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Bureau of Justice Statistics Bulletin

A LEMAS Report

Sheriffs' Departments 1990

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During 1990 nearly 17,000 publicly funded State and local law enforcement agencies were operating in the United States. Included in this total were approximately 3,100 sheriffs' departments.

In July 1990 the Law Enforcement Management and Administrative Statistics (LEMAS) program of the Bureau of Justice Statistics (BJS) surveyed a nationally representative sample of law enforcement agencies. This report presents data from sheriffs' departments on expenditures, functions, personnel, salaries, training and educational requirements, equipment, computerization, programs, and policies.

Major findings include the following:

- During fiscal year 1990, sheriffs' departments had operating expenditures of \$9.1 billion and employed 204,000 persons full time. About 69% of these employees were sworn officers, and 31% were civilian employees.

- Almost all sheriffs' departments reported performing at least some work related to the courts (98%) and to law enforcement (97%). About 87% of the departments performed some jail-related work.

- About 84% of the departments estimated they spent a third or more of their personnel hours on law enforcement activities. About 40% of the departments spent at least a third of their time on jail-related responsibilities, and 9% spent this much time performing court-related duties.

The Law Enforcement Management and Administrative Statistics (LEMAS) program, begun in 1987, provides a detailed portrait of the Nation's law enforcement agencies — their sworn and civilian personnel, hiring requirements, training, functions, expenditures, and equipment such as sidearms, body armor, and computers.

The findings reported in this Bulletin come from sheriffs' departments that comprise almost 30% of the agencies participating in LEMAS. A companion Bulletin on police departments reports on the same issues. We are confident that this information, which is collected only through exemplary cooperation by law enforcement agencies, is of great value to policymakers and criminal justice administrators.

Steven D. Dillingham, Ph.D.
Director

- Most sheriffs' departments were small: nearly two-thirds of them employed fewer than 25 sworn officers, and a third employed fewer than 10. About half of the departments served a population of less than 25,000.

- Sheriffs' departments serving a population of 1 million or more employed a fifth of all officers, and departments serving 250,000 or more residents employed about half of all officers.

- Among sworn personnel in sheriffs' departments, 84.5% were white (non-Hispanic), 9.8% black (non-Hispanic), 4.7% Hispanic, and 1% were members of other minority groups. About 15.4% were women.

- Approximately 93% of sheriffs' departments required new officer recruits to have at least a high school diploma, and the minimum requirement in another 4% of the departments included some college education, usually a 2-year degree.

- About 9 in 10 sheriffs' departments had formal classroom and field training requirements for new officer recruits. The average number of required training hours ranged from 400 hours in departments serving under 25,000 residents to over 800 hours in departments serving a population of 500,000 or more.

- The average starting salary for new officer recruits in sheriffs' departments ranged from about \$26,000 in the largest jurisdictions to about \$16,000 in the smallest, with an overall departmental average of \$17,400.

- Approximately 74% of sheriffs' departments authorized the use of semiautomatic sidearms by their officers. The 9mm was the semiautomatic weapon most frequently authorized for use.

- About 21% of sheriffs' departments required all regular field officers to wear body armor while on duty. Another 6% of the departments applied this requirement to some, but not all officers.

Table 1. State and local law enforcement agencies in the United States, 1990

Table 1. State and local law enforcement agencies in the United States, 1990								
Type of agency	Number of agencies*	Number of employees						Operating expenditures, fiscal year 1990
		Full-time			Part-time			
		Total	Sworn	Civilian	Total	Sworn	Civilian	
Total	16,961	793,020	595,869	197,151	76,044	35,384	40,660	\$41,550,270,000
Local police	12,288	459,891	363,001	96,890	53,705	24,533	29,172	\$20,585,981,000
Sheriff	3,093	203,974	141,418	62,556	16,406	9,192	7,214	9,137,209,000
Special police	1,531	51,825	39,078	12,747	5,129	1,549	3,580	8,137,543,000
State police	49	77,330	52,372	24,958	804	110	694	3,689,537,000
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Local police	72.4%	58.0%	60.9%	49.1%	70.6%	69.3%	71.7%	49.5%
Sheriff	18.2	25.7	23.7	31.7	21.6	26.0	17.7	22.0
Special police	9.0	6.5	6.6	6.5	6.7	4.4	8.8	19.6
State police	.3	9.8	8.8	12.7	1.1	.3	1.7	8.9

Note: Local police and State police categories include only general purpose agencies. Special police category includes both State- and local-level agencies. Detail may not add to total because of rounding.

