000. Defendant had appeared before the court twelve times, primarily on fraud charges. Grounds for departure (Defendant is tantamount to a career criminal, with history of fraud, extensive criminal history significantly beyond typical Category VI Defendant) were upheld. Extent of departure was reasonable, though it "stretches the proportionality concept to the limit." The Commission did not require the use of the next highest offense level -- if it had intended this result the Commission would have indicated that such a movement between

offense levels was required. See United States v. Roberson, 872 F.2d 597 (5th Cir. 1989).

Criminal History: VI (25 points)
Guideline Sentence: Level 8 (18-24 months)
Departure Sentence: 60 months

United States v. Richard Brown, 899 F.2d 94 (1st Cir. 1990)
(appeal from D. Me., Cyr, J.)

Defendant was convicted of unlawful possession of stolen mail in violation of 18 U.S.C. § 1708. Defendant had numerous prior convictions, including those for assault and battery, theft, criminal mischief, disorderly conduct. Grounds for departure (including extent of criminal history not accounted for by mere Category VI where Defendant has greater than 50% the number of history points) upheld as showing a penchant for criminality not accounted for by the guidelines. Extent of departure reasonable.

Criminal History: VI (20 points)
Guideline Sentence: Level 3 (3-9 months)
Departure Sentence: 21 months

United States v. Luis Colon, 905 F.2d 580 (2nd Cir. 1990)
(appeal from S.D. N.Y., Walker, J.)

Defendant was convicted of ten counts of dealing heroin through "Hell's Kitchen" in the vicinity of a school. Grounds for departure (criminal history fails to account for lenient sentences for ongoing criminal conduct, including crimes of violence and drug-related crimes, during the last thirteen years, making Category VI inadequate, among other grounds for departure) were upheld. Remanded to determine of extent of departure.

Criminal History: VI
Guideline Sentence: Level 16 (57-71 months)
Departure Sentence: 15 years

United States v. Roberto Rivera, 879 F.2d 1247 (5th Cir. 1989), cert. denied, ___ U.S. ___, 110 S.Ct. 554 (1989)
(appeal from S.D. Tex., Hinojosa, J.)

Defendant was convicted of transporting 13 undocumented aliens. Grounds for departure (including the excess five points over the minimum 13 required for criminal history Category VI) were upheld as reasonable. Extent of departure was reasonable.

Criminal History: VI (18 points)
Guideline Sentence: Level 13 (33-41 months)
Departure Sentence: 60 months

United States v. Joseph Christoph, 904 F.2d 1036 (6th Cir. 1990),
petition for cert. filed, (U.S. Aug. 23, 1990) (No. 90-5535)
(appeal from N.D. Ohio, McQuade, J.)

Defendant was convicted of two counts of credit card fraud, under 18 U.S.C. § 1029. One ground for departure (criminal history fails to account for lengthy criminal record which was likely to continue) was upheld in light of Defendant committing additional, similar crimes while in jail, pending charges, and past criminal conduct not resulting in conviction -- none of which was accounted for in the criminal history. Extent of departure held reasonable.

Criminal History:	VI (17 points)
Guideline Sentence:	Level 13 (33-41 months)
Departure Sentence:	60 months

United States v. James Belanger, 892 F.2d 473 (6th Cir. 1989)
(appeal from E.D. Mich., Newblaff, J.)

Defendant was convicted of making a false statement in connection with the acquisition of a firearm in violation of 18 U.S.C. § 922(a)(6), and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) when he purchased a rifle, ostensibly intending to use it for recreation. Grounds for departure (including extent of criminal history not accounted for by mere Category VI where Defendant has greater than double the number of history points) were upheld. Extent of departure held reasonable.

Criminal History:	VI (29 points)
Guideline Sentence:	Level 5 (9-15 months)
Departure Sentence:	24 months

CAREER OFFENDER ANALYSIS

The 10th Circuit has permitted as "proportional" or "reasonable" an explicit reference to the theoretically applicable career offender sentence. The 6th Circuit permitted a sentence to be imposed that was effectively the career offender sentence, but gave no explicit approval to the approach in its decision.

United States v. Richard Gardner, 905 F.2d 1432 (10th Cir. 1990),
cert. denied, ___ U.S. ___, 1990 WL 120194 (1990)
(appeal from W.D. Okla., Russell, J.)

