

United States General Accounting Office

Working Report to the Chairman
Subcommittee on International Security
and Judicial Administration
Committee on the Judiciary
House of Representatives

SENTENCING

Intermediate Sentencing in the Federal Criminal Justice System



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United States
General Accounting Office
Washington, D.C. 20548

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General Government Division

B-254524

January 14, 1994

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual
Property and Judicial Administration
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

In response to the Subcommittee's request, this briefing report provides descriptive information on intermediate sanctions in the federal criminal justice system. Specifically, the report identifies (1) available sanctions, (2) eligibility for the sanctions, (3) the sanctions imposed--both intermediate and other sanctions--on convicted offenders in fiscal year 1991, (4) the agencies responsible for administering the sanctions, (5) the monthly operating and expansion costs of illustrative sentences, and (6) legal limitations to the increased availability or use of sanctions other than imprisonment.

On January 13, 1994, we briefed you on the results of our work. This report summarizes the information provided at the briefing.

RESULTS IN BRIEF

We found the following:

- Three intermediate sanctions are available in the federal system--probation with a confinement condition, a "split sentence" (a short prison sentence followed by supervised release with a confinement condition), and "shock" incarceration (boot camps).
- Eligibility is principally determined by the U.S. Code and the guidelines of the U.S. Sentencing Commission (the Commission).
- Of the offenders sentenced in federal district courts in fiscal year 1991, about 73 percent received a sentence of imprisonment, about 14 percent received probation, and 11 percent received an intermediate sanction.
- Because most sentences are made up of more than one sanction, jurisdiction is often split between the probation and prison systems.

- Because costs vary so widely, according to the length and composition of sentences and other factors, comparative cost generalizations are difficult to make.
- The U.S. Code, the sentencing guidelines, and Bureau of Prisons (BOP) regulations (regarding boot camps) limit the availability and use of intermediate sanctions.

BACKGROUND

The federal prison population has grown dramatically over the past decade. The number of offenders incarcerated in BOP facilities increased 180 percent between 1980 and 1989, from 19,025 to 53,347. As of November 1993, BOP reported a population of 81,119 and a projected 1997 population of 106,174.

The costs of housing this expanding prison population have increased significantly. Congress appropriated over \$3.1 billion for prison construction between fiscal years 1989 and 1993. In 1989 BOP had 70 facilities; in July 1993 the total had risen to 103, and by the end of 1997 BOP planned to have 154 facilities operational.¹

The operating costs of housing the increasing prison population are also rising. BOP's salaries and expenses budget more than quadrupled in the last 10 years, from about \$363.2 million in fiscal year 1982 to about \$1.8 billion in fiscal year 1993. BOP estimates that if current trends continue, its salaries and expenses budget will nearly double by 1997 to \$3.6 billion.²

In part as a result of these increasing budgetary demands, interest has grown in the group of programs referred to collectively as intermediate sanctions. These programs get their name from the fact that the sanctions they impose on offenders are typically more severe than simple probation and less severe than traditional incarceration. Examples of intermediate sanctions include

- "shock" incarceration (typically, a short-term program for

¹This count differs from BOP's. According to BOP officials, BOP had 59 facilities in 1989; in July 1993 they had 72; and in 1997 they will have 103. The count differs because BOP considers minimum security facilities that are co-located with facilities of a higher security level to be one facility. We counted each type of facility separately.

²All figures are in current dollars.

youthful offenders modeled after the boot camps of the armed services);

- intensive supervision probation (programs involving frequent contacts between probation officers and offenders); and
- home confinement (programs that restrict the offender to his or her place of residence, except for authorized absences).

Intermediate sanctions are attractive to policy makers because, while they are more expensive than regular probation, they are generally less expensive than imprisonment. The long-term success of intermediate sanctions in reducing recidivism is uncertain, in part because most of the programs are relatively new, and there are limited data on the recidivism of participants. The National Institute of Justice is evaluating a number of state intermediate sanction programs. Related GAO products are listed at the end of this report.

SANCTIONS AVAILABLE

In addition to the traditional sanctions of fines, probation, and imprisonment, three intermediate sanctions are available in the federal system:

- probation with a condition of confinement to a halfway house, the offender's home (with and without electronic monitoring), or to a jail for nights or weekends;
- a "split sentence," which is a short prison sentence followed by supervision in the community with a condition of confinement to a halfway house or the offender's home (with and without electronic monitoring); and
- "shock" incarceration, or boot camps.

(See app. II for more discussion of available federal intermediate sanctions.)

ELIGIBILITY

Eligibility for all federal criminal sanctions is determined by the U.S. Code, the Commission's guidelines and, in the case of boot camps, by BOP regulations.

Generally, the range of sanctions for which an offender is potentially eligible is determined by the offender's criminal history and final offense score under the sentencing guidelines. This final score determines into which of four "zones" the offender falls. The zones are designated A, B, C, and D. With

the exception of boot camps, only offenders who fall in guidelines zones A, B, or C are eligible for intermediate sanctions (see table I and app. III). In addition, the Commission does not recommend the use of intermediate sanctions for offenders in criminal history categories III or above, even if they fall into zones A, B, or C.³

Table 1: Types of Sanctions Available in Each Sentencing Guidelines Zone

Type of sanction available	Zone A	Zone B	Zone C	Zone D
Probation	x			
Probation with a confinement condition ^a	x	x		
Shock incarceration (boot camp) ^{a,b}			x	x
Split sentence ^a		x	x	
Imprisonment	x	x	x	x

^aIntermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

^bAvailable to inmate volunteers sentenced to more than 12 but not more than 30 months in prison who also meet BOP's eligibility requirements.

SENTENCES IMPOSED IN FISCAL YEAR 1991

According to Commission data, about 73 percent of the 33,095 persons sentenced in federal district courts in fiscal year 1991 received a sentence of imprisonment, about 14 percent received probation, and 11 percent received an intermediate sanction.⁴ Of the almost 54 percent (17,710 of 33,095) of these persons who, according to their assigned criminal history category, were presumably first-time offenders or offenders with minor prior

³There are six categories of criminal history under the sentencing guidelines. Category I is the least severe, category VI is the most severe.

⁴Sentencing information was missing or indeterminate for about 2 percent of the 33,095 cases in the database.

criminal records,⁵ about 65 percent received a sentence of imprisonment, about 19 percent received probation, and about 15 percent received an intermediate sanction.^{6,7} The overall percentage distribution of sentences imposed by guidelines zone is shown in table 2 (details are in app. IV).

Table 2: Percentage Distribution of Sanctions Imposed in Fiscal Year 1991 by Sentencing Guidelines Zone

Type of sanction imposed	Percentage			
	Zone A	Zone B	Zone C	Zone D
Probation	69	10 ^a	6 ^a	2 ^a
Intermediate ^b	6 ^c	46	21 ^c	2 ^c
Prison	21	42	70	95
Missing ^d	4	2	3	1
Total	100	100	100	100
Number in each zone ^e	4,193	4,648	2,369	17,389

^aA sentence of probation indicates a probable departure by the sentencing judge, since probation is not a sanction otherwise available to those whose guidelines scores place them in zone B, C, or D. Through the use of departures, a judge can sentence offenders to sanctions for which they would otherwise be ineligible.

^bIntermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

^cThese cases may or may not indicate upward or downward departures, depending upon the sanction imposed.

^dMissing--database identifies as missing or indeterminate information.

⁵These cases were those categorized as criminal history category I in the sentencing database.

⁶Sentencing information was missing or indeterminate for about 1 percent of the 17,710 cases in criminal history category I.

⁷Percentages do not equal 100 due to rounding.

^oIn 4,496 cases there was insufficient information from the courts to determine the zone.

Because of data limitations and the complexity of the sentencing guidelines, it was not possible to identify how many offenders met all eligibility requirements but did not receive intermediate sanctions in 1991.

AGENCIES THAT ADMINISTER THE SANCTIONS

The Administrative Office of the U.S. Courts (AOUSC), through its Probation and Pretrial Services Division (and its 93 district offices), and BOP are responsible for administering all federal criminal sanctions. Most sentences are made up of more than one sanction, and in these cases responsibility for administration is often split between the two agencies.^o For example, an offender with a split sentence (with a home confinement condition) would be under the jurisdiction of BOP for the prison term and Probation for the term of supervised release with the home confinement condition.

COSTS OF THE SANCTIONS

Sentence costs are determined by the interaction of a number of variables, including

- the number and type of offenders entering the system;
- the sanction or combination of sanctions included in a sentence for a particular offender (such as a short prison term, followed by supervised release with a period of community confinement, followed by simple supervised release);
- the length of each sanction included in the sentence; and
- the per capita cost of administering each sanction in a sentence, including the costs associated with any necessary expansion.

Consequently, a number of sanction combinations are possible, including variations in the length of each sanction included in a sentence. As a result, it is difficult to compare the cost of a prison sentence to the cost of an intermediate sanction. To provide some comparative cost data, we constructed a range of

^oThroughout this report we use the term "sanction" to refer to the individual components of a sentence. A "sentence" usually comprises two or more sanctions, each of specific length.

typical sentences from simple probation to imprisonment. We calculated current operating costs, average monthly costs, and the costs of expanding agency operational capacity for each sentence. These costs appear in appendixes VI and VIII.

LIMITATIONS ON INCREASING
AVAILABILITY OR USE OF INTERMEDIATE SANCTIONS

There are a number of limitations on increasing the availability and/or use of sanctions other than imprisonment. The U.S. Code limits the circumstances in which probation, boot camps, and intermittent, home, and community confinement may be used. The U.S. Code does not authorize the imposition or administration of such intermediate sanctions as intensive supervision probation or day fines or the imposition of community service except as part of a sentence that includes probation or supervised release. Restitution is authorized as a stand-alone sanction only in the case of misdemeanors and only if the guidelines do not require a sentence of imprisonment or other confinement.

In addition, if an offender is convicted under a statute requiring a mandatory minimum sentence, a period of imprisonment must be imposed and intermediate sanctions are not available. However, fines, restitution, and/or supervised release may be added as part of the sentence. The sentencing guidelines limit the use of all nonimprisonment sanctions to certain offenders and recommend against use of nonimprisonment sanctions in the case of offenders who fall into criminal history categories III and above. BOP regulations place additional restrictions on boot camp eligibility beyond those found in the Code (see app. VII).

SCOPE AND METHODOLOGY

To determine available sanctions, eligibility for those sanctions, administrative responsibility, and limitations on the increased availability or use of intermediate sanctions, we interviewed officials of the Commission, AOUSC, BOP, and the Federal Judicial Center (FJC) and reviewed applicable sections of the U.S. Code, the sentencing guidelines, and agency policies and regulations. We limited our analysis to those sanctions available to the judge at the time of sentencing.

To determine sanctions imposed in fiscal year 1991, we analyzed the Commission's MONFY91 file.⁹ To determine the costs of each sanction, we analyzed the operating and expansion costs of various sentences with data supplied by AOUSC and BOP. The

⁹The fiscal year 1992 data were not available at the time we did our work.

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sentences used were those that both AOUSC and BOP officials agreed were representative of the type of sentences generally imposed in the federal system. We did not verify the sentencing and cost data provided by the agencies, and we did not evaluate the costs of any intermediate sanction programs not already in use in the federal system.

We discussed the contents of this report with Commission officials including the Deputy Staff Director, AOUSC officials including the Chief of the Probation System, and BOP officials including the Chief of the Strategic Management Branch. AOUSC and BOP officials commented that this report will provide a valuable tool for practitioners and policy makers. Each agency had minor technical comments, which have been incorporated into the report where appropriate.

In addition, AOUSC officials expressed concerns about the possible increased use of intermediate sanctions. First, they were concerned that when jurisdiction is split between AOUSC and BOP, resources must be allocated to the appropriate agency if it assumes a new responsibility or if its existing responsibilities are expanded. Second, they noted that if an offender is sanctioned in the community rather than through a prison sentence, the financial savings are not absolute, since funding for the community-based sanction must be increased (though funding for the prison-based sanction may be decreased).

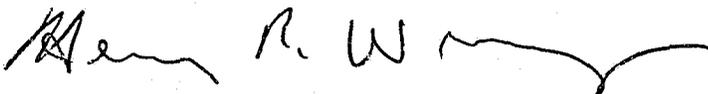
We did our work between November 1992 and July 1993 in accordance with generally accepted government auditing standards. Our scope and methodology are discussed in greater detail in appendix I.

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We are sending copies of this report to the Attorney General, the Director of BOP, the Chairman of the Commission, the Director of AOUSC, and other interested parties. Copies will also be made available to others upon request.

Major contributors to this report are listed in appendix IX. If you have any questions about this report, please call me on (202) 512-8777.

Sincerely yours,



Henry R. Wray
Director, Administration
of Justice Issues

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ABBREVIATIONS

AOUSC	Administrative Office of the U.S. Courts
BOP	Bureau of Prisons
FJC	Federal Judicial Center

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman of the Subcommittee on Intellectual Property and Judicial Administration, House Committee on the Judiciary, asked that we review intermediate sanctions in the federal criminal justice system. After discussions with the Subcommittee, it was agreed that we would identify

- the sanctions available in the federal system, including "intermediate" sanctions;
- who is eligible for the sanctions;
- the sanctions imposed in fiscal year 1991;
- the agencies responsible for administering the sanctions;
- the comparative costs of various sentence scenarios; and
- legal limitations to the increased availability and/or use of sanctions other than imprisonment.

Our focus for this review was on "front-end" sanctions, those that the judge can impose at the time of sentencing. We did not address programs that provide alternative ways to serve a prison sentence or to transition from prison to the community.

To address the first and second objectives, we interviewed officials at the U.S. Sentencing Commission (the Commission), the Administrative Office of the U.S. Courts (AOUSC), the Federal Judicial Center (FJC), and the Bureau of Prisons (BOP) about sanctions available in the federal system and eligibility for each of the sanctions. We reviewed the U.S. Code, the sentencing guidelines manual, and AOUSC and BOP policies and regulations.

To address the third objective, we analyzed the Commission's fiscal year 1991 data file, MONFY91,¹ which contains sentencing information on defendants sentenced under the guidelines in fiscal year 1991.² Of the 33,419 cases in the database, 324

¹Observations in MONFY91 data are on a per defendant per case basis.

²The fiscal year 1992 data file, MONFY92, was not available at the time of our analysis.

involved mixed law counts and were excluded from our analysis.³ The remaining 33,095 cases were grouped for analysis as follows:

- all defendants in the database;
- defendants within each of the four zones of the sentencing guidelines grid as determined by their guidelines scores (app. III); and
- defendants whose guidelines scores placed them in criminal history categories I or II, plus all other categories (III, IV, V, and VI) combined.

We also obtained information from BOP on the number of female and male offenders processed through the boot camp program as of May 1993.

To meet the fourth objective, we interviewed officials at AOUSC and BOP about program administration and reviewed applicable program and policy statements and manuals of these agencies.

To meet the fifth objective, we discussed costs with officials of AOUSC and BOP and requested itemized cost information. We obtained information on fiscal year 1992 and fiscal year 1993 first quarter average costs per offender per day for each sanction. All headquarters, field location, and correctional facility costs associated with the sanctions were included: (1) administration, (2) personnel compensation and benefits, (3) staff training, (4) payments to contractors, (5) equipment, (6) travel, and (7) space and facilities. We also requested estimated costs to expand the capacity of supervision and facilities. AOUSC provided estimated expansion costs for each additional 100 offenders. BOP provided the costs to increase minimum and low security prison capacity through construction of new facilities, including information on the costs of acquisition, planning, design, construction, and activation.

In order to analyze the costs of various sentences, we constructed hypothetical sentences for zones A, B, and C of the guidelines grid. For each sentence possibility within each zone, we developed two scenarios to represent the possible "low" and "high" terms of confinement and supervision in that zone. We showed the hypothetical sentences to employees of AOUSC and BOP experienced in federal sentencing policy and practice. With suggested modifications that we incorporated into the sentences, they agreed that these were sound and reasonable examples of

³Mixed law cases are those which involve both guidelines and pre-guidelines counts.

typical sentences in zones A through C of the guidelines grid.

We assumed that intermittent confinement would be served on weekends in contract state or local jail facilities. We also assumed that all sentences would be served in their entirety; that is, offenders would not receive credit on their prison sentences for good time and neither probation nor supervised release terms would be terminated before expiration of the full term. This method of calculating costs provided the cleanest cost comparisons among different types of sentences. However, this method also overstates actual costs, because a substantial number of offenders do earn good time reductions of up to 54 days per year, and about 24 percent of probation and supervision terms are terminated before the end of the full term.

To meet the sixth objective, we interviewed officials at the Commission, AOUSC, and BOP and reviewed the U.S. Code, the U.S. Sentencing Commission Guideline Manual, and AOUSC and BOP program and policy statements and manuals. To determine the possible impact of the statutory and BOP boot camp eligibility requirements, we analyzed the Commission's data file, MONFY91. This database does not include variables specifically designed to indicate boot camp eligibility; therefore, we analyzed variables in the database that would indicate probable eligibility on the basis of sentence length (prison terms of more than 12 but no more than 30 months), age (no more than 35 years for men), and criminal history category I or II. We used criminal history categories I and II because BOP told us that offenders in these categories would most likely meet BOP's requirements that the offender would be serving his or her first period of incarceration or have a minor prior history and would be qualified for minimum security.

For background information, we obtained budget data and federal prison population levels and projections from BOP.

We did not independently verify the sentencing data provided by the Commission or the cost data provided by AOUSC and BOP. We did not evaluate the costs of any intermediate sanction programs not already in use in the federal system.