*Except for the State police category, the number of agencies reported here is an estimate resulting from a weighted sample and is not an exact enumeration.

The LEMAS survey

The 1990 Law Enforcement Management and Administrative Statistics (LEMAS) survey was mailed to all 780 State and local law enforcement agencies with 100 or more sworn officers. A sample of 2,338 agencies with fewer than 100 officers also received the questionnaire. Of the 3,118 recipients of the LEMAS questionnaire, 2,945 (94.5%) responded.

The survey used a sampling frame based on personnel data from the 1986 Directory Survey of Law Enforcement Agencies. (Please see *Methodology* for further discussion of sampling.) This was the second LEMAS survey. A similar survey was conducted in 1987 (*Profile of State and Local Law Enforcement Agencies, 1987*, BJS Bulletin, NCJ-113949).

This report and a companion Bulletin, *State and Local Police Departments, 1990*, (NCJ-133284) present the results of the 1990 LEMAS data collection. This report focuses entirely on sheriffs' departments.

Sheriffs' departments

During 1990, an estimated 16,961 State and local law enforcement agencies were operating in the United States (table 1). The estimated 3,093 sheriffs' departments accounted for about 18% of the total. County governments operated almost all of the sheriffs' departments (over 99%), and independent cities, less than 1%.

The collective operating expenditure of sheriffs' departments during fiscal year 1990 was approximately \$9 billion, 22% of the total operating expenditure for all State and local law enforcement agencies. This was 47% more than in 1987, and represented a nationwide expenditure for sheriffs' departments of about \$63,000 per sworn officer. Capital expenditures such as equipment purchases and construction costs are not included in these figures.

On June 30, 1990, the Nation's sheriffs' departments employed an estimated 204,000 persons on a full-time basis and another 16,000 on a part-time basis. An estimated 141,000 (69%) of the full-time employees were sworn officers, representing about a fourth of all full-time State and local sworn law enforcement personnel. Approximately 63,000 full-time civilian employees were working for sheriffs' departments; they comprised about a third of the civilian law enforcement workforce nationwide. The largest sheriff's department in the United States was the Los Angeles County Sheriff's Department, with 10,808 full-time employees, including 7,640 sworn officers.

Overall, there were 12 sheriffs' departments (less than 1% of all departments) that employed 1,000 or more sworn officers (table 2). About a third of sheriffs' departments employed 25 or more officers. Another third employed between 10 and 24 officers, and the remaining third, fewer than 10 officers. In contrast to the nearly 1,000 single-officer local police departments, only an estimated 17 sheriffs' departments employed just one officer in 1990.

Table 2. Sheriffs' departments, by number of sworn personnel, 1990

Number of sworn personnel	Departments	
	Number*	Percent
Total	3,093	100%
1,000 or more	12	.4%
500-999	21	.7
250-499	64	2.1
100-249	191	6.2
50-99	295	9.5
25-49	522	16.9
10-24	953	30.8
5-9	684	22.1
2-4	335	10.8
1	17	.5

Note: Table includes both full-time and part-time employees. Detail may not add to total because of rounding.

*See table 1 note on estimated number of agencies.

Although just 1% of sheriffs' departments were located in jurisdictions with a population of 1 million or more, about 20% of all sworn officers were working for departments in jurisdictions that large (table 3). Half of all officers were working for the 6% of sheriffs' departments in jurisdictions with a population of 250,000 or more. Only 3% of all full-time officers were working for departments serving a population under 10,000, although 23% of all departments were in this population category.

On average, sheriffs' departments serving a population of 1 million or more employed just over 1,000 full-time sworn officers and about 600 full-time civilian employees (table 4). The average number of full-time employees for all sheriffs' departments was 66, including 46 sworn and 20 civilian. The workforce size of departments in the 50,000-99,999 population range most closely resembled the overall averages.

In large sheriffs' departments (100 or more sworn officers), about half of the full-time officers were providing direct services related to patrol, response to incidents, investigation, special operations, and other aspects of field operations (table 5). A third of full-time sworn employees were working in positions related to jail operation, and about 1 in 10 were working in court-related positions including bailiffs, security guards, and process servers.

Relatively small percentages of full-time sworn employees worked in administration or technical support. About 5% of them held administrative positions, including jobs related to finance, personnel, and internal affairs. Another 4% of sworn personnel provided technical support services related to communications and dispatch, fleet management, training, and other areas requiring technical expertise.

Approximately 50% of civilian employees worked in jail-related positions, and another 30%, in technical support positions.

