

**INTERNATIONAL ASSOCIATION OF
RESIDENTIAL AND COMMUNITY ALTERNATIVES**

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Testimony concerning proposed U.S. Sentencing Commission
Guideline Amendments for Public Comment

March 15, 1993

Submitted by: Mary K. Shilton on behalf of
The International Association of
Residential and Community Alternatives

Chairman Wilkins and Commissioners:

I am pleased to testify today on behalf of the International Association of Residential and Community Alternatives (IARCA). Founded in 1964, IARCA is dedicated to promoting and enhancing community-based correctional services as well as providing professional development for its members.

IARCA represents more than 250 private agencies operating over 1500 programs. It also serves over 600 individual members employed in community alternative and residential programs. They operate in conjunction with courts, departments of corrections, probation, the Federal Bureau of Prisons, counties and cities throughout the United States.

IARCA members are involved in a wide variety of programs including:

- * Community Based Corrections Centers
- * Educational/ Vocational Services
- * Drug Testing/Treatment
- * Tutoring Services
- * Day Treatment
- * Crisis Intervention
- * Family/Individual Counseling
- * Victim Services
- * Community Service Supervision
- * Bail Supervision
- * Home Detention/Electronic Monitoring
- * Neighborhood Outreach
- * After Care

Approximately 80% of the adult community-based corrections facilities in the United States are represented by IARCA and its members.

IARCA is pleased that the Commission has published the wide range of proposals and issues for consideration at this hearing. I will focus on proposals related to the use and development of alternative punishments because community based sanctions have not been fully developed under the Federal Guidelines. It is IARCA's position that they offer more cost-effective punishments than incarceration.

There are several steps necessary to improve correctional treatment of offenders under the Guidelines, particularly in the area of community-based alternatives. With respect to issues for comment published by the Commission, proposals 32, 33, and 52 provide a context for several of the following recommendations:

- * In view of Federal budget cuts for planned prison expansion, the Guidelines should save existing prison space for serious and violent offenders, and emphasize lower cost community based alternatives for nonviolent offenders.
- * Continue to document the impact of mandatory minimums and the Anti-Drug Abuse Act of 1986.
- * Develop guidelines which expand both categories of eligibility and range of community based options permissible as a condition of probation or as substitution for prison.
- * Permit alternative sentences to be served in lieu of imprisonment by most drug offenders, and other non-violent first time offenders.
- * Work with judges to develop sentencing practices which more fully utilize presently available alternatives.
- * Include a sentencing policy of presumed transitional release programs for up to twelve months prior to release from prison.
- * Gather available data related to information about basic questions concerning fairness, costs, recidivism and impact on the justice system and its components.

The Commission and its staff are to be applauded for documenting the impact of Federal mandatory minimum sentences and the Anti-Drug Abuse Act of 1986.

The Commission deserves credit for its leadership in studying the impact of mandatory minimums and their erosion of the Guidelines. This is especially important due to the provisions of the Anti-Drug Abuse Act of 1986 which have created increased penalties and limited the ability of the guidelines to

¹ United States Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties In the Federal Criminal Justice System (August 1991).

provide fair and proportionate sentences under these statutes. The Commission should continue to highlight the high rate of incarceration for this group as it affects potential rehabilitation, fair punishment, and burden on the justice system.

During the decade of the 1980s, a confluence of factors brought about considerable changes in Federal sentencing practices. The greatest number of offenders were affected by changes in drug related sentences. The U.S. Department of Justice, Bureau of Justice Statistics profiled the impact of our Federal drug sentencing policies during the past decade. There was a 213% increase in drug related cases between 1980 and 1990. The percent change of those sentenced to prison increased 274% during the decade, but the average prison term for drug offenders increased 515% over that period.²

Although the numbers outlined above give overall patterns, little effort has been made to document the individual human costs until recently. Examples of individual cases compiled by Families Against Mandatory Minimums bring home the human impact of our drug sentencing policies.

- * O. Maffett Pound is serving a 20 year sentence for conspiracy to distribute 300 pounds of marijuana as a first offense. Maffett is a 52 year old owner of a Mississippi resort who purchased marijuana for his own consumption and his friends.

- * Maffett's wife was sentenced to 5 years in prison for not turning him in although she did not use drugs. At her sentencing, the judge indicated he was forced to give her the 5 year term under the guidelines.

- * Bobby Joe Ward is serving a 6 1/2 year sentence for manufacturing marijuana plants. Bobby Joe is a 60 year old retired coal miner with black lung disease who was arrested at his son's marijuana patch.