We discussed this report's contents with officials of the Commission, AOUSC, and BOP. Their comments have been incorporated into the report where appropriate.

We did our work between November 1992 and July 1993 in accordance with generally accepted government auditing standards.

GAO Objective 1: Sanctions

- **Background**
 - origin of term "intermediate sanctions"
 - examples of intermediate sanctions

 - **Scope and Methodology**
 - focus on front-end sanctions
-

OBJECTIVE 1: SANCTIONSBackground

Intermediate sanction programs get their name from the fact that the sanctions they impose on offenders are typically more severe than standard probation and less severe than traditional imprisonment. Examples of intermediate sanctions include shock incarceration, intensive supervision probation, and home confinement with and without electronic monitoring.

Scope and Methodology

We discussed available sanctions with officials of the Commission, FJC, AOUSC, and BOP. We also reviewed the U.S. Code, the U.S. Sentencing Commission Guidelines Manual, and applicable program and policy statements and manuals of AOUSC and BOP.

Our focus was on "front-end" sanctions, those that the judge can impose at the time of sentencing. We did not address programs that provide alternative ways to serve a prison sentence or to make the transition from prison to the community.

GAO Sanctions, Definitions, and
Required Supervision Terms

- Available sanctions:
 - probation
 - probation with a confinement condition (intermediate)
 - prison and supervised release with a confinement condition (intermediate)
 - shock incarceration (intermediate)
 - prison with/without supervised release
-

SANCTIONS, DEFINITIONS, AND REQUIRED SUPERVISION TERMSSanctions

Sanctions are specified in the U.S. Code and the U.S. Sentencing Commission Guidelines Manual. Available sanctions are

- probation;
- intermediate sanctions, which are
 - probation with a condition(s) of confinement;
 - prison with a subsequent term of supervised release that includes a condition(s) of confinement, also referred to by the term split sentence;
 - shock incarceration; and
- prison with or without supervised release.

In addition to these sanctions, fines, restitution, and community service are available in the federal system. A fine may be the sole sanction only if a term of imprisonment or other confinement is not required by the guidelines. Restitution may be imposed as the sole sanction in the case of any misdemeanor offense for which the guidelines do not require a sentence of imprisonment or other confinement. Otherwise, restitution may be ordered only as a condition of probation or supervised release. Community service is available only as a condition of probation or supervised release.

Definitions

The following are definitions of sanctions and sentencing terminology:

1. Fine--a financial penalty.
2. Probation--a sentence to supervision in the community by a U.S. Probation Officer. In addition to some mandatory conditions, other conditions may apply. The maximum term of probation supervision varies by offense class.
3. Restitution--a penalty or condition of probation or supervised release (after release from prison) in which the offender is ordered to make good on any loss or damage suffered by victims.

4. Community service--a condition of probation or supervised release (after release from prison) that involves nonsalaried service by the offender for civic or nonprofit organizations.
5. Condition of confinement--any of the following three alternatives that may be used as conditions of probation or supervised release (after release from prison):
 - Intermittent: custody for intervals of time, such as nights or weekends (only as a condition of probation).
 - Home: a program that restricts the offender to his or her place of residence, except for authorized absences. It is usually enforced by electronic monitoring, which is the use of any electronic equipment to provide information about the location of the offender.
 - Community: residence in a community treatment center (halfway house), mental health facility, alcohol or drug rehabilitation center, or other community facility, including required participation in employment and educational programs.
6. Split sentence--a brief sentence of imprisonment combined with a subsequent term of supervised release with a condition that substitutes community confinement and/or home confinement to satisfy the minimum required prison sentence.
7. Shock incarceration--the "intensive confinement program," administered by BOP, involving progression from a highly regimented prison component to a graduated release program comprising community and home confinement phases (also known as "boot camp").
8. Imprisonment--a sentence to the custody of BOP until the expiration of the term imposed (less credit for applicable good time).
9. Supervised release--following completion of the offender's term of imprisonment, a period of supervision in the community by a U.S. Probation Officer. In addition to some mandatory conditions, other conditions may apply. The court must order supervised release to follow any term of imprisonment that exceeds 1 year or if required by a specific statute. The court may order supervised release to follow imprisonment in any other case. The maximum term of supervised release varies by offense class.

Required Supervision Terms

The length of probation supervision and supervised release terms are determined by the U.S. Code and the sentencing guidelines.

- Probation: 1 to 5 years if the guidelines offense level is 6 or greater; not more than 3 years if the level is less than 6.

- Supervised Release: 3 to 5 years for a Class A or B felony; 2 to 3 years for a Class C or D felony; 1 year for a Class E felony or a Class A misdemeanor.

GAO Objective 2: Eligibility

- **Scope and Methodology**
-

OBJECTIVE 2: ELIGIBILITYScope and Methodology

We discussed eligibility with officials of the Commission, FJC, AOUSC, and BOP. We also reviewed the U.S. Code, the U.S. Sentencing Commission Guidelines Manual, and applicable program and policy statements and manuals of AOUSC and BOP.

GAO How Eligibility is Determined

- Eligibility is determined by:
 - the U.S. Code
 - Commission guidelines
 - regulations of BOP
(for boot camps)
-

How Eligibility is Determined

The type of sanction for which the offender is eligible and the sentence length are determined by the U.S. Code, the sentencing guidelines, and, for boot camps, applicable BOP regulations.

The U.S. Code prescribes maximum and, in some cases, mandatory minimum penalties for each offense for which the offender is convicted.

The guidelines are promulgated for the use of the sentencing court in determining the sentence to be imposed, including

- whether to impose a sentence of a fine, probation (with or without confinement conditions), or a term of imprisonment (with or without subsequent confinement conditions);
- a determination as to the appropriate amount of a fine or the appropriate length of sentence, including any term of confinement; and
- whether and for what length of time to impose supervised release.

Beyond the statutory criteria that the offender be sentenced to a term of imprisonment of more than 12 but not more than 30 months and volunteer for the program, BOP regulations restrict boot camp participation to individuals who are

- serving their first period of incarceration or who have a minor history of prior incarceration;
- qualified for minimum security;
- 35 years of age or less (men only; there is no age limit for women); and
- without medical restrictions and capable of participating in the rigorous program.

Operation of the Guidelines

An offender's sentence under the guidelines is determined using the sentencing table (see table III.1). The left side of the table consists of 43 offense levels, with the least serious crimes falling within the lower offense levels and the most serious crimes within the higher levels. The top of the table consists of six criminal history categories, with category I the least severe and category VI the most severe. Placement in one of these categories is determined by such factors as the number and length of prior convictions.

The intersection of an offender's offense level (after any necessary adjustments) and criminal history category determines his or her placement within a "cell" on the table and, thus, the potential minimum and maximum period of confinement (the sentencing range).

The cells in the table are grouped into four zones labelled A, B, C, and D. The type of sanction for which the offender is eligible is determined by the zone in which his or her range falls.

Table III.1: Sentencing Guidelines Table, Effective November 1, 1990 (sentencing ranges in months)

Offense Level	Criminal History Category					
	I	II	III	IV	V	VI
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	1-7	2-8	4-10	8-14	12-18	15-21
8	2-8	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

Source: U.S. Sentencing Commission Guidelines Manual, November 1, 1990

GAO Eligibility—Zone A Sanctions

- Probation
 - Probation with a confinement condition
 - Imprisonment
-

Eligibility--Zone A Sanctions

In zone A, the offender may be sentenced to probation, probation with a confinement condition, or imprisonment.¹ The available confinement conditions are intermittent, home, and community. They may be imposed singly or in any combination.

¹Either fines or restitution may be the sole sanction imposed in this zone, but this rarely happens.

GAO Eligibility—Zone B Sanctions

- Probation with a confinement condition
 - Split sentence
 - Imprisonment
-

Eligibility--Zone B Sanctions

In zone B, the offender may be sentenced to probation with a confinement condition, a split sentence, or imprisonment.

If probation with a confinement condition is imposed, the confinement term must equal at least the minimum end of the guideline range for the cell applicable to the offender. The available confinement conditions are intermittent, home, and community. They may be imposed singly or in any combination.

If a split sentence is imposed, the term of imprisonment must be at least 1 month.² The confinement term under supervised release must equal at least the remainder of the minimum guideline range. The available confinement conditions are home and community, which may be imposed singly or in any combination.

²Prior to November 1, 1992, the term of imprisonment had to equal at least one-half of the minimum guideline range, but not less than 1 month.

GAO Eligibility—Zone C Sanctions

- Split sentence
- Imprisonment

Eligibility--Zone C Sanctions

In zone C, the offender may be sentenced to a split sentence or imprisonment.

If a split sentence is imposed, the term of imprisonment must equal at least one-half of the minimum guideline range. The confinement term under supervised release must equal at least the remainder of the minimum guideline range. The available confinement conditions are home and community, which may be imposed singly or in any combination.

If the offender is sentenced to more than 12 but no more than 30 months of imprisonment and volunteers, he or she is eligible for the boot camp program. Additional BOP criteria must be met.
(See p. 24.)

GAO Eligibility—Zone D Sanction

- Imprisonment

Eligibility--Zone D Sanction

In zone D, the offender may be sentenced to imprisonment.

If the offender is sentenced to more than 12 but no more than 30 months of imprisonment and volunteers, he or she is eligible for the boot camp program. Additional BOP criteria must be met.
(See p. 24.)

GAO Eligibility—Caveats

- Criminal history scores of III or above
 - Departures
-

Eligibility--Caveats

The Commission has indicated in guidelines commentary that the use of probation with confinement conditions and the split sentence are not recommended for most offenders, in any guideline zone, who have a criminal history score of III or above.

Judges can use "departures," that is, move upward or downward on the sentencing table to impose a sentence length greater or lesser than indicated by the guideline range for the offender's combination of offense level and criminal history category. This departure may result in the imposition of a sanction for which the offender would not otherwise be eligible. For example, in fiscal year 1991, 364 offenders in zone D were sentenced to probation. Offenders whose guideline range falls in zone D are not eligible for probation, except through departures.

The U.S. Code and the guidelines provide for departures in two circumstances:

- The court may sentence the offender below a statutorily required minimum, upon motion of the government, stating that the offender has provided substantial assistance in the investigation or prosecution of another person (18 U.S.C. section 3553(e), 28 U.S.C. 994(n), as amended, and U.S.S.G. section 5K1.1).
- The court may impose a sentence outside the applicable guideline range if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." (18 U.S.C. section 3553(b) and U.S.S.G. section 5K2.0.)

**GAO Objective 3: Sanctions Imposed
in Fiscal Year 1991**

- Determine the sanctions imposed in fiscal year 1991

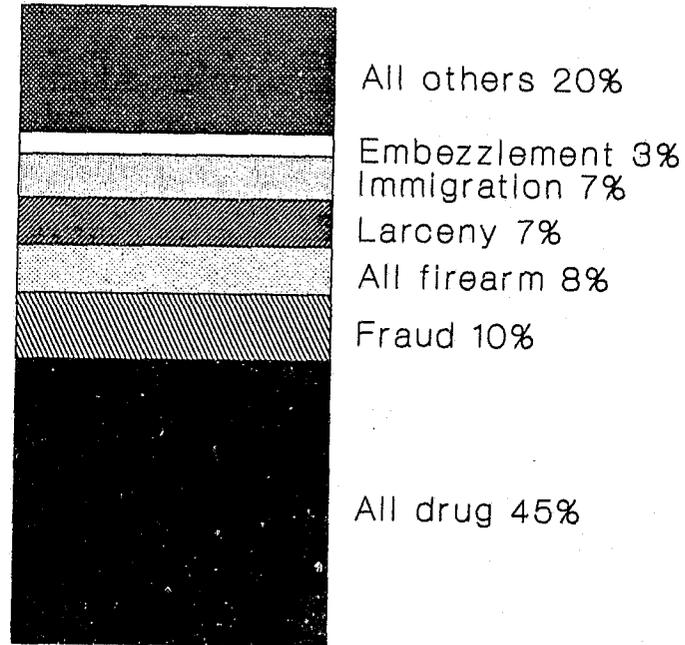
OBJECTIVE 3: DETERMINE THE SANCTIONS IMPOSED IN FISCAL YEAR 1991

The sentencing guidelines table in use in fiscal year 1991 is in appendix III, table III.1.

The term "zone unknown" represents 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate sentencing guidelines zone and, consequently, whether the distribution of these cases would have affected the results of our analyses.

GAO Illustrated for All Offenders

- **Type of Offense Committed, Figure IV.1**
 - **Sentences Imposed, Figure IV.2**
 - **Use of Confinement Conditions With Probation, by Type of Confinement, Figure IV.3**
 - **Use of Confinement Conditions With Supervised Release, by Type of Confinement, Figure IV.4**
-

Figure IV.1: Type of Offense Committed

N=33,095

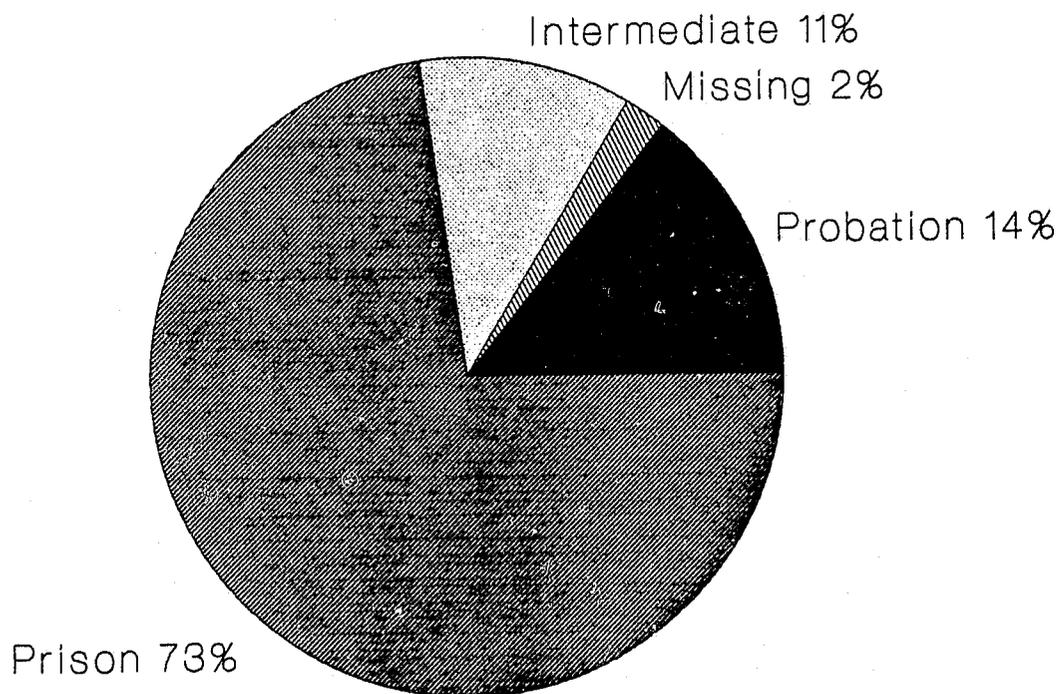
Note 1: All others--includes 89 cases in which it was impossible to determine the type of offense committed.

Note 2: All firearm--all cases in which a firearms offense was the primary offense type.