The average annual operating expenditure of sheriffs' departments for fiscal year 1990 was about \$3 million, ranging from about \$92 million in departments serving a population of 1 million or more to about \$300,000 in those serving under 10,000 residents (table 6). Overall, employee salaries and benefits accounted for \$3 of every \$4 in operating expenditures. The overall departmental average expenditure per resident was \$40. Departments serving a population of under 10,000 cost the most to operate, \$56 per resident. Departments serving a population of 1 million or more and those serving a population of 100,000 to 249,999 had the highest average expenditure per employee, \$55,400 and \$52,400, respectively.

Table 3. Sheriffs' departments and full-time sworn officers, by size of population served, 1990

Population served	Departments		Full-time sworn officers	
	Number*	Percent	Number	Percent
All sizes	3,093	100%	141,418	100%
1,000,000 or more	27	.9%	28,112	19.9%
500,000-999,999	62	2.0	22,231	15.7
250,000-499,999	92	3.0	18,367	13.0
100,000-249,999	270	8.7	25,055	17.7
50,000-99,999	374	12.1	17,998	12.7
25,000-49,999	594	19.2	13,391	9.5
10,000-24,999	955	30.9	11,972	8.5
Under 10,000	719	23.2	4,292	3.0

*See note on table 1.

Table 4. Average number of employees in sheriffs' departments, by size of population served, 1990

Population served	Average number of employees					
	Full-time			Part-time		
	Total	Sworn	Civilian	Total	Sworn	Civilian
All sizes	66	46	20	5	3	2
1,000,000 or more	1,638	1,052	586	45	31	14
500,000-999,999	534	356	178	22	4	18
250,000-499,999	287	199	87	19	8	11
100,000-249,999	129	93	36	9	6	3
50,000-99,999	64	48	16	8	5	3
25,000-49,999	32	23	10	5	3	2
10,000-24,999	17	13	5	3	2	1
Under 10,000	9	6	3	2	1	1

Note: Detail may not add to total because of rounding.

Table 5. Job classification of full-time personnel in large sheriffs' departments, 1990

Job classification	Percent of full-time employees		
	Total	Sworn	Civilian
Total	100%	100%	100%
Jail operations	39.0%	33.6%	50.1%
Field operations	34.7	47.8	7.4
Technical support	12.5	4.2	29.8
Court operations	7.3	9.4	2.9
Administration	5.6	4.7	7.5
Other	1.0	.4	2.3

Note: Detail may not add to total because of rounding. Table excludes departments with fewer than 100 sworn personnel.

Table 6. Operating expenditures of sheriffs' departments, by size of population served, 1990

Population served	Operating expenditures, fiscal year 1990			
	Per department	Per sworn officer	Per employee	Per resident
All sizes	\$2,954,000	\$62,600	\$43,100	\$40
1,000,000 or more	\$92,020,000	\$86,200	\$55,400	\$38
500,000-999,999	23,640,000	66,100	43,400	34
250,000-499,999	12,023,000	59,200	40,600	34
100,000-249,999	6,997,000	73,000	52,400	48
50,000-99,999	2,247,000	44,300	33,200	34
25,000-49,999	954,000	39,800	27,800	28
10,000-24,999	603,000	45,300	32,100	38
Under 10,000	309,000	48,200	32,700	56

Note: Figures are for the fiscal year ending June 30, 1990, or the most recent fiscal year completed prior to that date. Figures do not include capital expenditures such as equipment purchases or construction costs. Computation of per officer and per employee averages includes both full-time and part-time employees, with a weight of 0.5 assigned to part-time employees.

Estimated workload level for law enforcement, jail-related, and court-related functions in sheriff's departments, 1990

About 84% of sheriffs' departments reported that at least a third of their total personnel hours were spent on activities related to law enforcement. Approximately 27% of the departments estimated that employees spent more than two-

thirds of their total work time on activities related to law enforcement. Departments serving a population under 10,000 (43%) were the most likely to devote that much time to law enforcement. Only 3 departments serving a population

of 500,000 or more spent more than two-thirds of their personnel time on law enforcement.

Unlike local police departments, most of which perform law enforcement duties almost exclusively, sheriffs' departments are much more likely to have additional jail- and court-related responsibilities.

In 1990 the percentage of sheriffs' departments with primary responsibility for operating a jail (81%) was 16 times higher than the percentage of local police departments (5%). Sheriffs' departments were 9 times more likely than local police departments to be responsible for serving civil process (91% versus 10%), and about 5 times more likely to be providing court security (85% versus 18%).