- * Charles Dunlap is a 46 year old father, who worked for the army, as a fireman and as an emergency medical technician. He rented a truck for an informant to off-load marijuana. He is serving 8 years for conspiracy to import 10 tons of marijuana.

While IARCA supports incarceration of high volume, career drug dealers, it does not support the preferred use of incarceration of most non-assaultive criminals. We must take immediate steps to treat these non-assaultive offenders differently than violent, predatory offenders.

² See Attachment A prepared by the National Association of Criminal Justice Planners, Washington DC (1993).

With half of all defendants sentenced to prison in 1990 guilty of drug-related offenses, and many to mandatory terms, it is time to re-evaluate whether our sentencing laws should permit assignment of many of these offenders to community alternatives, home confinement with electronic monitoring, and halfway houses. The nation cannot afford to continue imprisoning offenders who can be punished more effectively in community programs.

The Sentencing Guidelines should adopt a capacity-based approach to sentencing to give priority for holding the most serious and violent offenders.

The United States is on the verge of a massive prison building boom through the 1990s. According to the U.S. Department of Justice, Bureau of Justice Statistics, the population in federal prisons was 65,526. The Wall Street Journal(3/12/93) reports that the Federal prison population is projected to be 133,000 by the year 2000. The number of Federal prisoners increased at a higher rate than state or local prisoners during 1990.

It costs about one twentieth of our 1992 national debt to care for prisoners in the United States. Cells cost about \$110,000 to build and it costs nearly \$20,000 per prisoner per year on the average.

Federal prisons are operating at 151% of their capacity although a 1991 study by the General Accounting Office found that halfway houses were 27% under-utilized by the Federal government. Unless the Guidelines are also based on an assessment of limited space and resources, we will continue to fill prisons while ignoring the availability of more effective community-based programs.

The Sentencing Guidelines have increased the length of many sentences while failing to create rehabilitative options for many offenders.

A majority of Federal offenders have not committed a violent offense,³ yet most receive a prison sentence. Most Federal offenders are ranked at the lowest and second lowest security levels and are not classified as dangerous.⁴ Despite these facts, many will serve prison sentences because the Guidelines increased length of terms.

In developing Guidelines and avoiding unwarranted disparity

³ Bureau of Justice Statistics, U.S. Department of Justice, Sourcebook of Criminal Justice Statistics 1990, p.646 (1991).

⁴ Id.

in sentencing, the Commission has narrowed its focus to an offense and criminal history classification system. This was accomplished by creating a sentencing decision process which does not reflect other variables such as age, infirmity, culpability and capacity for change which may have been considered by the pre-guidelines sentencing judge. The tendency, in many instances, has been to apply more stringent confinement practices than are justified by the goals of rehabilitation, need for deterrence, incapacitation or demand for punishment proportionate to the offense.

Although longer sentences have not resulted in all cases under the guidelines, the pattern has been to lengthen sentences. A recent study by Gerald W. Heaney, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit concluded that some Federal prisoners are serving twice as long as they did prior to sentencing guidelines and the number of offenders receiving probation has declined dramatically. Some writers have noted the importance of prosecutorial discretion in determining the ultimate sentencing result. Because the guidelines were based on sentences which were generally shortened by parole, and parole is now no longer available, this has had a tendency to lengthen terms when coupled with mandatory minimums.

The Guidelines should set forth specific provisions to develop opportunities for intermediate sanctions and community based punishments.

The statutory purposes of the Guidelines give equal weight to the primary goals of sentencing: punishment, deterrence, incapacitation, restitution and rehabilitation, as well as elimination of unwarranted disparity.⁶ However, the legislation also indicates that when a court is considering whether to imprison and if so the length of term then it should note that "...imprisonment is not an appropriate means of promoting correction and rehabilitation."

Because the legislation does not recognize rehabilitation as a basis for imprisonment, the Guidelines should provide a range of non-incarcerative rehabilitative options for all but the most serious offenders who are imprisoned for life. To provide no rehabilitative options for large categories of offenders is to disregard effective correctional treatment as one of the four

5 For a lengthy discussion of this point of view see "Calculating Injustice: The Fixation on Punishment as Crime Control," 27 Harvard Civil Rights-Civil Liberties Law Review (1992) at p. 597.

⁶ 18 U.S.C. Sec 3553(a) (1988).

⁷ See 18 U.S.C. Sec. 3582"(a)(1988)

purposes of the legislation.

The Guidelines should include a non-incarcerative rehabilitative option for all non-violent first time offenders. As recommended in the Corrothers' Alternatives to Imprisonment Project Report, this can be accomplished by expanding the array of sentencing options to include: residential incarceration, intensive supervision, public service work, bootcamps, and day reporting centers as a substitute for imprisonment.⁸ Another possibility is to extend split sentence options to Zone D. In addition, transitional release programs to halfway houses should be the norm for offenders for up to 12 months prior to their release from prison.