Defendant was convicted of bank robbery with a revolver, under 18 U.S.C. § 2113, and sentenced to the bottom end of the guideline range applicable for a career offender. Defendant had previously been convicted of four firearms and robbery offenses, all of which were included in the criminal history calculation. Grounds for

departure (inadequacy of criminal history since two armed robbery convictions and conviction on two counts of bank robbery fell outside the fifteen year time period) were sustained. Extent of departure reasonable since Defendant resembled a career offender (particularly since firearms offenses show continued pattern of crime, and robberies were conducted using similar methods), and since no category beyond Category VI existed.

Criminal History: VI (15 points)
Guideline Sentence: Level 24 (100-125 months)
Departure Sentence: 210 months
Affirmed

United States v. Bobby Dean, 908 F.2d 1491 (10th Cir. 1990)
(appeal from W.D. Okla., Russell, J.)

Defendant was convicted of possession of a semi-automatic shotgun. Defendant had prior convictions for unauthorized use of a motor vehicle, first degree rape (Defendant also brandished a knife), of violating 18 U.S.C. § 922(g) (felon in possession of a firearm), robbery with a firearm and burglary, and a second burglary, and these convictions were sentenced separately. Additional convictions for assault with intent to kill and robbery with a dangerous weapon, which offenses took place ten months apart, were considered related cases to the rape conviction, since they were sentenced on the same day. Grounds for departure (including the inadequacy of criminal history given the related cases exclusion, and the inadequacy of Category VI given Defendant's criminal record) were upheld. Extent of departure held unreasonable in light of the court's failure to adequately justify the extent of the departure, and the appellate court can find no extension of criminal history category, no analogy or reference to guideline principles, that would justify doubling the permitted guideline sentence. It is not apparent whether the court would have upheld sentencing under the career offender provision (which would have provided a level 24 - Category VI range of 100-125 months).

Criminal History: VI (17 points)
Guideline Sentence: Level 8 (18-24 months)
Departure Sentence: 48 months (consecutive to sentence already serving)

United States v. Franklin Joan, 883 F.2d 491 (6th Cir. 1989)
(appeal from S.D. Ohio, Smith, J.)

Defendant was convicted of 21 U.S.C. § 841(a)(1), Possession with Intent to Distribute Marijuana, 21 U.S.C. § 843(b), Telephone Count, and 18 U.S.C. § 922(g), Felon in Possession of a Firearm. Defendant had prior convictions for aggravated robbery with a firearm, during which he kidnapped a drug store employee; for

aggravated trafficking, during which he carried a .44 Magnum. Grounds for departure (including inadequate criminal history based on nature of prior convictions, and threat to the public health and safety) were upheld. Extent of departure was based on increase in offense level to 24 (100-125 months), (equivalent to a career offender sentence) and was held reasonable.

Criminal History: VI
Guideline Sentence: Level 18 (57-71 months)
Departure Sentence: 120 months

ARTIFICIAL CATEGORY VII (STEP BY STEP PROGRESSION)

The Seventh Circuit appears to be the only circuit to have explicitly required that a departure guideline range be based on an artificial or theoretical Category VII constructed by adding 10-15% to the Category VI sentence applicable at the relevant offense level. The Fifth Circuit, in cases not directly concerning Category VI defendants, may have indicated its intention to adopt this approach.

U.S. v. Kevin Schmude, 901 F.2d 555 (7th Cir. 1990), Docket No. 88-CR-121, USSC No. 89-10199,
(appeal from E.D. Wis.)

Defendant agreed to sell for cash a number of weapons, including semi-automatic weapons, to undercover agents the Defendant believed were convicted felons. Defendant was convicted on two counts, §§ 922(a)(1) (dealing in firearms without a license), and 922(g)(1) (felon in possession of a firearm), and sentenced to 60 months after the judge departed upward from a level 9 sentence (21-27 months) to two concurrent 60-month sentences, finding that Defendant's criminal history category underrepresented his criminal history, particularly in light of the fact that the Defendant had been convicted and sentenced for the same offense at least once before. No statement of reasons appears in the file to justify the admitted upward departure. The appellate court, following the Fifth Circuit, agreed that prior convictions for the same offense might call for greater sanctions to deter Defendant from committing the same offense yet a third time. However, the appellate court found the doubling of the sentence to be unreasonable, and indicated a preference for a ten to fifteen per cent increase, more commensurate with a single criminal history category increase. The appellate court, however, expressed support for the sentencing result achieved by the lower court, and noted the ability of the sentencing court on remand to sentence Defendant to a guideline term consecutive (instead of concurrent, as the court initially did) to a state term Defendant was then serving. The resulting time served would approximate the length of the term imposed under

the challenged departure. See also United States v. Jaime Ferra, 900 F.2d 1057 (7th Cir. 1990) (appeal from E.D. Wis., Warren, C.J.) (Circuit court recommended establishing judicially created, higher criminal history categories by increasing the ranges incrementally by 10-15%, as apparently intended by the Commission).