Note 3: All drug--all cases in which a drug offense was the primary offense type.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.2: Sentences Imposed



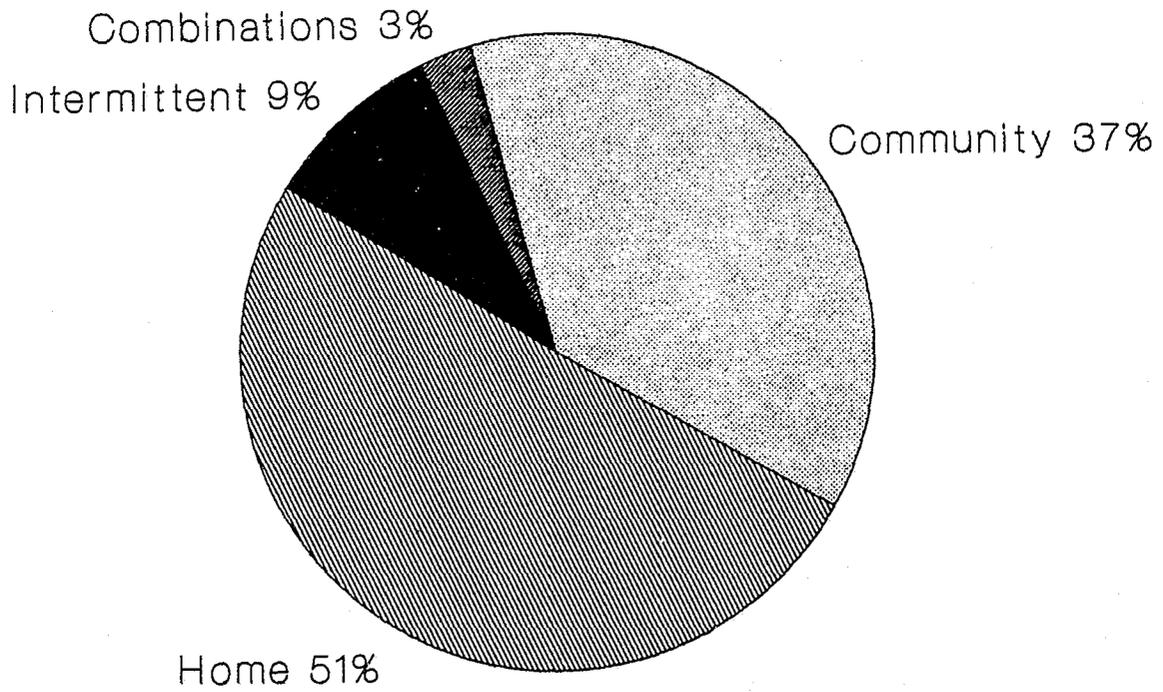
N=33,095

Note 1: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

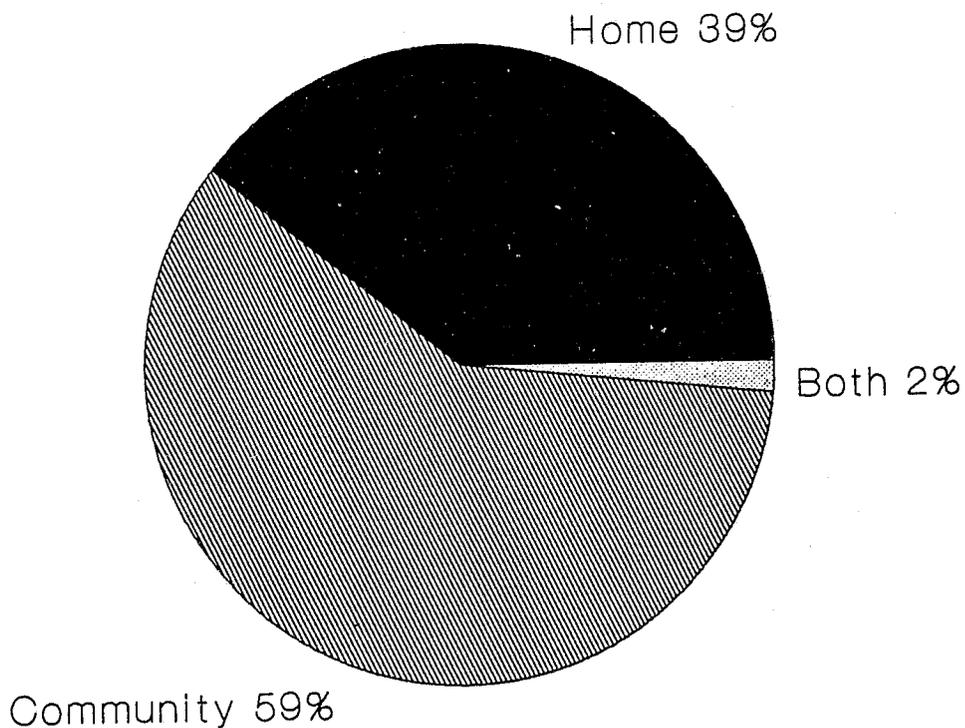
Figure IV.3: Use of Confinement Conditions With Probation, by Type of Confinement



N=2,864

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.4: Use of Confinement Conditions With Supervised Release, by Type of Confinement (Split Sentence)



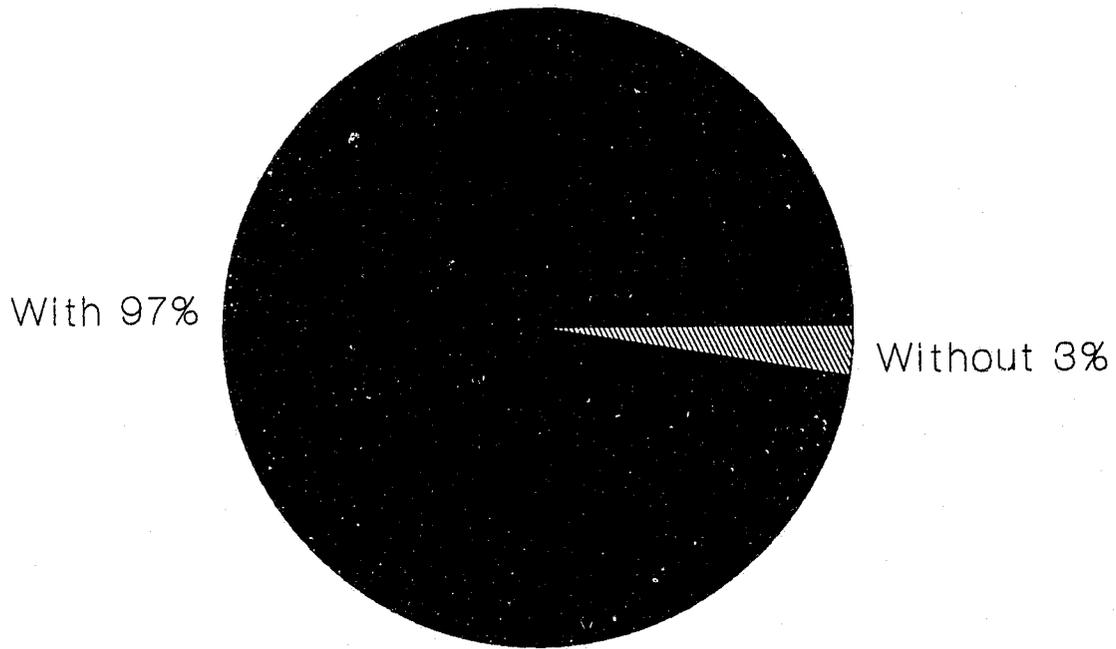
N=755

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Illustrated for All Offenders

- Use of Supervised Release With Prison Sentences, Figure IV.5
 - Use of Community Service Orders, Figure IV.6
 - Use of Fines and Restitution Orders, Figure IV.7
-

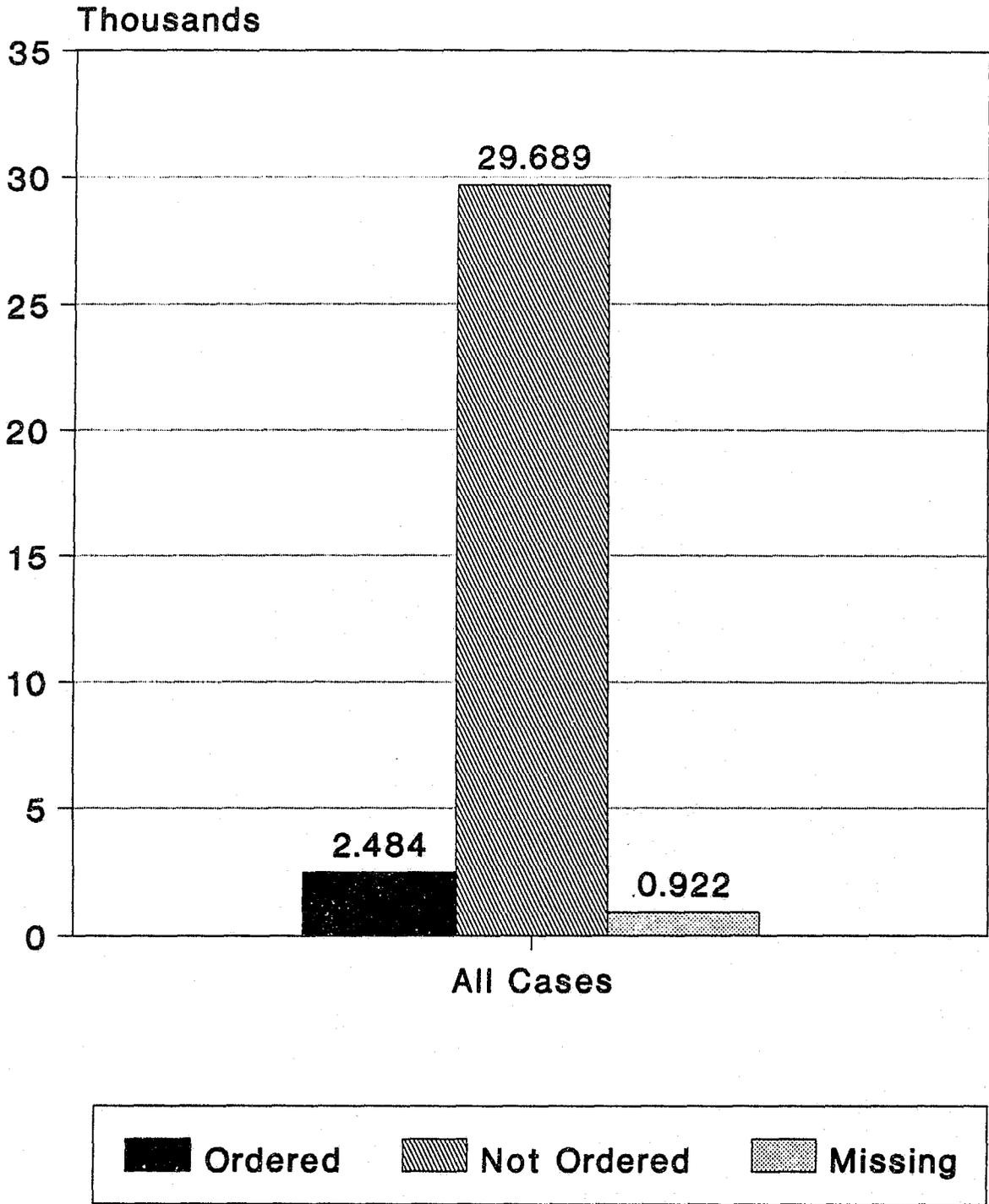
Figure IV.5: Use of Supervised Release With Prison Sentences



N=24,039

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.6: Use of Community Service Orders

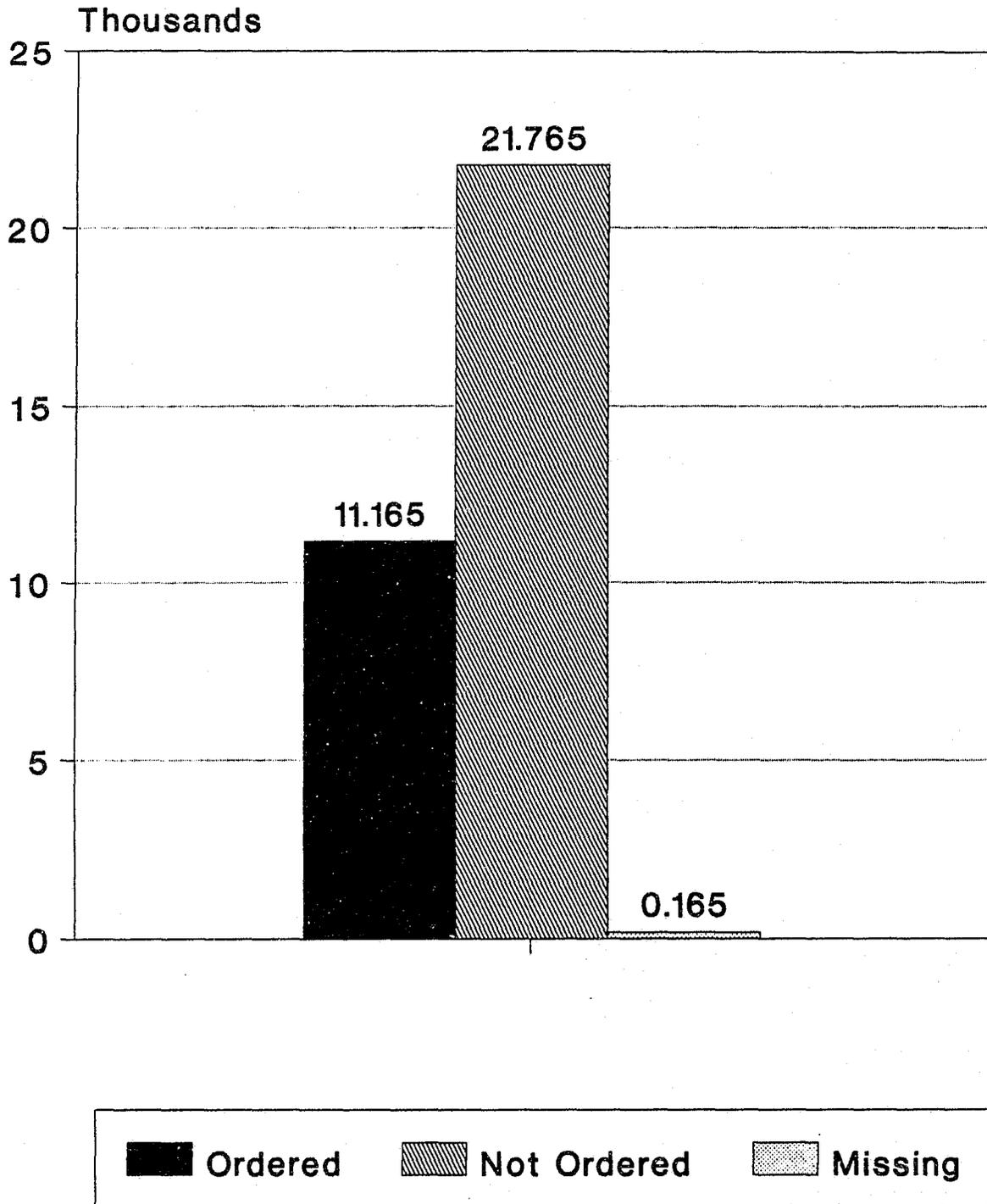


N=33,095

Note: Missing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.7: Use of Fines and/or Restitution Orders



N=33,095

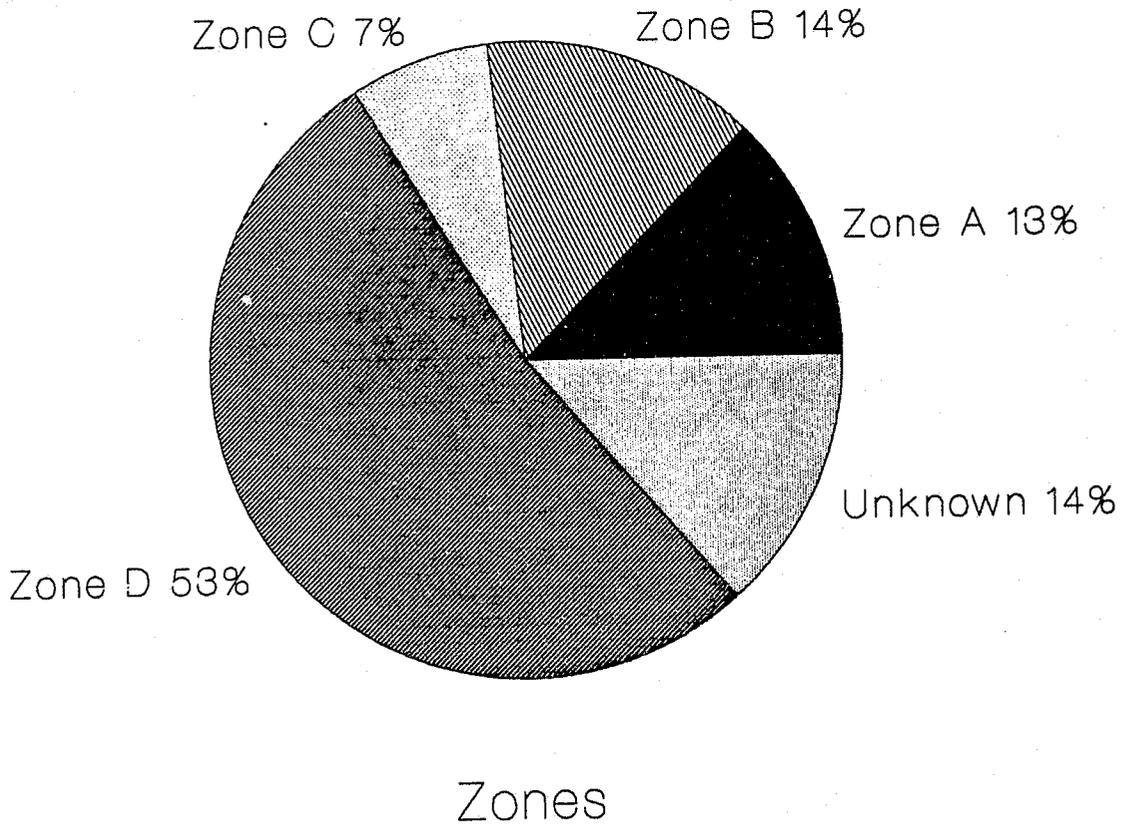
Note: Missing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Illustrated by Guideline Zone

- Percentage of Cases, by Guideline Zone, Figure IV.8
 - Type of Offense Committed, by Guideline Zone, Table IV.1
 - Sentences Imposed, by Guideline Zone, Table IV.2
-

Figure IV.8: Percentage of Cases, by Guideline Zone



N=33,095

Note: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Table IV.1: Type of Offense Committed, by Guideline Zone

Primary offense	Percentage				
	Zone A	Zone B	Zone C	Zone D	Zone unknown ^a
All drug ^b	16	14	23	64	38
Fraud	16	23	18	5	9
All firearm ^c	6	7	14	7	9
Larceny	22	13	8	2	9
Immigration	13	12	9	3	11
Embezzlement	7	9	6	1	3
All others ^d	19	22	22	18	23
Total	99 ^e	100	100	100	102 ^e

N=33,095

^aZone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

^bAll drug--all cases in which a drug offense was the primary offense type.

^cAll firearm--all cases in which a firearms offense was the primary offense type.

^dAll others--includes 89 cases in which it was impossible to determine the type of offense committed.