Rehabilitation is more likely to occur in an alternative sentencing program.

There is growing evidence that rehabilitation is more likely to occur with use of halfway houses or other alternatives in lieu of confinement.⁹ According to Ralph Ardito, Jr. President, Federal Probation Officers Association. "Unlike prison, intermediate punishment programs deal with some root causes why people commit crime..They help offenders get a job and they receive treatment for their addiction and counseling for them and their families."

If appropriate offenders receive drug treatment, literacy training, and job placement in the community, they can become productive members of that community. This will enable them to support their families, build their neighborhoods and help reduce crime. Stable families with adequate economic support and opportunity for the future are the best anti-crime measures.

The National Institute of Justice reported that electronic monitoring was successful in three out of four cases. Only 11% of drug offenders granted home confinement in Florida re-offended compared to 27%. In Genessee County, Michigan 79% of offenders who completed community residential programs did not commit a new crime. Day reporting centers have reported successful completion rates as high as 80%. These are but a few of the program evaluations indicating lower rates of recidivism for community

⁸ See United States Sentencing Commission Alternatives to Imprisonment Project, The Federal Offender: A Program of Intermediate Punishment, (1990).

⁹ The Challenge of Crime in a Free Society indicated community based programs are less expensive and at least as effective as incarceration according to Norval Morris and Michael Tonry, Between Prison and Probation, New York: Oxford University Press, 1990.

corrections programs.

Many judges believe that intermediate punishment programs are an effective option in lieu of prisons. In a survey of 225 federal judges a majority supported a wide array of sentencing alternatives and many indicated there were too few intermediate punishment programs available. Among the programs they identified for expansion were: community service, intensive supervision, electronic monitoring, boot camps and community treatment centers. Focused telephone interviews indicated that the most frequently mentioned program that was lacking was community treatment centers and home confinement with electronic monitoring.

Intermediate sanctions should be approached as a public private partnership. Both Federal and private agencies operate programs successfully but citizens, businesses and nonprofit groups should be engaged in the planning, implementation and delivery of services.

The Commission should further expand the guidelines to permit courts to sentence non-violent first offenders to alternatives as suggested in Issue 32.

Issue 32 suggest courts should impose sentences other than imprisonment for first offenders convicted of non-violent offenses. IARCA urges the Commission to develop and adopt an amendment as indicated by extending the option of a community sentence to all first time offenders including Zone D. There is a preference for this to be handled as an extension of Zone A rather than as a downward departure. If it were treated instead as a downward departure, it would increase the complexity of the sentencing process.

There is growing public support for the greater use of intermediate sanctions. A 1991 survey by the Wirthlin Group of 1,000 Americans indicated that four out of five support community-based corrections provided selected offenders are closely supervised, pay restitution, get a job and participate in substance abuse treatment. This is consistent with public opinion polls by the Public Agenda Foundation, Figgie International, Gallup and Harris polls which found that the public wants tough but rehabilitative programs for non-violent offenders.

Under proposed issue 52, the Guidelines would be revised to presume probation without confinement for Zone A unless there is a finding to the contrary.

IARCA supports proposed amendment 52 which would require a Zone A sentence to be probation without confinement unless the court gives reasons stated on the record that imprisonment is

necessary to serve the purposes of sentencing. There is presently a failure of judges to use probation or alternative split sentences for some offenders who would otherwise be eligible. Although there are a number of compelling reasons for declining to use non-incarcerative sentences permissible under the existing guidelines, these could be noted by the judge at sentencing.

Prison beds should be saved for violent offenders and those with a record of aggressive or dangerous behavior. With respect to non-violent first time offenders, the Guidelines should presume that punishment will be limited to probation or alternative community punishments in the absence of a finding by the sentencing judge that there is an adequate basis for a departure from this guideline. Such a presumption would be consistent with the tradition of parsimony in use of incarceration when more effective options are available.

IARCA supports an increase in the availability of the type of sentences in Zones A and B to more offense levels within all criminal history categories as proposed in 33.

Approximately 62% of all Federal offenders could be assigned to community based alternative punishments. In 1990 the Federal Bureau of Prisons reported that only 18.2% of the more than 65,500 prisoners were placed in halfway houses. Richard M. Bilby, United States District Judge, District of Arizona noted summed up the response of many judges when he noted: "We need more halfway houses because these programs keep offenders off the streets and away from those who contributed to their criminal behavior, they help offenders get a job and they mandate drug testing and treatment."