Criminal History: VI
Guideline Sentence: Level 9 (21-27 months)
Departure Sentence: 60 months

United States v. Donny Harvey, 897 F.2d 1300 (5th Cir. 1990), petition for cert. filed, (U.S. Aug. 6, 1990) (No. 90-5530) (appeal from W.D.Tex., Smith, J.)

Defendant was convicted under 18 U.S.C. § 922(g), felon in possession of a firearm. Grounds for departure (several convictions more than 10 years old) were upheld. Extent of departure was reasonable, despite United States v. Lopez, 871 F.2d 513 (5th Cir. 1989), since here the Defendant's criminal history category was high.

Criminal History: V
Guideline Sentence: Level 9 (18-24 months)
Departure Sentence: 60 months

United States v. Houston Jones, 905 F.2d 867 (5th Cir. 1990) (appeal from E.D. Tex., S.B. Hall, J.)

Defendant was convicted of exchanging cocaine for food stamps, in violation of 21 U.S.C. § 841(a)(1), Possession with Intent to Distribute Cocaine, and 7 U.S.C. § 2024(b), Unauthorized Acquisition of Food Stamps. Grounds for departure (mere recitation of priors, including those not counted in the criminal history calculation due to staleness -- burglary, robbery by assault, burglary -- see also United States v. Fitzwater, 896 F.2d 1009 (6th Cir. 1990, United States v. Kennedy, 893 F.2d 825 (6th Cir. 1990)) held not sufficiently explicated. Extent of departure, in contrast with United States v. Harvey, in fact requires consideration of intervening Criminal History Category VI, where departure is beyond Category VI.

Criminal History: V
Guideline Sentence: Level 11 (24-30 months)
Departure Sentence: 120 months