^ePercentages do not equal 100 due to rounding.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Table IV.2: Sentences Imposed, by Guideline Zone

Sanction	Zone A	Zone B	Zone C	Zone D	Zone unknown ^a	Total
Probation	2,888	473 ^b	143 ^b	364 ^b	858	4,726
Probation with a confinement condition	252	2,017	130 ^b	172 ^b	293	2,864
Split	10 ^b	122	367	177 ^b	79	755
Prison	872	1,933	1,667	16,536	3,031	24,039
Missing ^c	171	103	62	140	235	711
Total	4,193	4,648	2,369	17,389	4,496	33,095

^aZone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone. Since the zone is unknown, any sanction is theoretically possible.

^bPossible only with a departure.

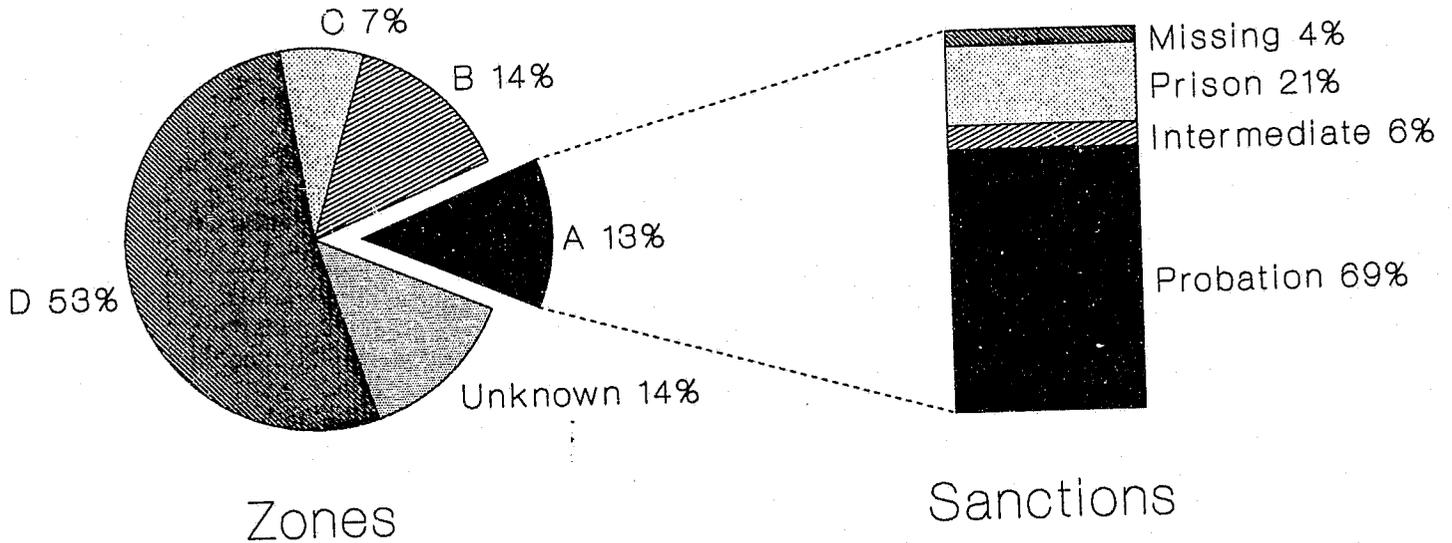
^cMissing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Illustrated by Guideline Zone

- Sentences Imposed in Guideline Zones A-D and Unknown, Figures IV.9-IV.13
-

Figure IV.9: Sentences Imposed in Guideline Zone A



N=4,193

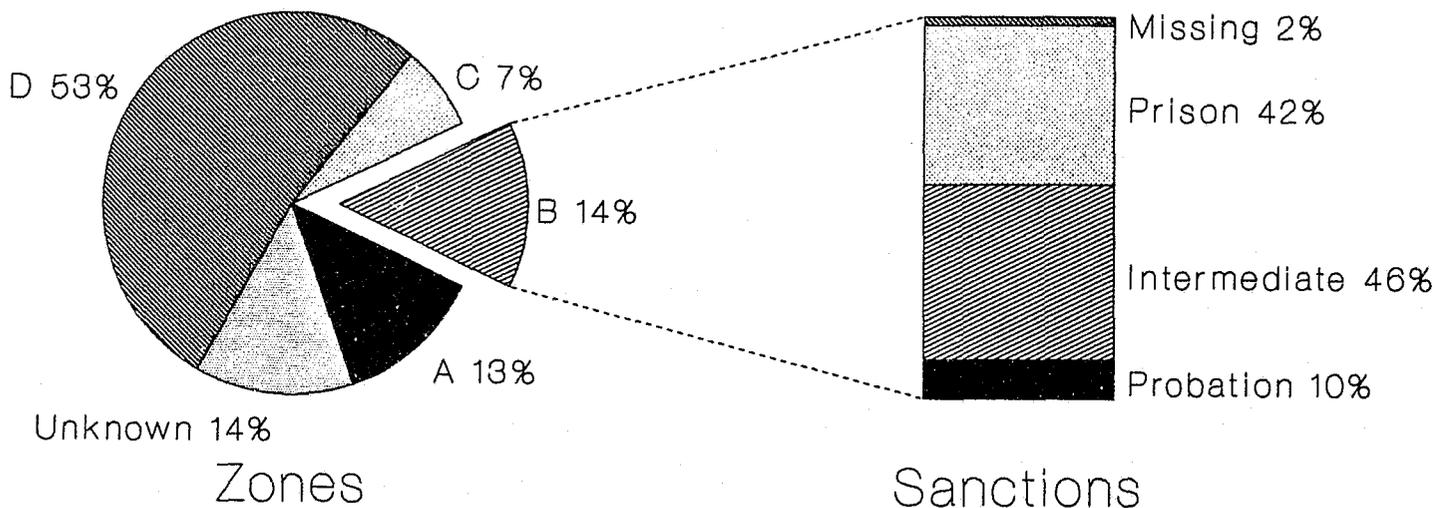
Note 1: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.10: Sentences Imposed in Guideline Zone B



N=4,648

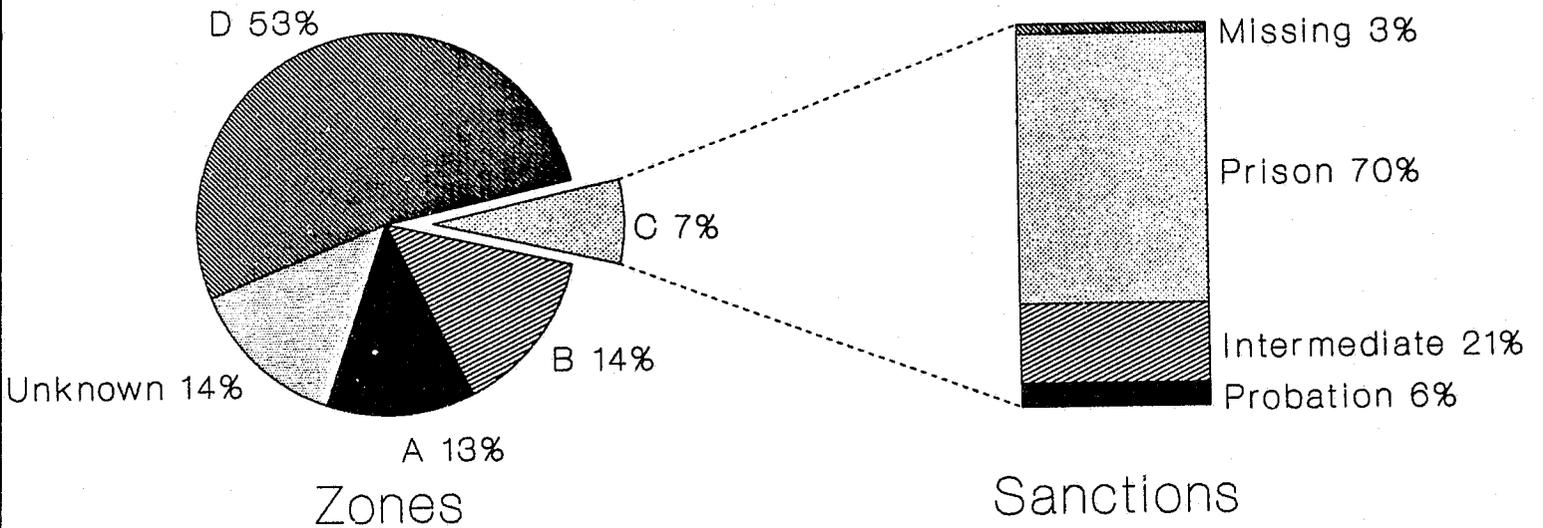
Note 1: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.11: Sentences Imposed in Guideline Zone C



N=2,369

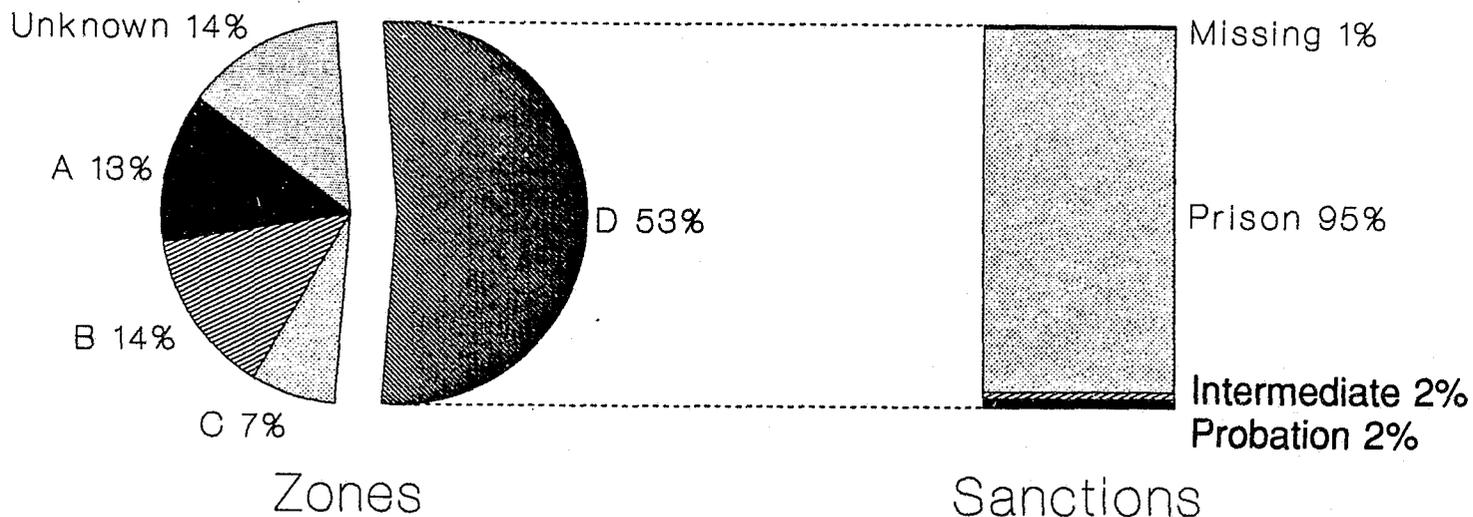
Note 1: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.12: Sentences Imposed in Guideline Zone D



N=17,389

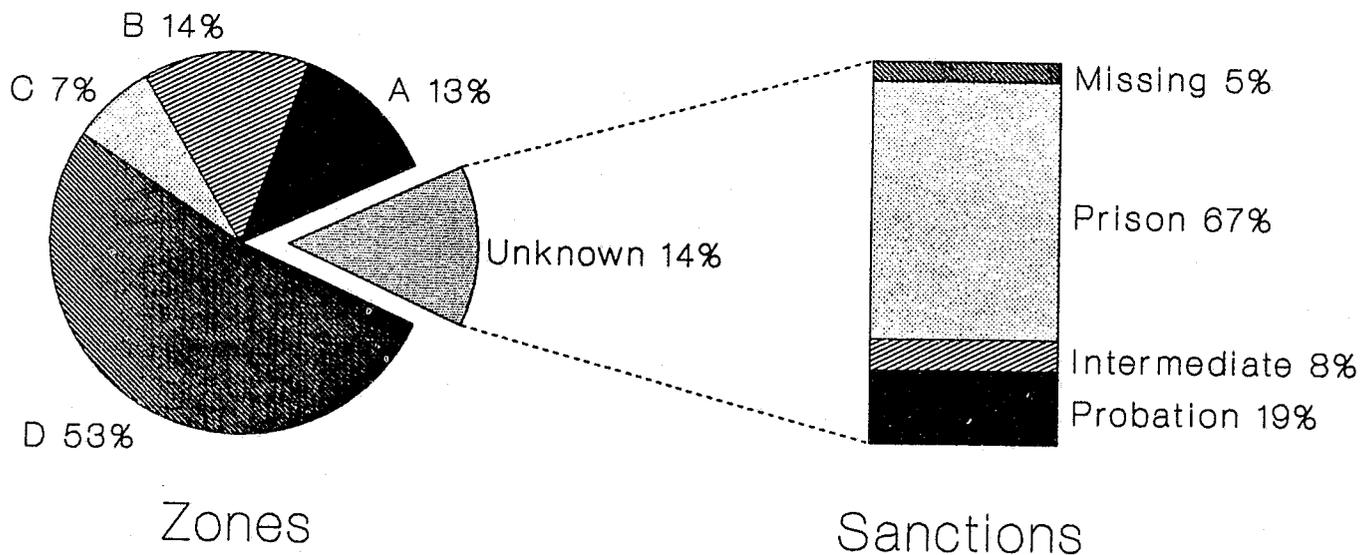
Note 1: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.13: Sentences Imposed in Zone "Unknown"



N=4,496

Note 1: Zone unknown--a zone comprising 4,496 sentences for which, due to a missing piece of information, it was impossible to determine the appropriate zone.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

**GAO Possible Reasons Intermediate
Sanctions Not Used**

- Probation or supervised release revocation
 - "Illegal" alien
 - Lack of resources
 - Criminal history category
 - Departures
-

Possible Reasons Sanctions Not Used

Intermediate sanctions were not always used, although the offender appeared to be technically eligible. For example, 21 percent (872) of the offenders in zone A received a prison sentence, although they appeared to be technically eligible for the intermediate sanctions. A number of possible explanations were offered by officials of AOUSC, BOP, and the Commission and were anecdotal only.

- The offender may have been before the court for a revocation of probation or supervised release, and the court may have therefore concluded that the offender had already failed in a community-based setting.
- The offender may have been subject to possible deportation and thus thought to be a flight risk.
- Resources needed for a community-based sanction, such as halfway houses or electronic monitoring for home confinement, were not available in that district.
- The offender's criminal history category may have been III or higher (the guidelines recommend against intermediate sanctions for these offenders).
- The offender may have already benefited as a result of a departure, which would result in a shorter prison sentence than would otherwise be required.

GAO Criminal History Category

- Six categories in the guidelines
 - Criminal history categories of those sentenced in fiscal year 1991:
 - Category I—17,710
 - Category II—3,235
 - All others—12,150
-

Criminal History Category

There are six criminal history categories under the sentencing guidelines. Placement in a category is dependent on the offender's record of past criminal conduct. The offender receives "points" based on his record, and the total number of points determines the category. Categories I and II are for those offenders with the least record of past criminal behavior.

Criminal history category I is for offenders with 0-1 points:

- Only a prior sentence of less than 60 days (including probation or a fine) earns 1 point.

Criminal history category II is for offenders with 2-3 points:

- 2 or 3 prior sentences of less than 60 days earn 1 point each;
- a prior sentence of at least 60 days earns 2 points;
- a prior sentence exceeding 1 year and 1 month earns 3 points;
- a prior sentence resulting from a conviction of a crime of violence that has not otherwise received points because it was considered related to another sentence resulting from a crime of violence earns 1 point.
- The following scenarios also earn 2 points (when connected to a prior sentence that has also received points):
 - The offense of conviction was committed while the offender was under any criminal justice sentence, including probation, parole, etc.
 - The offense of conviction was committed less than 2 years after the offender was released from prison on a sentence of at least 60 days or while in prison or on escape status on such a sentence. Only 1 point is added if 2 points have been given due to the offense having been committed while under a criminal justice sentence.

GAO Illustrated by Criminal History
Categories I and II

- Type of Offense Committed in Criminal History Categories I and II, Table IV.3
 - Sentences Imposed in Criminal History Categories I and II, Table IV.4
-

Table IV.3: Type of Offense Committed in Criminal History
Categories I and II

Primary offense	Percentage	
	Category I	Category II
All drug ^a	47	55
Fraud	12	9
All firearm ^b	3	6
Larceny	8	6
Immigration	5	4
Embezzlement	5	1
All others ^c	18	18
Total	98 ^d	99 ^d

Category I, N=17,710

Category II, N=3,235

^aAll drug--all cases in which a drug offense was the primary offense type.

^bAll firearm--all cases in which a firearms offense was the primary offense type.

^cAll others--includes 41 cases in category I and 3 cases in category II in which it was impossible to determine the type of offense committed.

^dPercentages do not equal 100 due to rounding.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Table IV.4: Sentences Imposed in Criminal History Categories I and II

Sanction ^a	Category I	Category II
Probation	3,431	263
Probation with a confinement condition	2,203	195
Split	470	65
Prison	11,419	2,691
Missing ^b	187	21
Total	17,710	3,235

^aSince this analysis is by criminal history category, rather than zone, any sanction is theoretically possible.