Halfway houses are most often private agencies under contract with the Bureau of Prisons. In order to adhere to the strict standards set by the Bureau of Prisons all Federal offenders are required to undergo drug testing and urinalysis, participate in substance abuse treatment, a GED or remedial education, and gain employment. Offenders are required to pay 25 percent of their gross wages for room and board and pay all court-ordered fines, costs and restitution.

There is a need for more information about individual impacts of the guidelines on offenders as well as on the entire justice system.

This Guideline decision model fails to adequately report on individual offender outcomes as well as justice system results. The Commission's publications have neglected to analyze results related to such factors as: cost for sentencing options, and whether current practices in any way limit the impact of crime on society. As a recent GAO report concluded: " At this time, neither we nor the Commission can definitively answer the central

question posed by Congress regarding how effective the sentencing guidelines have been in reducing sentencing disparity"¹⁰.

In order to gain an understanding of whether the guidelines have any discernable impact on reducing crime or rehabilitating offenders, the Commission must continue to work with other Federal agencies to develop a better profile of sentencing outcomes, including probation, alternative sanctions and split sentences.

The Commission should continue to work with other agencies in gathering data about costs of imprisonment and sentencing alternatives, recidivism of various sentences populations, and impact of incarceration practices on the other justice agencies. Although statistical analyses and descriptions of offender characteristics and types of sentences are widely available, this information does not adequately describe the impact of the Sentencing Guidelines on crime reduction. For example, there is very little information about the effect of widespread use of imprisonment for the nearly half of all felons who are convicted of drug crimes. By sentencing them to prison are we doing as much as we can to preclude the possibility that they will re-offend upon release?

There is little information about the average cost of incarceration as compared to probation, split sentence and community based alternatives. According to national figures, it costs about \$110,000 to build a prison cell and about \$19,244 to house a person in prison for a year. In contrast, some intermediate sanctions are one third the cost of incarceration. More information is needed about the cost of prison compared to alternatives where prisoners can earn a wage, pay room and board and family support.

With respect to an analysis of results, the Commission has not gained sufficient access or used data from public defenders, prosecutors, the courts and other Federal agencies to indicate the real outcomes of the Guidelines. This has failed to shed light on the real decision points in the sentencing process. It has also failed to highlight the overall results of our increased incarceration rates.

I thank the Commission for this opportunity to discuss the expansion and use of alternatives under the Guidelines. I commend the Commission for its willingness to consider these issues which are very important to system of justice. It is my belief that the Commission will not have adequately addressed the area of fairness in sentencing until all sentences short of life include

¹⁰ United States General Accounting Office, Sentencing Guidelines: Central Questions Remain Unanswered, August 1992.

a community corrections sanction component.

ATTACHMENT A

TOTAL DEFENDANTS CONVICTED IN FEDERAL COURTS, 1980 TO 1990						PERCENT CHANGE 1980-1990
	1980	1987	1988	1989	1990	
TOTAL	29,943	44,518	43,587	46,779	46,283	55%
VIOLENT	2,134	2,241	2,140	2,180	2,282	7%
PROPERTY	10,780	14,349	13,434	13,546	13,399	24%
DRUGS	5,135	13,423	13,383	15,803	16,068	213%
PUBLIC ORDER	11,893	14,500	14,581	15,256	14,877	25%
PERCENT THAT ARE DRUG CHARGES	17.1%	30.2%	30.7%	33.8%	34.7%	

NUMBER OF FEDERAL DEFENDANTS SENTENCED TO PRISON						PERCENT CHANGE 1980-1990
	1980	1987	1988	1989	1990	
TOTAL	13,766	23,579	23,450	27,366	27,955	103%
VIOLENT	1,770	1,837	1,733	1,892	1,999	13%
PROPERTY	4,630	6,234	5,723	5,974	5,775	25%
DRUGS	3,675	10,196	10,599	13,306	13,754	274%
PUBLIC ORDER	3,690	5,312	5,395	6,194	6,427	74%
PERCENT THAT ARE DRUG CHARGES	26.7%	43.2%	45.2%	48.6%	49.2%	

AVERAGE PRISON TIME (NUMBER SENT TO PRISON TIMES AVERAGE TERM) IN YEARS					PERCENT CHANGE 1980-1990
	1980	1987		1990	
TOTAL	50,824	108,463		125,027	146%
DRUGS	14,424	57,607		88,713	515%
NON-DRUGS	36,398	50,855		36,314	0%
PERCENT THAT ARE DRUG CHARGES	28.4%	53.1%		71.0%	