OFFENSE LEVEL BY PRIMARY OFFENSE CATEGORY FOR DEFENDANTS WITH NO CRIMINAL HISTORY SCORE

PRIMARY OFFENSE CATEGORY																								
OFF. LEVEL	HOMICIDE	ROBBERY	AGGRAV. BATTERY	BATTERY	LARCENY	EMBEZZ.	TAXES	FRAUD	DRUGS	DRUGS	POSSESS.	COMM. FACIL.	AUTO THEFT	FORGERY	SEX OFFENSES	BATTERY	ESCAPE	FUGITIVE	MARIJUANA	EXTORTION	STOLEN VEHICLE	OTHER	N	(%)
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	19	(0.1)
2	0	0	0	0	225	15	1	13	11	193	2	0	0	0	1	0	0	0	0	0	0	41	509	(3.4)
3	0	0	0	0	106	41	5	3	0	0	0	0	0	2	0	0	0	0	0	0	0	26	192	(1.3)
4	0	0	0	0	155	136	2	398	82	162	1	1	1	55	1	0	0	0	156	0	0	167	1,384	(9.2)
5	0	0	0	0	74	113	2	64	4	2	0	0	0	27	2	0	0	0	19	0	0	42	369	(2.5)
6	0	0	0	0	82	123	6	171	45	37	16	0	0	26	3	0	0	0	6	58	3	61	655	(4.4)
7	0	0	0	0	57	107	4	94	4	0	0	0	0	75	3	0	0	0	311	1	0	27	758	(5.0)
8	0	0	0	0	65	95	2	181	73	6	21	0	13	52	3	0	0	0	7	4	0	50	613	(4.1)
9	0	0	0	0	45	91	0	110	2	0	1	0	8	29	3	0	0	0	133	4	0	34	479	(3.2)
10	0	0	0	0	58	103	8	156	254	5	104	0	8	23	5	0	0	0	6	9	35	56	931	(6.2)
11	0	0	0	0	45	72	3	92	35	0	1	0	2	28	15	0	0	0	21	1	7	47	447	(3.0)
12	0	0	0	0	32	55	3	88	297	12	18	0	6	24	4	0	0	0	52	3	11	47	647	(4.3)
13	0	0	0	0	20	35	2	60	21	0	2	0	2	48	41	0	0	0	14	2	6	41	316	(2.1)
14	0	0	0	0	20	18	2	53	358	20	3	0	2	14	12	0	0	0	27	5	16	22	565	(3.8)
15	0	0	0	0	9	16	2	33	8	0	0	0	2	21	1	0	0	0	1	0	2	32	156	(1.0)
16	0	0	0	0	6	5	3	31	448	19	1	0	4	8	1	0	0	0	0	0	4	16	582	(3.9)
17	0	0	0	0	7	7	3	34	19	0	0	0	0	12	3	0	0	0	3	1	0	32	197	(1.3)
18	0	0	0	0	6	6	3	17	346	1	0	0	0	7	3	0	0	0	0	0	1	24	461	(3.0)
19	0	0	0	0	10	6	0	11	12	0	0	0	2	1	0	0	0	0	0	0	0	8	102	(0.7)
20	0	0	0	0	5	5	1	10	390	0	1	0	1	1	0	0	0	0	0	0	0	10	484	(3.2)
21	0	0	0	0	5	2	0	10	22	0	0	0	0	3	1	0	0	0	0	0	0	6	104	(0.7)
22	0	0	0	0	3	0	0	2	414	0	0	0	0	3	1	0	0	0	0	0	0	10	495	(3.3)
23	0	0	0	0	2	0	0	6	14	0	0	0	0	0	1	0	0	0	0	0	0	2	69	(0.5)
24	0	0	0	0	1	0	0	4	952	0	5	0	0	0	0	0	0	0	0	0	0	3	1,015	(6.7)
25	0	0	0	0	2	0	0	2	14	0	0	0	0	0	1	0	0	0	0	0	0	1	39	(0.3)
26	0	0	0	0	1	0	0	2	701	2	0	0	0	0	2	0	0	0	1	1	13	5	748	(5.0)
27	0	0	0	0	1	0	0	0	14	0	0	0	0	0	3	0	0	0	0	0	0	2	27	(0.2)
28	0	0	0	0	2	0	0	0	516	1	0	0	0	0	0	0	0	0	0	0	0	3	543	(3.6)
29	0	0	0	0	0	0	0	2	24	0	1	0	0	0	0	0	0	0	0	0	0	1	36	(0.2)
30	0	0	0	0	0	0	0	1	530	1	0	0	0	0	4	0	0	0	0	0	0	1	552	(3.7)
31	0	0	0	0	1	0	0	0	19	0	0	0	0	0	0	0	0	0	0	0	0	1	27	(0.2)
32	0	0	0	0	0	0	0	0	492	1	1	3	0	0	0	0	0	0	0	0	0	2	508	(3.4)
33	0	0	0	0	0	0	0	1	21	0	0	1	0	0	0	0	0	0	0	0	0	0	31	(0.2)
34	0	0	0	0	0	0	0	2	410	0	3	3	0	0	0	0	0	0	0	0	0	0	427	(2.8)
35	0	0	0	0	0	0	0	0	23	0	0	0	0	0	0	0	0	0	0	0	0	2	30	(0.2)
36	0	0	0	0	0	0	0	0	225	0	1	0	0	0	0	0	0	0	0	0	0	1	234	(1.6)
37	0	0	0	0	0	0	0	0	35	0	0	0	0	0	0	0	0	0	0	0	0	0	39	(0.3)
38	0	0	0	0	0	0	0	0	121	0	0	0	0	0	0	0	0	0	0	0	0	0	124	(0.8)
39	0	0	0	0	0	0	0	1	26	0	0	0	0	0	0	0	0	0	0	0	0	0	29	(0.2)
40	0	0	0	0	0	0	0	0	46	0	0	0	0	0	0	0	0	0	0	0	0	0	47	(0.3)
41	0	0	0	0	0	0	0	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	19	(0.1)
42	0	0	0	0	0	0	0	0	27	0	0	0	0	0	0	0	0	0	0	0	0	0	28	(0.2)
43	0	0	0	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0	13	(1.0)
Total	67	12	278	98	35	1,041	61	1,854	7,080	466	188	66	66	465	114	94	57	358	770	183	91	826	15,050	
(%)	(0.5)	(0.9)	(1.9)	(0.6)	(0.2)	(7.0)	(6.9)	(0.4)	(11.0)	(47.0)	(3.1)	(1.3)	(0.4)	(3.1)	(0.8)	(0.6)	(0.4)	(2.4)	(5.1)	(1.2)	(0.6)	(5.5)	(100.0%)	