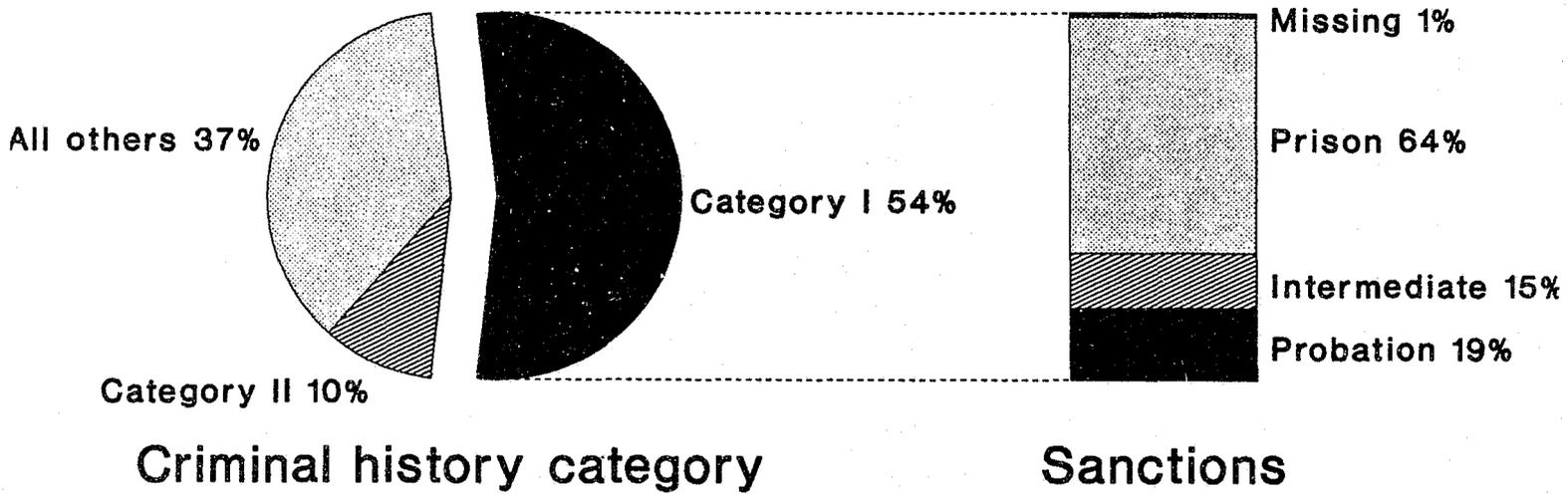
^bMissing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Illustrated for Category I

- Sentences Imposed in Criminal History Category I, Figure IV.14
 - Sentences Imposed for Drug Offenses in Criminal History Category I, Figure IV.15
 - Sentences Imposed for Fraud Offenses in Criminal History Category I, Figure IV.16
 - Sentences Imposed by Offense in Criminal History Category I, Table IV.5
-

Figure IV.14: Sentences Imposed in Criminal History Category I



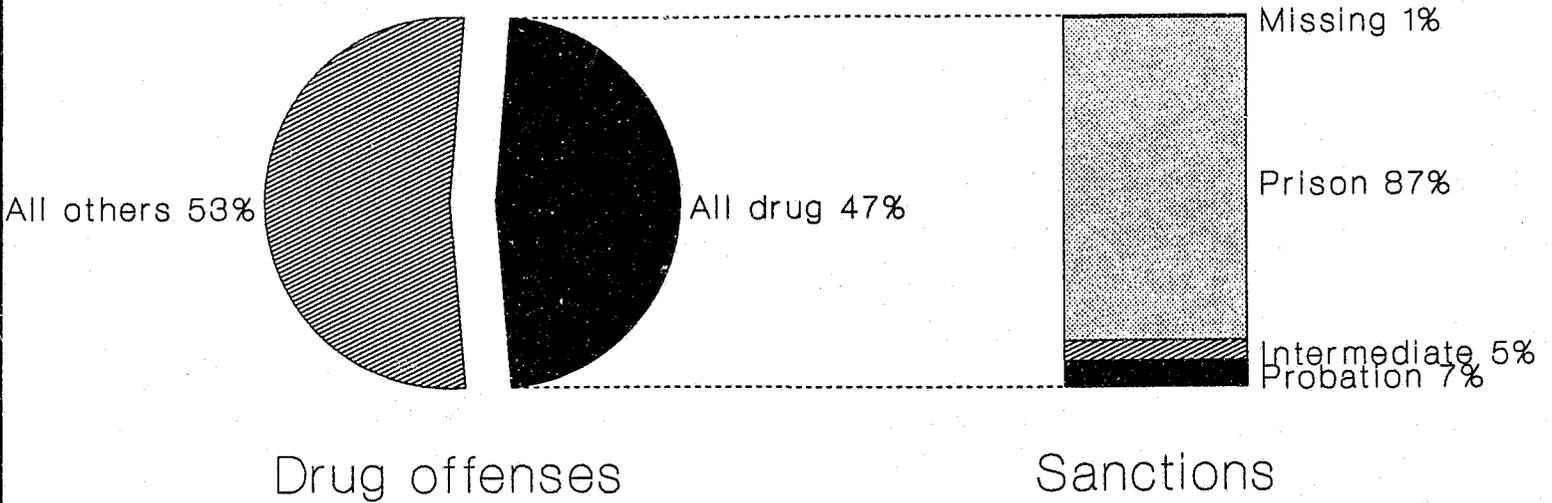
N=17,710

Note 1: Missing--database identifies an entry as missing or indeterminate information.

Note 2: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.15: Sentences Imposed for Drug Offenses in Criminal History Category I



N=8,394

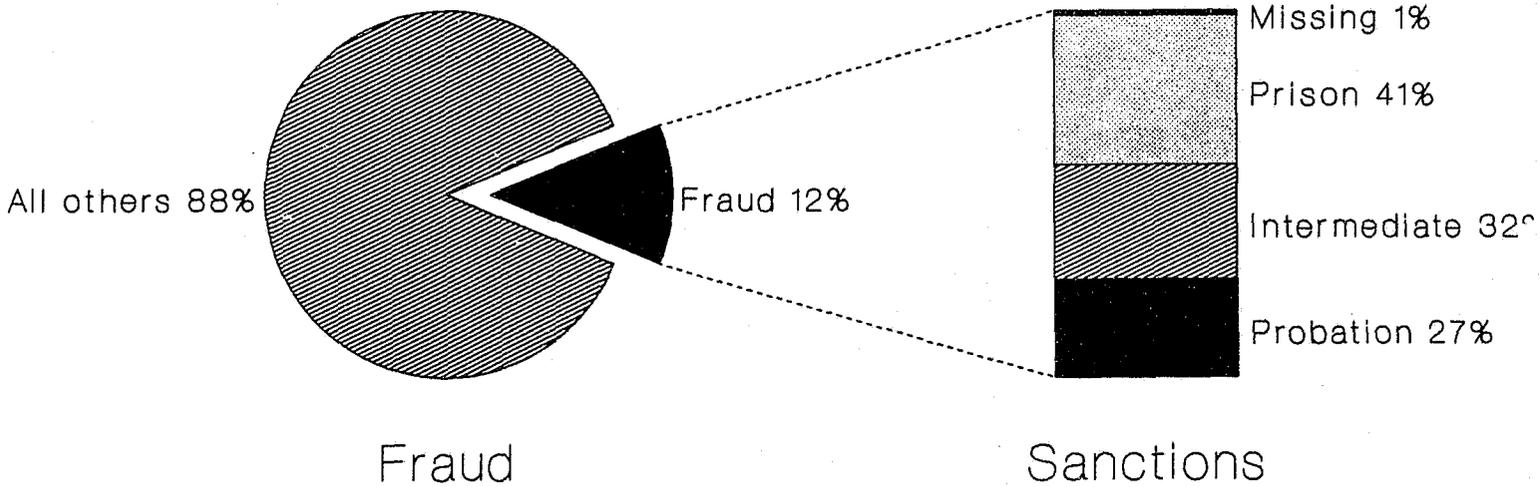
Note 1: All drug--all cases in which a drug offense was the primary offense type.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.16: Sentences Imposed for Fraud Offenses in Criminal History Category I



N=2,186

Note 1: Missing--database identifies an entry as missing or indeterminate information.

Note 2: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Table IV.5: Sentences Imposed by Offense in Criminal History Category I

Primary offense	Probation	Probation/ confinement	Split	Prison	Missing ^a	Total
Murder	0	0	0	14	0	14
Manslaughter	2	5	5	23	0	35
Kidnapping/ hostage	0	0	0	20	0	20
Sexual abuse	2	2	6	75	0	85
Assault	23	16	6	84	0	129
Bank robbery	1	0	5	297	2	305
Other robbery	0	0	0	21	0	21
Extortion	5	2	1	44	0	52
Arson	6	2	0	37	0	45
Drugs/ trafficking	310	257	110	7014	31	7,722
Drugs/ communication	41	51	5	97	0	194
Drugs/simple possession	229	21	0	185	14	449
Firearms/use	0	0	0	16	0	16
Firearms/ possession	133	70	16	338	9	566
Burglary	2	4	5	15	0	26
Auto theft	8	22	5	39	0	74
Larceny	761	287	42	324	34	1,448
Fraud	582	589	100	889	26	2,186
Embezzlement	304	344	59	235	11	953
Forgery/ counterfeiting	129	104	9	159	4	405
Bribery	23	34	12	66	2	137
Tax offenses	92	64	4	55	5	220
Money laundering	51	25	23	242	4	345
Racketeering	3	10	4	102	0	119
Gambling/ lottery	40	72	7	32	0	151
Civil rights	27	17	1	35	0	80

Immigration	274	65	5	559	13	916
Pornography/ prostitution	34	13	12	62	0	121
Offenses in prison	3	2	0	13	1	19
Administration of justice related	82	48	10	171	2	313
Environmental	69	10	3	25	8	115
National defense	1	1	1	12	0	15
Antitrust	0	2	0	12	0	14
Food and drug	34	6	1	6	0	47
Traffic	0	0	0	1	0	1
Other violent	0	0	0	8	0	8
Other drug	9	9	3	8	0	29
Other firearms	12	3	0	0	1	16
Other property	36	8	2	15	1	62
Other environmental	12	6	2	11	0	31
Miscellaneous	90	31	6	32	6	165
Missing/ indeterminate	1	1	0	26	13	41
Total	3,431	2,203	470	11,419	187	17,710

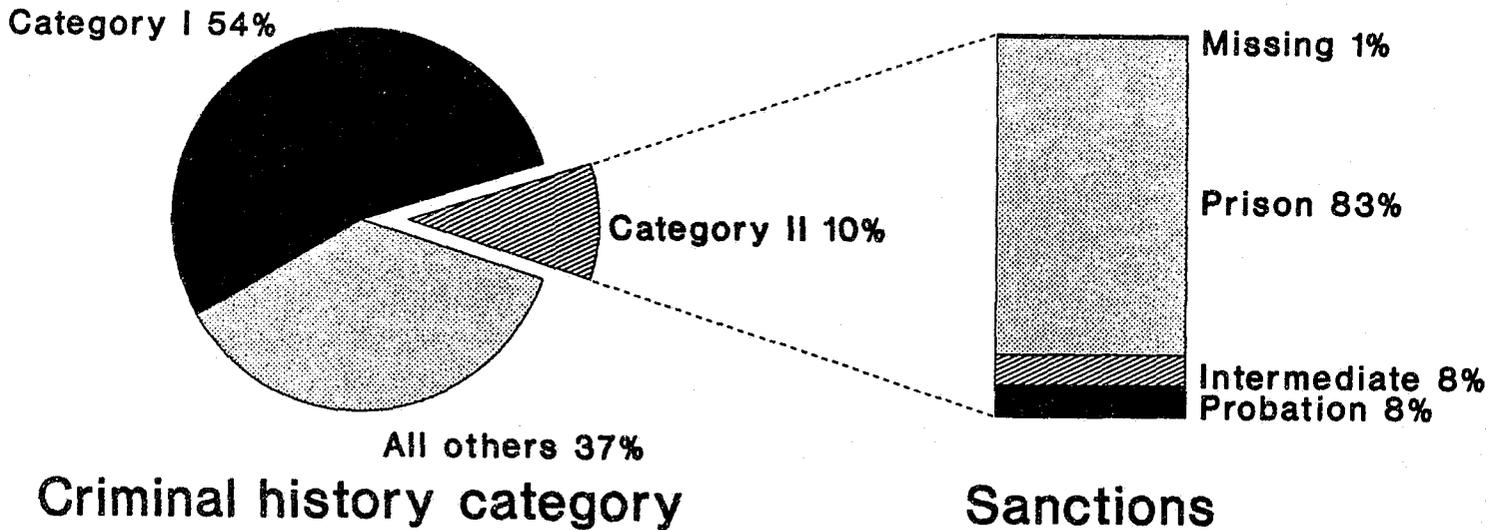
^aMissing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Illustrated for Category II

- Sentences Imposed in Criminal History Category II, Figure IV.17
 - Sentences Imposed for Drug Offenses in Criminal History Category II, Figure IV.18
 - Sentences Imposed for Fraud Offenses in Criminal History Category II, Figure IV.19
 - Sentences Imposed by Offense in Criminal History Category II, Table IV.6
-

Figure IV.17: Sentences Imposed in Criminal History Category II



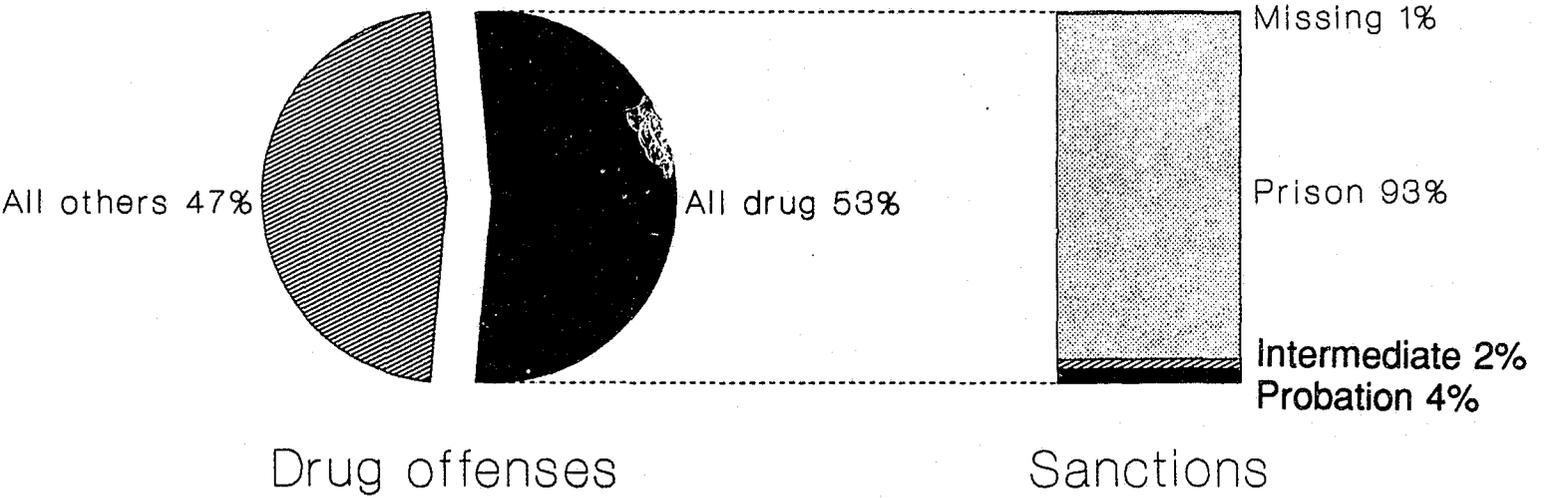
N=3,235

Note 1: Missing--database identifies an entry as missing or indeterminate information.

Note 2: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.18: Sentences Imposed for Drug Offenses in Criminal History Category II



N=1,708

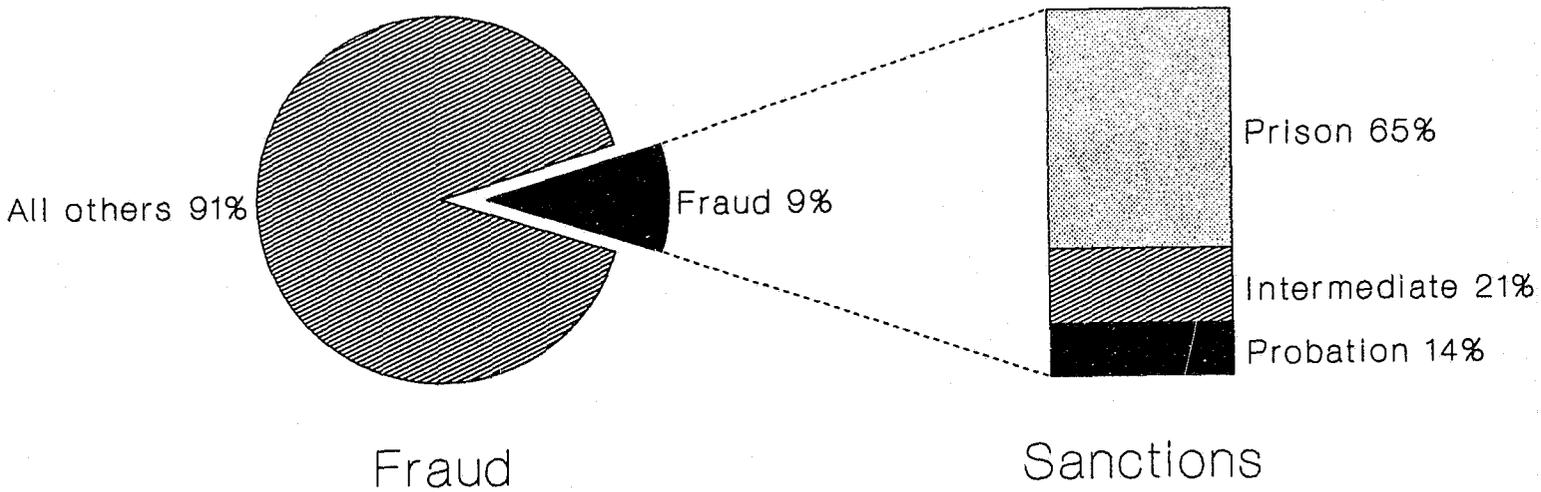
Note 1: All drug--all cases in which a drug offense was the primary offense type.

