

Appendix B

PRISON IMPACT OF RECOMMENDATIONS

This section summarizes the estimated impact on prison sentences and the federal prison system of the recommendations described in Chapter 8 and the model sentencing guideline amendment in Appendix A showing one possible implementation of those recommendations.¹ This analysis uses the Commission's prison impact model to assess the independent and combined effects of the changes for all drug trafficking offenses and for individual drug types. The impact analysis of the recommended changes to the drug quantity threshold and sentencing guideline enhancements is followed by an explanation of the prison impact model.

PRISON IMPACT OF RECOMMENDED DRUG QUANTITY THRESHOLD

The Commission recommends increasing the drug quantity threshold for the five-year statutory minimum sentence for crack cocaine offenses from five grams to *at least* 25 grams (and the ten-year minimum to *at least* 250 grams). Because the prison impact model cannot estimate the impact of an inexact threshold quantity, this prison impact estimate on crack cocaine offenses assumes that Congress resets the threshold at 25 grams and the guidelines' Drug Quantity Table is modified to reflect that change across all quantity ranges.

Almost all, 93.3 percent, of crack cocaine offenders would be affected by increasing the drug quantity required to trigger the mandatory five-year prison term from five grams to 25 grams. If the drug quantity threshold were changed accordingly but none of the proposed enhancements were adopted, the average prison sentence of all crack cocaine offenses would decrease from 118 months to 86 months.

¹ This analysis does not include the prison impact of a drug-related guideline amendment sent to Congress on May 1, 2002. Excluded from the current analysis are: 1) the increase in maximum base offense level from 16 to 26 under USSG §2D1.8(a)(2)(Renting or Managing a Drug Establishment); 2) the maximum base offense level of 30 for offenders sentenced under USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses, Attempt or Conspiracy) who also receive an adjustment under USSG §3B1.2 (Mitigating Role); 3) modification of the Typical Weight Per Unit (Dose, Pill, or Capsule) Table in USSG §2D1.1 relating to MDMA and MDA; and 4) the clarification of the applicability of the two-level reduction in subsection (b)(6) of USSG §2D1.1 for offenders who meet the criteria set forth in USSG §5C1.1 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

PRISON IMPACT OF RECOMMENDED SENTENCING GUIDELINE ENHANCEMENTS

The individual and combined impacts on all drug trafficking offenders of the recommended sentencing guideline enhancements appear in Table B1. Each of the first four rows of Table B1 indicates the independent effect of the recommended sentencing guideline enhancement, absent any other guideline or statutory changes. The table shows the percent of all drug trafficking cases affected by the implementation of each enhancement, the current average sentence for the *affected* cases, the new average sentence for the *affected* cases, and the estimated number of prison beds that would be required five years after implementation of that adjustment.² The bottom row in Table B1 shows the prison impact on all drug offenders of all the adjustments combined.³

The graduated weapon enhancement would affect 2.4 percent of all drug trafficking offenders, increasing the average sentence for those affected from 118 months to 148 months. The enhancement for bodily injury would increase the average sentence for 1.2 percent of drug trafficking offenders from 93 months to 159 months. Almost twenty percent of all drug offenders would be subject to the enhancement for prior drug felony convictions. The average sentence for offenders with prior drug felonies would increase from 98 months to 120 months.

The prison impact of the importation enhancement was calculated for only powder cocaine and crack cocaine offenses.⁴ In fiscal year 2000, 17.4 percent of powder cocaine offenders would be eligible for the enhancement compared to only 1.7 percent of crack cocaine cases.⁵

The combined impact of the recommended enhancements appears in the last row of Table B1. The package of enhancements would affect 23.2 percent of all drug trafficking cases. The average sentence of the affected drug trafficking cases would increase from 94 months to 124 months. Implementation of these sentencing enhancements would require an additional 1,816

² Changes in average sentences are reported for affected cases because the proportion of affected cases in each category is relatively small. The effects on sentence length of the adjustments would be indiscernible if grouped with the unaffected cases.

³ Data for the adjustments are derived from the 1995 and 2000 drug samples. Rates of eligibility for each adjustment were collected for each drug type and applied at those rates to cases in the FY2000 datafile.

⁴ The 2000 drug sample, which is the basis for this analysis, includes data on whether the defendant was directly involved with the importation of drugs. At the writing of this report, this information was available for powder cocaine and crack cocaine offenses only.

⁵ The impact to sentences of the importation enhancement would be substantial for each type of cocaine. The average sentence for the 17.4 percent of affected powder cocaine cases would increase from 80 months to 98 months and the average sentence for the 1.7 percent of affected crack cocaine cases would increase from 118 months to 146 months.

prison beds after five years. These results likely underestimate the proportion of affected cases because data for the importation enhancement only were available for powder cocaine and crack cocaine offenders and it would likely apply to some proportion of heroin and marijuana offenses as well.⁶

Table B1⁷
Prison Impact of Recommended Sentencing Guideline Enhancements

	Percent of Cases Affected	Current Average Sentence	New Average Sentence	Five-year Prison Beds
Graduated Weapon Enhancement	2.4%	118	148	+127
Bodily Injury Enhancement	1.2%	93	159	+207
Prior Drug Felony Enhancement	19.9%	98	120	+1,263
Importation Enhancement⁸	9.6%	83	102	+370
All Enhancements Combined	23.2%	95	124	+1,816

⁶ Methamphetamine offenders would not be affected by the proposed importation enhancement because those offenders already are subject to such an enhancement under USSG §2D1.1(b)(4). In FY2000, 0.43 percent of methamphetamine offenders received the importation enhancement in its current form.