Note 2: Missing--database identifies an entry as missing or indeterminate information.

Note 3: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not shown in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Figure IV.19: Sentences Imposed for Fraud Offenses in Criminal History Category II



N=307

Note: Intermediate--the sentence was either probation with a confinement condition or a split sentence. Boot camp sentences are not identified in the database.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

Table IV.6: Sentences Imposed by Offense in Criminal History Category II

Primary offense	Probation	Probation/ confinement	Split	Prison	Missing ^a	Total
Murder	0	0	0	3	0	3
Manslaughter	0	0	0	8	0	8
Kidnapping/ hostage	0	0	0	3	0	3
Sexual abuse	0	1	0	21	0	22
Assault	2	1	0	29	2	34
Bank robbery	1	0	5	128	0	134
Other robbery	0	0	0	5	0	5
Extortion	0	0	0	3	0	3
Arson	1	0	0	6	0	7
Drugs/ trafficking	37	18	15	1520	8	1598
Drugs/ communication	4	3	1	31	0	39
Drugs/simple possession	23	4	0	40	2	69
Firearms/use	0	0	0	6	0	6
Firearms/ possession	33	24	8	199	1	265
Burglary	0	0	2	11	0	13
Auto theft	0	2	1	18	1	22
Larceny	44	33	4	97	5	183
Fraud	44	51	12	200	0	307
Embezzlement	8	10	0	13	0	31
Forgery/ counterfeiting	15	17	3	46	2	83
Bribery	0	4	0	3	0	7
Tax offenses	4	1	0	10	0	15
Money laundering	2	1	1	31	0	35
Racketeering	0	0	0	18	0	18
Gambling/ lottery	6	4	7	7	0	24
Civil rights	2	1	1	7	0	11

Immigration	11	8	0	124	0	143
Pornography/ prostitution	1	1	0	9	0	11
Offenses in prison	1	0	0	9	0	10
Administration of justice related	5	3	4	58	0	70
Environmental	4	0	0	6	0	10
National defense	0	0	0	1	0	1
Antitrust	0	0	0	0	0	0
Food and drug	0	1	0	0	0	1
Traffic	0	0	0	0	0	0
Other violent	0	0	0	4	0	4
Other drug	1	0	0	1	0	2
Other firearms	3	0	0	0	0	3
Other property	4	1	0	5	0	10
Other environmental	1	1	0	0	0	2
Miscellaneous	6	5	0	9	0	20
Missing/ indeterminate	0	0	1	2	0	3
Total	263	195	65	2,691	21	3,235

^aMissing--database identifies an entry as missing or indeterminate information.

Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

GAO Boot Camps

- Database does not show sentences to BOP's boot camp program.
 - These sentences are served in 3 stages: prison (boot camp), community confinement, and home confinement.
 - BOP information shows numbers of offenders processed through boot camp only as of May 1993.
-

Table IV.7: Offenders Processed Through Boot Camps as of May 1993

Category	Offenders			
	Women		Men	
	Number	Percent	Number	Percent
Graduates	116	48	543	66
Voluntary withdrawals	2	1	80	10
Removed	7	3	43	5
Still in program	115	48	151	18
Total	240	100	817	99 ^a

^aPercentage does not equal 100 due to rounding.

Source: BOP.

**GAO Objective 4: Sanction
Administration**

- Which agencies are responsible for administering the available sanctions?

OBJECTIVE 4: SANCTION ADMINISTRATIONScope and Methodology

We discussed the administration of each sanction with officials of AOUSC and BOP. We also reviewed applicable program and policy statements and manuals of these agencies.

Table V.1 shows which sanctions Probation (of AOUSC) and BOP administer.

Table V.1: Who Administers the Available Sanctions

Sanction	BOP	Probation
Probation		x
Probation with treatment conditions or community service		x x
Probation with intermittent confinement	x	x
Probation with home confinement ^a		x x
Probation with community confinement	x	x
Prison with supervised release and home confinement (split sentence) ^a	x	x x
Prison with supervised release and community confinement (split sentence)	x x	x
Prison	x	
Boot camp: prison (boot camp portion) community confinement home confinement ^a supervised release	x x x	x
Prison with supervised release	x	x

^aBOP operates a home confinement program for offenders in its boot camp program. AOUSC administers all other home confinement cases. However, at times each has handled home confinement cases

APPENDIX V

APPENDIX V

normally handled by the other, depending on the circumstances and availability of resources.

Sources: AOUSC and BOP.

GAO Objective 5: Sentence Costs

- What are the costs of various sentences?

OBJECTIVE 5: SENTENCE COSTSScope and Methodology

Costs were discussed with officials of AOUSC and BOP. All current and projected cost data were supplied by these agencies and were not verified.

Additional methodological details appear prior to the presentation of each cost analysis. In addition, a detailed scope and methodology is presented in appendix I, and an explanation of the calculation of expansion costs is presented in appendix VIII.

GAO Variables Critical in
Determining Total Costs

- Type and number of offenders
 - Type and number of sanctions imposed
 - Length of each sanction
 - Per capita costs
-

Variables Critical in Determining Total Costs

The cost of any sentence is the combined costs of the individual sanctions or components of the sentence, such as prison plus supervised release plus home confinement, and is dependent on the per capita monthly cost and the number of months imposed for each sanction or component of the sentence.

Analysis of the total system costs of the different sentence options is more complex and involves consideration of the following critical variables:

- the number of offenders entering the system and their characteristics, such as gender, offenses of conviction, and security level assigned by BOP (cost per offender increases with the security level of the prison to which they are assigned);
- the sanction or combination of sanctions imposed in any sentence;
- the length of each sanction or component of the sentence, e.g., the number of months of imprisonment and the number of months of supervised release; and
- the per capita cost of administering each component (including the costs of expansion).

**GAO Sentencing Guidelines
Table**

- Current guidelines table displayed at Table VI.1.
 - Change from guidelines table used in fiscal year 1991 displayed at Table III.1,
 - zone A now extends to levels 7 and 8 at criminal history category I.
-

Table VI.1: Sentencing Guidelines Table, Effective November 1, 1992 (sentencing ranges in months)

Offense Level	Criminal History Category					
	I	II	III	IV	V	VI
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

Source: U.S. Sentencing Commission Guidelines Manual, November 1, 1992

GAO Average Monthly Offender Costs and Who Pays

- Table VI.2 displays the average monthly cost of each sanction or sentence component and indicates the agency responsible for costs.
 - All sentences comprise more than one sanction or sentence component, except for simple probation and prison without supervised release.
-

Table VI.2: Average Monthly Offender Costs of Sentence Components and Who Pays (rounded to the nearest dollar)

Components of sentences	Cost	BOP	Probation
Simple probation	\$187		x
Supervised release	187		x
Probation with a condition of substance abuse treatment	410		x
Probation with a condition of mental health treatment	346		x
Probation with a condition of community service	214		x
Intermittent confinement-- custody component only	1,279 ^a	x	
Probation or supervised release with a condition of home confinement	575		x
Home confinement with a condition of substance abuse treatment	900		x
Home confinement with a condition of mental health treatment	835		x
Home confinement with a condition of community service	637		x
Community confinement-- custody component only	1,149	x	
Prison, minimum security (without supervised release)	1,497	x	
Prison, low security (without supervised release)	1,549	x	
Boot camp			
prison	1,877	x	
community confinement	1,149	x	
home confinement	636	x	
supervised release	187		x

^aCost represents 30 days intermittent confinement.

Source: AOUSC and BOP.

GAO Sentences Developed for Use in
Cost Analyses

- Tables VI.3-5 display illustrative sentence scenarios.
 - Each sentence possibility in zones A, B, and C is represented.
 - Terms in months are used to represent possible low and high sentences.
-

Sentences Developed for Use in Cost Analysis

Illustrative sentences were developed for sentencing guidelines zones A, B, and C. The illustrative sentences are presented at tables VI. 3 through 5. These sentences were used in the cost analyses that follow. Each sentence possibility in each zone, along with various treatment conditions, is presented. For each sentence in each zone, terms (in months) are presented to represent the possible "low" and "high" terms of confinement and supervision in that zone.

For example, table VI.4 represents sentence possibilities in zone B. At the high end the offender could receive these possible sentences:

- probation with home confinement--36 months of supervision, the first 12 months in home confinement and the remaining 24 in simple probation;
- a split sentence with home confinement--1 month in prison, served in a minimum security prison; followed by 36 months supervised release, the first 11 months in home confinement; the remaining 25 months served in simple supervised release;
- prison--12 months in prison (8 months in a minimum security prison and 4 in community confinement) followed by 36 months of supervised release.

Sentences involving imprisonment are presented as both minimum and low security prison designations to illustrate the difference in prison costs depending upon the security level of the prison.

These illustrative sentences result from assumptions about both the components of the sentences and the length of each component. Many other combinations are possible, each with its own price tag. Both AOUSC and BOP officials agreed that these sentences are sound and reasonable examples of sentences in zones A, B, and C of the sentencing guidelines table.

Table VI.3: Illustrative Sentences--Zone A (in months)

Sentence	Duration of components			
	Confinement		Supervision	
	Low	High	Low	High
Probation	0	0	24	36
Probation with a 6-month substance abuse treatment condition ^a	0	0	24	36
Probation with a 6-month mental health treatment condition	0	0	24	36
Probation with a 200-hour community service condition ^b	0	0	24	36
Probation with intermittent confinement	3	6	21	30
Probation with home confinement	3	6	21	30
Probation with home confinement and a 6-month substance abuse treatment condition ^c	3	6	21	30
Probation with home confinement and a 6-month mental health treatment condition	3	6	21	30
Probation with home confinement and a 200-hour community service condition	3	6	21	30
Probation with community confinement	3	6	21	30
Prison, minimum security designation, and supervised release	3	6	24	24
Prison, low security designation, and supervised release	3	6	24	24

^aIf a sentence to probation or supervised release includes either a treatment condition, community service, or a confinement condition, that part of the sentence is served first and costs more than the subsequent simple supervision. For example, a sentence to 24 months of probation with a 6-month substance abuse treatment condition, in terms of costs, translates to 6 months of the more expensive probation and substance abuse followed by 18 months of the less expensive simple probation. Probation for 24 months with 3 months confinement is treated as 3 months at the confinement cost followed by 21 months of simple probation.

^bThe assumption is that 200 hours of community service will be served over the course of 1 year of supervision, and 400 hours will be served over the course of 2 years. Any remaining supervision term will be at the simple supervision cost.

^cIn this sentence scenario, at the low end the total supervision term is 24 months. Home confinement is required for the first 3 months, and substance abuse treatment is required for the first 6. Therefore, in terms of costs, the first 3 months are probation with home confinement and substance abuse treatment, the next 3 are probation and substance abuse treatment, and the remaining 18 months are simple probation.

Table VI.4: Illustrative Sentences--Zone B (in months)

Sentence	Duration of components			
	Confinement		Supervision	
	Low	High	Low	High
Probation with intermittent confinement	1	12	35	24
Probation with home confinement	1	12	35	24
Probation with home confinement and a 6-month substance abuse treatment condition	1	12	35	24
Probation with home confinement and a 6-month mental health treatment condition	1	12	35	24
Probation with home confinement and a 400-hour community service condition	1	12	35	24
Probation with community confinement	1	12	35	24
Prison, 1 month, minimum security designation, the remainder in home confinement, ^a followed by supervised release	2	12	35	25
Prison, 1 month, low security designation, the remainder in home confinement, ^a followed by supervised release	2	12	35	25
Prison, 1 month, minimum security designation, the remainder in community confinement, ^a followed by supervised release	2	12	35	25
Prison, 1 month, low security designation, the remainder in community confinement, ^a followed by supervised release	2	12	35	25
Prison, minimum security designation, followed by supervised release	1	12	36	36
Prison, low security designation, followed by supervised release	1	12	36	36

^aIn these examples of the split sentence, the confinement is split between a term of imprisonment and a term of either home or community confinement.

Table VI.5: Illustrative Sentences--Zone C (in months)

Sentence	Duration of components			
	Confinement		Supervision	
	Low	High	Low	High
Prison, 4 and 12 months respectively, minimum security designation, followed by 24 and 36 months of supervised release respectively, of which 4 months are in home confinement	8	16	20	32
Prison, 4 and 12 months respectively, low security designation, followed by 24 and 36 months of supervised release respectively, of which 4 months are in home confinement	8	16	20	32
Prison, 4 and 12 months respectively, minimum security designation, followed by 24 and 36 months of supervised release respectively, of which 4 months are in community confinement	8	16	20	32
Prison, 4 and 12 months respectively, low security designation, followed by 24 and 36 months of supervised release respectively, of which 4 months are in community confinement	8	16	20	32
Prison - boot camp ^a	13	16	36	36
Prison, minimum security designation (3 and 4 months, respectively, of the prison term in community confinement) followed by supervised release	8	16	24	36
Prison, low security designation (3 and 4 months, respectively, of the prison term in community confinement) followed by supervised release	8	16	24	36

^aLow end: 13-month sentence of confinement, 6 in the boot camp, 4 in community confinement, and 3 in home confinement, followed by 36 months of supervised release.

High end: 16-month sentence of confinement, 6 in the boot camp, 6 in community confinement, and 4 in home confinement, followed by 36 months of supervised release.

GAO Comparison of Total Life Cycle
Costs of Illustrative Sentences

- Sum of the costs of each sanction or component of the sentence.
 - Figure VI.1 illustrates the comparative life cycle costs of 3 sentences in zone B.
 - Table VI.6 displays the total life cycle costs of the illustrative sentences.
-

Comparison of Total Life Cycle Costs of Illustrative Sentences

Life cycle cost is the full cost of the sentence over the total length of the sentence. The life cycle cost of each sentence is the sum of the costs of each component of the sentence. Each component of the sentence and the length of time to be served in each component are taken into consideration.

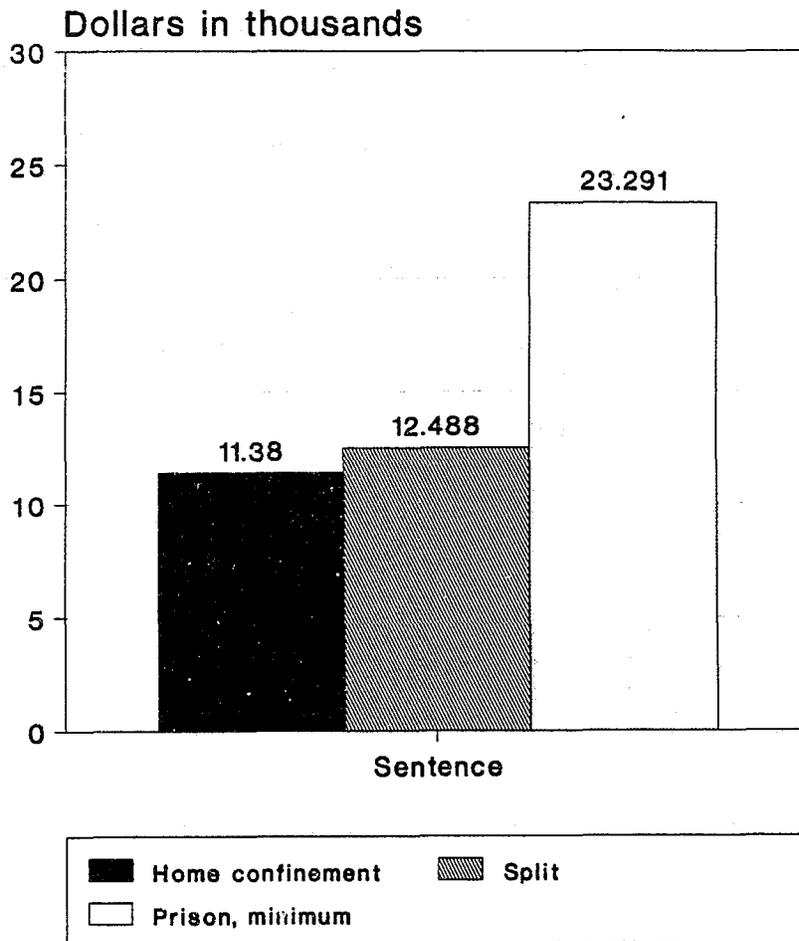
For example, "home confinement," the first sentence represented in figure VI.1, is a 36-month sentence to probation with a condition of home confinement for the first 12 months.¹ Simple probation supervision costs \$186.60 per month; probation with home confinement costs \$575.10 per month.² The total life cycle cost of the sentence is about \$11,380 dollars:

- the first 12 months, probation with home confinement, at \$575.10 per month, or \$6,901.20; plus the next 24 months, simple probation, at \$186.60 per month, or \$4,478.4 dollars; thus
- \$11,379.60 is the total cost of the sentence.

¹Type and length of sentence are taken from table VI.4, row 2.

²Monthly costs are taken from table VI.2 but have not been rounded.

Figure VI.1: Comparison of Total Life Cycle Costs of Three High End Zone B Sentences



Note 1: "Home confinement" represents a 36-month sentence to probation; the first 12 months are served in home confinement, the remaining 24 in simple probation.

Note 2: "Split" represents a 1-month sentence to prison, served in a minimum security prison, followed by 36 months of supervised release. The first 11 months are served in home confinement, the remaining 25 in simple supervised release.

Note 3: "Prison, minimum" represents a 12-month sentence to prison (8 months in a minimum security prison and 4 months in community confinement) followed by 36 months of supervised release.

Source: Table VI.6.

Table VI.6: Total Life Cycle Costs of Illustrative Sentences
(rounded to the nearest dollar)

Sentence	Zone A		Zone B		Zone C	
	Low	High	Low	High	Low	High
Probation	\$4,478	\$6,718	NA	NA	NA	NA
with substance abuse treatment	5,821	8,060	NA	NA	NA	NA
with mental health treatment	5,432	7,672	NA	NA	NA	NA
with community service	4,806	7,045	NA	NA	NA	NA
Probation with intermittent confinement	7,756	13,273	\$7,810	\$19,829	NA	NA
Probation with home confinement	5,644	9,049	7,106	11,380	NA	NA
with substance abuse treatment	7,291	11,000	8,550	13,331	NA	NA
with mental health treatment	6,899	10,606	8,161	12,937	NA	NA
with community service	6,076	9,585	7,796	12,452	NA	NA
Probation with community confinement	7,365	12,490	7,680	18,263	NA	NA
Prison, minimum, supervised release, home confinement	NA	NA	8,603	12,488	\$12,022	\$26,239
Prison, low, supervised release, home confinement	NA	NA	8,655	12,540	12,229	26,862

Prison, minimum, supervised release, community confinement	NA	NA	9,177	18,798	14,316	28,534
Prison, low, supervised release, community confinement	NA	NA	9,229	18,850	14,524	29,156
Boot camp, supervised release	NA	NA	NA	NA	24,480	27,414
Prison, minimum, supervised release	8,970	13,462	8,215	23,291	15,411	29,280
Prison, low, supervised release	9,126	13,774	8,267	23,706	15,671	29,903

Note: NA indicates that this type of sentence is not available in this zone except through departure.

Source: GAO analysis of AOUSC and BOP data.

GAO Average Monthly Costs of
Illustrative Sentences

- Allows for comparison of the monthly costs of each sentencing scenario.
 - Figure VI.2 illustrates the comparative average costs of 3 sentences in zone B.
 - Table VI.7 displays the average monthly costs of each illustrative sentence.
-

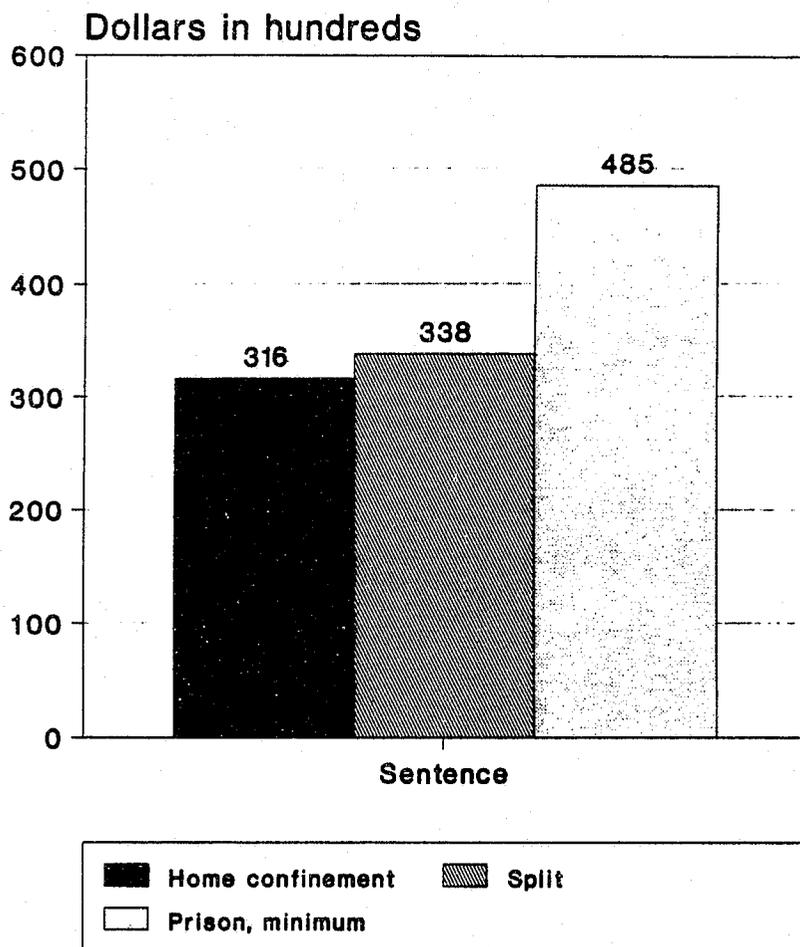
Average Monthly Costs of Sentences

Average monthly costs make it possible to compare the monthly costs of each sentencing scenario. The average monthly cost represents the average monthly cost of the entire sentence. It adjusts for both the monthly cost and length in months of each sentence component, or sanction.

For example, "home confinement," the first sentence represented in figure VI.2, is a 36-month sentence to probation with a condition of home confinement for the first 12 months. Simple probation supervision costs \$186.60 per month; probation with home confinement costs \$575.10 per month. The average monthly cost of the entire sentence, rather than either component, is about \$316 dollars:

- the first 12 months, probation with home confinement, at \$575.10 a month, or \$6,901.20;
- the next 24 months, simple probation, at \$186.60 a month, or \$4,478.40; and
- the total, divided by the entire length of sentence, \$11,379.60/36 months, or about \$316.

Figure VI.2: Comparison of the Average Monthly Costs of Three High End Zone B Sentences



Note 1: "Home confinement" represents a 36-month sentence to probation; the first 12 months are spent in home confinement, the remaining 24 in simple probation.

Note 2: "Split" represents a 1-month sentence to prison, served in a minimum security prison, followed by 36 months of supervised release. The first 11 months are served in home confinement, the remaining 25 in simple supervised release.

Note 3: "Prison, minimum" represents a 12-month sentence to prison (8 months in a minimum security prison and 4 months in community confinement) followed by 36 months of supervised release.

Source: Table VI.7

Table VI.7: Average Monthly Costs of Illustrative Sentences
(rounded to the nearest dollar)

Sentence	Zone A		Zone B		Zone C	
	Low	High	Low	High	Low	High
Probation	\$187	\$187	NA	NA	NA	NA
with substance abuse treatment	243	224	NA	NA	NA	NA
with mental health treatment	226	213	NA	NA	NA	NA
with community service	200	196	NA	NA	NA	NA
Probation with intermittent confinement	323	369	\$217	\$551	NA	NA
Probation with home confinement	235	251	197	316	NA	NA
with substance abuse treatment	304	306	238	370	NA	NA
with mental health treatment	287	295	227	359	NA	NA
with community service	253	266	217	346	NA	NA
Probation with community confinement	307	347	213	507	NA	NA
Prison, minimum, supervised release, home confinement	NA	NA	233	338	\$429	\$547
Prison, low, supervised release, home confinement	NA	NA	234	339	437	560
Prison, minimum, supervised release, community confinement	NA	NA	248	508	511	594

Prison, low, supervised release, community confinement	NA	NA	249	509	519	607
Boot camp, supervised release	NA	NA	NA	NA	500	527
Prison, minimum, supervised release	332	449	222	485	482	563
Prison, low, supervised release	338	459	223	494	490	575

Note: NA indicates that this type of sentence is not available in this zone except through departure.

Source: GAO analysis of AOUSC and BOP data.

GAO Program Capacity

- According to BOP and AOUSC officials:
 - prison and probation systems are operating at or over capacity; and
 - significant population increases will require additional resources.
-

Program Capacity

BOP and AOUSC officials told us that the prison and probation systems are operating at or over capacity and that a significant increase in the number of offenders sentenced to any sanction will require additional resources.

For example, the planned combined minimum and low security prison capacity in 1996 is 47,115, an increase of 23,403 (or almost 100 percent) from present capacity.³ However, if current sentencing patterns continue, this increase will still not provide the necessary capacity to meet BOP's projected 1996 population of 55,281 for these security levels.⁴

According to AOUSC, fiscal year 1993 funding was insufficient to meet the needs for substance abuse and mental health treatment and electronic monitoring. Based on AOUSC data, table VI.8 illustrates the gap between requested and appropriated funding for fiscal year 1993 and the gap between the estimated number of offenders needing services and the number that would receive services, given the funding available.

Table VI.8: Funding and Service Gap

Program	Judiciary's request	Appropriation	Number of offenders needing treatment	Number of offenders treated
Substance abuse	\$38,000,000	\$25,400,000	24,000	24,000 ^a
Mental health	2,030,000	780,000	7,400	3,600
Electronic monitoring	5,017,000	2,017,000 ^b	5,800	3,400

^aThe level of service was cut back.

^bThe full amount requested was funded. However, as a result of the fiscal year 1993 judicial budgetary shortfall, \$3,000,000 from this program was reprogrammed to meet other needs.

Source: AOUSC.

³Figures provided as of June 1993.

⁴Figures provided as of January 1993.

GAO Average Monthly Costs to
Expand Capacity

- Table VI.9 displays the average monthly costs per offender to expand the capacity of nonimprisonment sanctions.
 - Table VI.10 displays the costs to expand prison capacity and does not include operating costs.
-

Table VI.9: Average Monthly Costs to Expand Nonprison Capacity Per Offender (rounded to the nearest dollar)

Component	Cost
Probation/supervised release	\$272
Intermittent confinement	1,297
Community confinement	1,165

Note: See appendix VIII for details on methodology.

Source: GAO analysis of AOUSC and BOP data.

Table VI.10: Costs to Expand Prison Capacity Per Offender (rounded to the nearest dollar)

Security level	Total estimated cost	Planned capacity	Monthly per offender cost of expansion
Minimum	\$16,840,000	512	\$197
Low	71,067,000	1,536	277

Note: See appendix VIII for details on methodology.

Source: GAO analysis of BOP data.

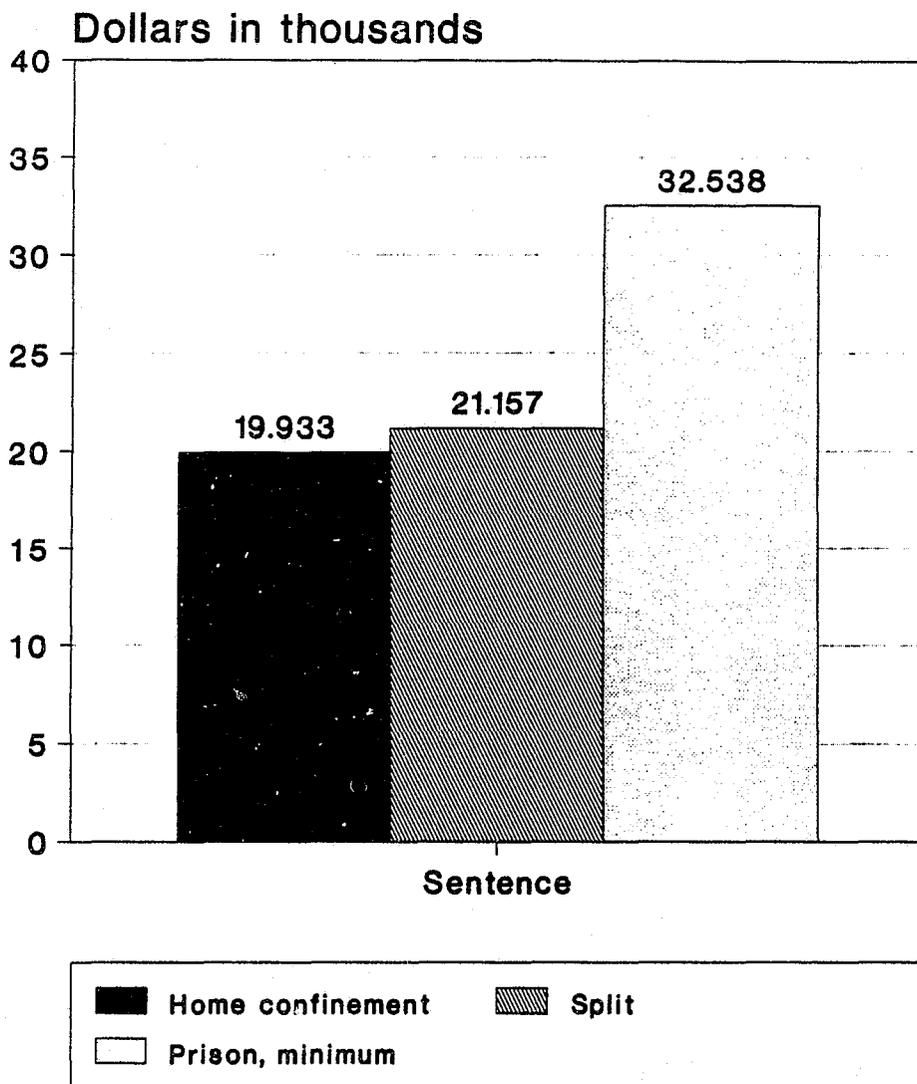
GAO Total Life Cycle Costs With
Capacity Expansion

- Includes expansion and current operating costs.
 - Figure VI.3 illustrates the comparative life cycle costs, with expansion, of 3 sentences in zone B.
 - Table VI.11 displays the life cycle costs of the illustrative sentences if capacity is expanded.
-

Total Life Cycle Costs With Capacity Expansion

The total life cycle costs of the illustrative sentences were calculated assuming capacity expansion. Both operating and expansion costs were included. Operating costs were based on current dollars. BOP expansion costs include the cost for minimum and low security prisons of site acquisition, planning, design, construction, and activation. All costs incurred beyond the current year were adjusted for inflation--to put them in constant dollar terms--and then all costs were discounted. Thus, life cycle costs represent the net present value of costs. We assumed that the costs of expanding intermittent and community confinement would be included in the average per day contract costs used in the earlier analyses. Thus, we did not increase the costs of these two sentence components. See appendix VIII for details on methodology.

Figure VI.3: Comparison of the Expansion Costs of Three High End Zone B Sentences



Note 1: "Home confinement" represents a 36-month sentence to probation; the first 12 months are spent in home confinement, the remaining 24 in simple probation.

Note 2: "Split" represents a 1-month sentence to prison, served in a minimum security prison, followed by 36 months of supervised release. The first 11 months are spent in home confinement, the remaining 25 in simple supervised release.

Note 3: "Prison, minimum" represents a 12-month sentence to prison (8 months in a minimum security prison and 4 months in community confinement) followed by 36 months of supervised release.

Source: Table VI.11.

Table VI.11: Discounted Value of Total Life Cycle Costs of Illustrative Sentences With Expansion

Sentence ^a	Zone A		Zone B		Zone C	
	Low	High	Low	High	Low	High
Probation	\$10,412	\$15,484	NA	NA	NA	NA
with substance abuse treatment	11,693	16,766	NA	NA	NA	NA
with mental health treatment	11,322	16,395	NA	NA	NA	NA
with community service	10,725	15,797	NA	NA	NA	NA
Probation with intermittent confinement	12,761	20,183	\$16,267	\$24,720	NA	NA
Probation with home confinement	11,524	17,709	15,855	19,933	NA	NA
with substance abuse treatment	13,096	19,570	17,233	21,795	NA	NA
with mental health treatment	12,722	19,194	16,861	21,419	NA	NA
with community service	11,936	18,220	16,508	20,951	NA	NA
Probation with community confinement	12,388	19,435	16,143	23,386	NA	NA
Prison, minimum, supervised release, home confinement	NA	NA	17,450	21,157	\$18,303	\$36,078
Prison, low, supervised release, home confinement	NA	NA	17,576	21,283	18,807	37,591
Prison, minimum, supervised release, community confinement	NA	NA	17,738	24,323	19,454	37,210
Prison, low, supervised release, community confinement	NA	NA	17,864	24,449	19,958	38,722

Prison, minimum, supervised release	15,218	20,024	17,079	32,538	21,666	38,843
Prison, low, supervised release	15,596	20,780	17,205	33,546	22,296	40,356

Note 1: NA indicates that this type of sentence is not available in this zone except through departure.

Note 2: Includes current operating costs plus expansion costs.

^aAnalysis does not include expansion of boot camps.

Source: GAO analysis of AOUSC and BOP data.