⁷ U.S. Sentencing Commission 2000 Datafile, USSCFY00, Prison Impact Model, 1995 Drug Sample, and 2000 Drug Sample.

⁸ This row shows the impact for powder cocaine and crack cocaine cases *only*.

COMBINED PRISON IMPACT OF RECOMMENDED DRUG QUANTITY THRESHOLD AND SENTENCING GUIDELINE ADJUSTMENTS

Table B2 summarizes the combined impact of all four guideline enhancements and the increased drug quantity threshold for crack cocaine. The recommendation as a whole (including the increase in the mandatory minimum threshold penalty for crack cocaine offenses, and the sentencing enhancements) would affect approximately one-third of all drug offenders. The proportion of offenders affected varies by drug type, ranging from eight percent for marijuana offenses to 85 percent for crack cocaine offenses. Average sentences for all drug offenses would decrease slightly from 72 months to 71 months.⁹ The combined impact of these changes would make available 1,011 prison beds after five years.

Table B2¹⁰
Prison Impact of Recommended Sentencing Guideline Enhancement and Drug Quantity Threshold Increase to 25 Grams

	Percent of Cases Affected	Current Average Sentence	New Average Sentence
TOTAL	33.0%	72	71
Powder Cocaine	30.8%	74	83
Crack Cocaine	85.8%	118	95
Heroin	12.3%	62	66
Marijuana	8.8%	35	36
Methamphetamine	22.1%	86	91

⁹ This figure actually understates the impact of the recommendation. The 85.8 percent *affected* crack cocaine cases had increased or decreased offense levels after the drug quantity threshold and all of the proposed guideline enhancements were applied. If the application of these changes resulted in a net zero change in offense level, it was *not* classified as an affected case. The net effect of these changes is zero for 7.5 percent of crack cocaine offenders. Consequently, these offenders are not affected by the model.

¹⁰ Table B2 reports the current and new average sentences for *all* (affected and unaffected) cases for each drug type. U.S. Sentencing Commission 2000 Datafile, USSCFY00, Prison Impact Model, 1995 Drug Sample, and 2000 Drug Sample.

As expected from the change in the crack cocaine drug quantity threshold, the majority of offenders affected by the recommendation were sentenced for crack cocaine offenses. The combined impact of the recommended guideline enhancements and the increased drug quantity threshold would affect 85.8 percent of crack cocaine offenders, decreasing their average sentence from 118 months to 95 months. Approximately one-third of powder cocaine offenders (30.8%) would be affected by the recommendation, increasing the average sentence for those offenders from 74 months to 83 months.

The prison impact is less substantial for the remaining three drug types. The recommendation would affect 22.1 percent of methamphetamine offenders, increasing average sentences from 86 months to 91 months. There is a lesser impact for heroin and marijuana offenders, affecting 12.3 percent and 8.8 percent of those cases, respectively. The sentence increases also are smaller, increasing heroin sentences an average of four months (62 months to 66 months) and increasing marijuana sentences an average of one month (35 months to 36 months).

Finally, it is noteworthy that the recommendations do not affect the hierarchy of average sentences by drug type. Current average sentences are longest for crack cocaine offenders, followed by methamphetamine, powder cocaine, heroin, and marijuana. The recommendations would preserve this order, assuming that Congress sets the five-year and ten-year threshold quantity at 25 grams and 250 grams, respectively, but the gap between average sentences for powder cocaine and crack cocaine would be narrowed substantially (from 44 months to 12 months). In addition, crack cocaine penalties would be only four months longer on average than methamphetamine penalties.

THE PRISON IMPACT MODEL

The U.S. Sentencing Commission's Prison Impact computer model identifies and re-sentences cases in Commission datafiles. The model recalculates the relevant guideline based on specified changes (*e.g.*, drug amounts that correspond to base offense levels) and compares the recalculated offense levels to existing offense levels. The model then reassigns any Chapter Three adjustments and departures that currently exist in each case. Finally, the model "respos" the new sentence in the corrected guideline range to a location equivalent to the current sentence. The model makes the following assumptions in calculating estimated sentences:

- 1) Defendants earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment).
- 2) Defendants serve the minimum of a) the sentence imposed less the maximum allowable good-time, or b) their estimated remaining life expectancy, based upon an actuary table incorporating age, race, and gender.
- 3) Changes are made to a "steady-state" prison population. A "steady-state" population

assumes a prison system in homeostasis in which the number of new, incoming inmates is equal to the number of outgoing (released) inmates and all beds are assumed to be occupied. Change is measured in person-years of imprisonment.

4) All factors other than the proposed change in the specific sentencing policy under review (*e.g.*, arrest rates, charging practices, conviction rates, and other sentencing policies) remain constant over time. As a result, changes in the specific policy under review are isolated from other systemic change.

If the proposed amendment lengthens sentences, the “steady-state” prison population increases because inmate release dates would be later if the new, longer sentence were applied. These delayed release dates would cause offenders to accumulate in the prison system. Because new inmates arrive at a constant rate, additional beds are required. If the proposed amendment shortens sentences, the “steady-state” prison population decreases because inmates would be released earlier and early releases would free up prison beds.