GAO Factors Not Included in
Cost Calculations

- Net-widening
 - Offsetting effects
 - Prison costs after program failure
 - Possible longer prison term
 - Public safety
 - Good time credits
 - Short prison sentences in non-BOP facilities
 - Early termination of supervision
-

Factors Not Included in Cost Calculations

- To the extent that offenders who would otherwise receive simple probation instead receive more costly intermediate sanctions, total criminal justice system costs increase (referred to as net-widening).
- Offsetting effects: offenders sanctioned in the community can pay taxes and more easily pay fines, make restitution, assist with the support of dependents, and make payments for part or all of the costs of their sentences.
- If an offender "fails" probation or an intermediate sanction, through either a technical violation or commission of an additional criminal offense, the cost of any subsequent prison sentence must be added to the cost of that part of the initial sentence that was served prior to failure.
- The subsequent prison sentence might be longer after failure in the community than if the offender had been sentenced directly to prison.
- Public safety (social costs) could be affected by the commission of new criminal offenses by offenders sanctioned in the community.
- Prison costs are reduced if the offender earns "good time." Offenders serving prison sentences in excess of a year may earn up to 54 days a year, or about 15 percent of the sentence, which is credited against completion of the sentence.
- BOP can place offenders with short prison sentences, generally 6 months or less, into a halfway house or local contract jail, which are generally less expensive than either a minimum or low security prison.
- Pursuant to the U.S. Code, a term of probation or supervised release may be terminated at any time after the expiration of 1 year.

GAO Objective 6: Legal Limitations

- **What legal limitations exist to the increased availability and/or use of sanctions other than prison?**

OBJECTIVE 6: LEGAL LIMITATIONSScope and Methodology

We discussed legal limitations with officials of the Commission, AOUSC, and BOP. We also reviewed the U.S. Code, the U.S. Sentencing Commission Guidelines Manual, and applicable program and policy statements and manuals of AOUSC and BOP.

We analyzed the Commission's 1991 sentencing data file in an attempt to determine the number of offenders who, after limiting statutory and regulatory criteria are considered, might be eligible for the boot camp program.

**GAO U.S. Code Limits the Use
of Certain Sanctions**

- Probation
 - Intermittent, home, and community confinement
 - Community service and restitution
 - Boot camps
-

U.S. Code Limits the Use of Certain Sanctions

The U.S. Code contains a number of limitations to the increased availability and/or use of sanctions other than prison.

Probation may not be used in the following situations:

- "the offense is a Class A or Class B felony;
- the offense is an offense for which probation has been expressly precluded; or
- the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense." (18 U.S.C. section 3561.)

Intermittent, home, and community confinement are limited to conditions of probation or supervised release. (18 U.S.C. sections 3563(b) and 3583(d).)¹

Community service is limited to a condition of probation or supervised release. (18 U.S.C. sections 3563(b) and 3583(d).)

Restitution may be used as a sole sanction only in the case of misdemeanor offenses and is otherwise limited to a condition of probation or supervised release. (18 U.S.C. sections 3563(b), 3583(d), and 3663.)

Boot camps are generally limited to offenders who are sentenced to a term of imprisonment of more than 12 but not more than 30 months, if the offender consents to placement in the program. (18 U.S.C. section 4046.)

In addition, any sanction other than imprisonment is precluded by mandatory minimum statutes, such as 21 U.S.C. section 841, which prescribes mandatory 5-, 10-, or 20-year terms of imprisonment, or life, for the manufacture or distribution of a controlled substance, depending on the quantity of controlled substance involved, whether death or serious bodily injury occurred, or whether the offender had previous convictions.

Additional intermediate sanction programs must be authorized by Congress.

¹Home confinement, as a part of pre-release custody (not as an intermediate sanction), is limited to the last 10 percent or 6 months of imprisonment, whichever is less. (18 U.S.C. section 3624 (c)).

GAO Sentencing Guidelines Limit
the Use of Certain Sanctions

- Fines
 - Probation
 - Probation with a confinement condition
 - Split sentence
-

Sentencing Guidelines Limit the Use of Certain Sanctions

The Commission's sentencing guidelines further limit the availability and/or use of sanctions other than prison.

Fines may only be used as a sole sanction in zone A--i.e., for those offenders whose guideline range is 0-6 months. (U.S.S.G. section 5C1.1, comment. (n.2).)

The use of probation, probation with a confinement condition, and the split sentence (absent departures) are limited to those offenders who fall into the appropriate zones of the guidelines table. (U.S.S.G. section 5C1.1). In addition, the use of probation with a confinement condition and the split sentence are not recommended for most offenders with a criminal history category of III or above. (U.S.S.G. section 5C1.1, comment.(n.7).)

GAO BOP Regulations and Capacity
Limit the Use of Boot Camps

- BOP regulations impose additional restrictions.
 - Boot camp capacity as of May 1993:
 - Men—192
 - Women—120
-

BOP Regulations and Capacity Limit the Use of Boot Camps

BOP regulations place restrictions, beyond those found in the U.S. Code, on boot camp eligibility.² (Operations Memorandum 174-90 (5390), Nov. 20, 1990.)

We analyzed the Commission's 1991 sentencing database in an attempt to determine how many offenders in that year met basic statutory and regulatory requirements for the boot camp program. The database does not include information designed to show eligibility. As a result, we analyzed the database for the information that would come closest to showing boot camp eligibility.

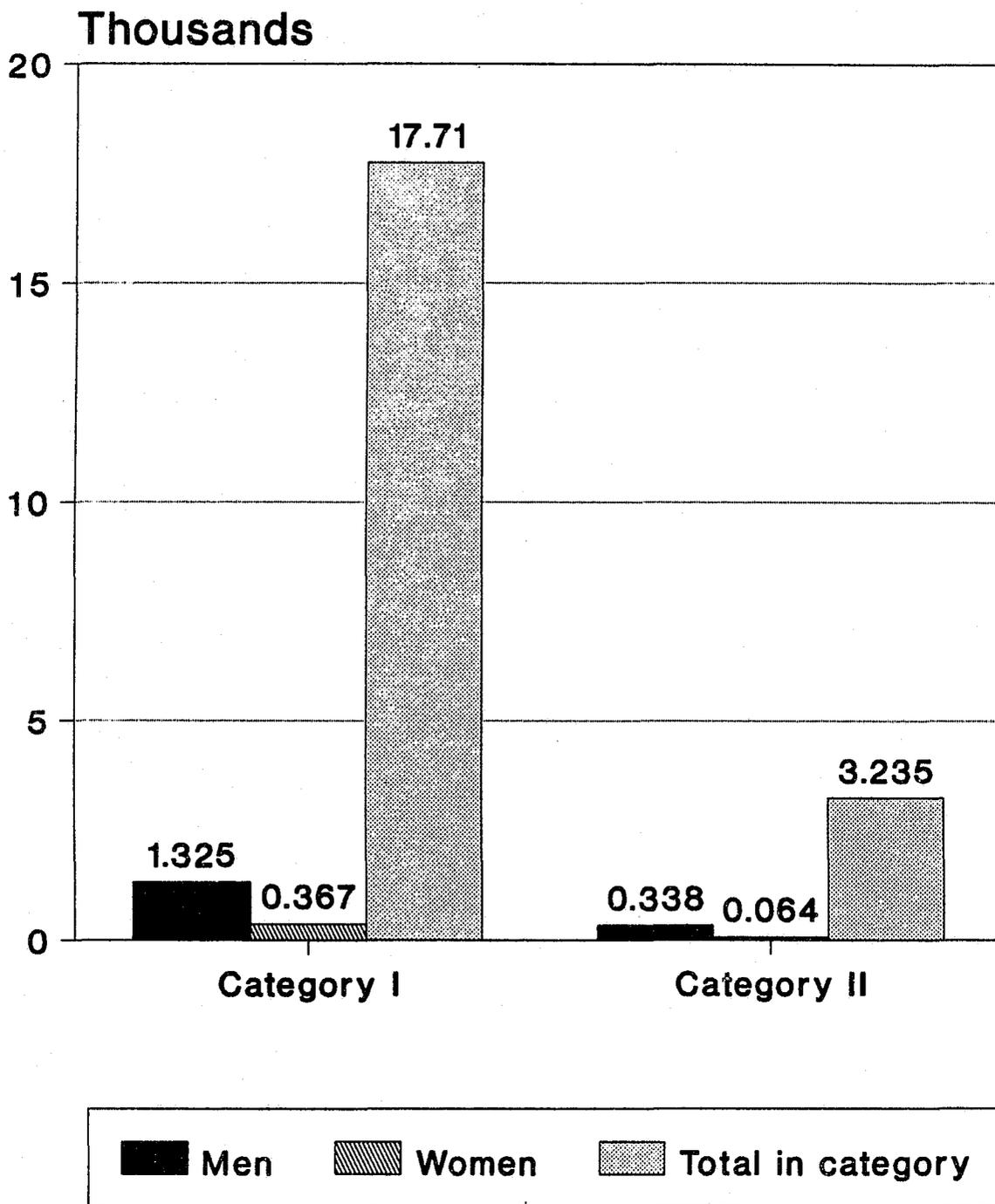
We analyzed the database for male and female offenders serving more than 12 but not more than 30 months (statutory criterion) and men no older than 35 (BOP criterion). In addition, we analyzed the database by criminal history categories I and II. Officials at BOP told us that offenders in these categories would most likely meet BOP's requirements that the offender be serving his or her first period of incarceration or have a minor prior history, and be qualified for minimum security.

Our analysis did not take into account the additional statutory criterion that the offender volunteer for the program or the BOP criteria that the offender be without medical restrictions and capable of participating in the rigorous program.

The results of this analysis are displayed in figure VII.1.

²See this report, p. 24.

Figure VII.1: Boot Camp Eligibility



Source: GAO analysis of the Commission's fiscal year 1991 data file, MONFY91.

EXPANSION COST ANALYSIS

Expansion costs were calculated with cost data supplied by AOUSC and BOP. These cost data were not verified. All costs occurring in years beyond 1993 were adjusted for inflation and then discounted.¹ Thus, total cost figures represent the net present value of costs in constant dollars. The procedures for calculating costs follow.

AOUSC provided \$9.05 per offender as the daily cost to increase supervision capacity by 100 offenders assuming 55 simple probation cases, 27 with substance abuse treatment, 4 with mental health treatment, 10 with community service, and 4 home confinement with electronic monitoring. AOUSC based its calculation on fiscal year 1993 first quarter costs. Using this figure, we arrived at a monthly cost of about \$272 per offender as the expansion cost of supervision.

Monthly intermittent and community confinement costs were based on the average daily costs provided by BOP. We assumed these costs would remain the same.

To estimate the costs of expanding prison capacity, we used figures provided by BOP on the capital costs of building minimum and low security facilities and the planned capacity of new prisons with these security designations.² In calculating expansion costs, we assumed that the capital costs of construction were paid when incurred. From BOP's capital costs we derived monthly costs of expansion. We computed these figures in order to allocate costs over the useful life of the facility,

¹The cost figures in appendix VI, table VI.11 and figure VI.3, were calculated using an inflation rate of 3 percent per year and a discount rate of 4.8 percent. The discount rate was the yield on 5-year treasury bonds as reported in the Wall Street Journal on October 27, 1993. We also did sensitivity analyses with inflation rates of 4 percent and discount rates of 5.5 percent. These analyses did not have an effect on the rankings of the costs of sentences.

²Our analysis is based on BOP's planned capacity for minimum and low security prisons, even though many BOP facilities actually house more offenders than the maximum for which they were designed.

to take into account the opportunity cost³ of expanding capacity, and to apportion expansion costs across offenders serving time in the new facilities. In this way, we arrived at monthly expansion costs that were more directly comparable to the AOUSC estimates of expanding supervisory capacity.

We computed the monthly cost of expanding capacity by first computing the number of bedspaces available over the life of a new facility. We assumed that a facility had a useful life of 30 years (or 360 months), the period of time that BOP considers to be the period before its prisons require major repair or renovation. We calculated the number of bedspaces by multiplying the 360 months of useful life by the number of bedspaces given by rated capacity (512 for minimum security and 1,536 for low). We then amortized the original capital cost of constructing a facility over the number of bedspaces available during the life of the facility. We amortized these costs at an interest rate of 6 percent to reflect the opportunity cost of capital. We used the resultant figure--the amortized cost per available bedspace per month--as the monthly cost of expanding prison capacity.

According to BOP, a new minimum security facility would cost \$16,840,000 to construct. The estimated number of bedspaces available over 30 years is equal to the planned rated capacity of 512 multiplied by 360 expected useful months, or 184,320 bedmonths. The per bedmonth cost of the total payments made if the \$16,840,000 were amortized over 30 years at a 6-percent interest rate would be about \$197.

For low security facilities, outlays of \$71,067,000 amortized at 6 percent over 30 years and spread out over 552,960 bedmonths (1,536 beds over 360 months) would amount to a monthly cost of expansion of about \$277.

From the monthly expansion costs we then calculated the per sentence cost of expansion by multiplying monthly expansion costs by the number of months of the prison sentence imposed. Finally, we calculated the yearly costs of prison sentences taking into account expansion of facilities as the sum of yearly expansion costs plus the yearly operating costs.

³Because the money spent to expand capacity could be used for other purposes (e.g., reducing the federal budget deficit, new prison programs, or even reducing taxes) there is an opportunity cost to the federal government of building new prison facilities. We accounted for this opportunity cost by amortizing the capital costs over the 30-year life of a facility at a 6-percent interest rate.

While the overall costs to expand a facility do not vary with the length of sentence of any individual offender, the per offender costs of expansion vary with the length of time served in prison. Comparing per offender costs of prison with per offender costs of intermediate sanctions requires accurate estimates of lengths of prison sentences served. Prison sentences imposed are proxies because many offenders earn good time reductions. The magnitude of these reductions may be estimated by assuming that offenders earn the maximum good time reduction. This amounts to 54 days per year for sentences in excess of 1 year, or about 15 percent for each year of their sentences. However, there is no readily available, comparable formula for estimating maximum reductions for those sentenced to nonprison terms (e.g., early termination of probation or supervised release). Consequently, in providing cost comparisons between prison and nonprison sanctions, we calculated all costs assuming no good time would be earned for any type of sentence.

However, the impact of good time reductions on costs can be readily illustrated. If we assume that all offenders earn the maximum amount of good time reductions on sentences in excess of 1 year--about 15 percent of the length of the sentence imposed--the average estimated stay of a minimum security offender would be reduced from 59.2 months, almost 5 years, to about 50.3 months, or a little over 4 years.⁴ Using these numbers, and the monthly expansion costs determined on pp. 126-127, we calculated that the portion of expansion costs for minimum security offenders attributable to the new facility would decrease by 15 percent from about \$11,662, for the average length of sentence imposed before good time computations are taken into account (59.2 months) to about \$9,909 after good time computations (50.3 months).

⁴Offenders serving sentences of less than 13 months do not earn good time reductions. Therefore, we estimated the effects of good time reductions on the average sentence of a minimum security offender by first subtracting the 859 offenders serving terms of less than 13 months from the total of 17,191 minimum security offenders in BOP prisons to arrive at 16,332 offenders. Next, we multiplied this number by 59.2 months (the average length of sentence for the remaining 16,332 minimum security offenders) to arrive at 966,854 total months that these offenders could be expected to serve. Multiplying this number by 85 percent (the total sentence less 15 percent good time) produced a total of 821,826 months. Dividing 821,826 months by 16,332 offenders produces an average estimated length of stay, with maximum good time reductions, of about 50.3 months.

Similar calculations for low security prisons would reduce the average sentence from 83.9 months, almost 7 years, to about 71 months, or almost 6 years.⁵ Similarly, the net effect of good time reductions across all low security offenders would be to reduce expansion costs from \$23,240 to about \$19,695.

Finally, while varying sentence lengths do not affect the expansion costs associated with a particular facility, sentence lengths can influence the need for additional facilities to house a given population of offenders.

For example, under current policy, offenders in minimum security facilities serve sentences, on average, of 59.2 months.⁶ If these current sentences were maintained over the life of a facility, an estimated 3,135 offenders could occupy a minimum security facility of 512 beds over its 30-year life. To estimate the total number of offenders who could occupy a new minimum security prison we multiplied the 30-year useful life by the planned new minimum security prison capacity of 512 and divided this number (15,360) by the average stay of about 4.9 years (59.2 months divided by 12) to arrive at 3,135 offenders occupying this space over 30 years. By contrast, if lengths of sentences increased, say to 7 years, the carrying capacity of a new minimum security facility would decrease to 2,194 offenders. If the prison system still had to house the original 3,135 offenders, the new facility would fall short of needed capacity by 941 bedspaces. Pursuant to current BOP policy, offenders in minimum security facilities are already double-bunked but presumably, to some extent, BOP could triple-bunk or set up beds in common areas. However, at some point increasing sentence lengths would increase the need to expand capacity for a given population of offenders. Thus, for any given facility, the length of sentence does not directly affect expansion costs. However, sentence length indirectly affects these costs by limiting the number of offenders who can occupy a facility and thereby increasing the need for additional facilities.

⁵There were no low security offenders serving terms of less than 1 year.

⁶While BOP does not maintain historical information on average sentence lengths, it did provide the number of minimum and low security offenders as of March 1993: 17,191 minimum and 11,784 low security. The average sentence length: 59.2 months minimum and 83.9 months low.

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Intensive Probation Supervision: Mixed Effectiveness in Controlling Crime (GAO/PEMD-93-4, June 4, 1993).

Intensive Probation Supervision: Cost-Savings Relative to Incarceration (GAO/PEMD-93-22, June 4, 1993).

Prison Boot Camps: Short-Term Prison Costs Reduced, but Long-Term Impact Uncertain (GAO/GGD-93-69, Apr. 29, 1993).

Prison Alternatives: Crowded Federal Prisons Can Transfer More Inmates to Halfway Houses (GAO/GGD-92-5, Nov. 14, 1991).

Intermediate Sanctions: Their Impacts on Prison Crowding, Costs, and Recidivism Are Still Unclear (GAO/PEMD-90-21, Sept. 7, 1990)

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