Consequently, nearly all (98%) sheriffs' departments reported spending at least some work hours on court-related activities during 1990, and 87% reported at least some jail-related work.

Jail-related responsibilities consumed at least a third of the work hours in 40% of sheriffs' departments. Although only 2% of all departments spent more than two-thirds of their personnel time on jail operation, 24% of the departments serving 1 million or more residents did so.

Court-related responsibilities did not require as much personnel time as law enforcement or jail-related duties. Although nearly all sheriffs' departments performed some court-related work, only 9% spent a third or more of their work-hours on court-related activities.

Despite their jail and court-related responsibilities, only 3% of all sheriffs' departments reported they performed no law enforcement-related work in 1990. Departments in jurisdictions of 1 million or more residents (19%) and departments serving a population of 500,000 to 999,999 (14%) were most likely not to perform law enforcement functions.

Proportion of total personnel workhours spent on law enforcement functions

Population served	Total	None	Less than 1/3	1/3 to 2/3	More than 2/3
All sizes	100%	3%	13%	57%	27%
1,000,000 or more	100%	19%	41%	40%	0%
500,000-999,999	100	14	52	29	5
250,000-499,999	100	5	40	43	12
100,000-249,999	100	9	26	54	11
50,000-99,999	100	5	15	68	13
25,000-49,999	100	2	14	64	20
10,000-24,999	100	1	6	60	33
Under 10,000	100	2	8	48	43

Proportion of total personnel workhours spent on jail-related functions

Population served	Total	None	Less than 1/3	1/3 to 2/3	More than 2/3
All sizes	100%	13%	46%	38%	2%
1,000,000 or more	100%	19%	11%	46%	24%
500,000-999,999	100	14	22	49	14
250,000-499,999	100	32	15	46	7
100,000-249,999	100	21	23	50	6
50,000-99,999	100	5	42	52	1
25,000-49,999	100	7	48	43	2
10,000-24,999	100	10	57	32	0
Under 10,000	100	22	49	29	1

Proportion of total personnel workhours spent on court-related functions

Population served	Total	None	Less than 1/3	1/3 to 2/3	More than 2/3
All sizes	100%	2%	89%	6%	3%
1,000,000 or more	100%	7%	85%	7%	0%
500,000-999,999	100	2	78	2	18
250,000-499,999	100	1	80	2	16
100,000-249,999	100	0	84	10	6
50,000-99,999	100	0	92	4	4
25,000-49,999	100	3	87	9	2
10,000-24,999	100	3	91	6	--
Under 10,000	100	2	92	4	2

Note: Figures are based on estimates provided by departments. Some departments may have performed functions not related to any of these three categories. Detail may not add to total because of rounding.

--Less than 0.5%.

Table 7. Functions for which at least half of sheriffs' departments had primary responsibility, by size of population served, 1990

Population served	Percent of departments with primary responsibility for:												
	Civil process serving	Violent crime investigation*	Death investigation	Court security	Property crime investigation	Patrol and first response	Jail operation	Narcotics and vice enforcement	Telephone/radio communication and dispatch	Traffic enforcement	Accident investigation	Search and rescue	Fingerprint processing
All sizes	91%	89%	87%	85%	85%	82%	81%	81%	72%	67%	65%	57%	52%
1,000,000 or more	85%	70%	70%	73%	66%	77%	77%	73%	73%	62%	62%	60%	70%
500,000-999,999	88	57	56	86	57	56	75	56	61	51	51	35	52
250,000-499,999	98	62	60	88	60	59	68	59	55	59	38	48	58
100,000-249,999	96	74	72	90	71	72	76	67	64	57	48	50	51
50,000-99,999	98	87	87	89	86	85	93	80	77	61	58	56	57
25,000-49,999	91	93	91	89	85	84	91	85	72	64	64	57	51
10,000-24,999	88	95	91	83	88	86	86	85	75	70	68	60	55
Under 10,000	90	92	90	81	91	85	64	81	73	74	77	60	46

*Includes investigation of rape, robbery, or serious assault.

Operations

About 7 in 8 sheriffs' departments had primary responsibility for crime and death investigations (table 7). A similar proportion of departments also provided civil process serving and court security. About 4 in 5 departments performed the functions of patrol and first response to incidents, enforced narcotics and vice laws, and

operated a jail. At least half of the departments also had primary responsibility for communications and dispatch (72%), traffic enforcement (67%), accident investigation (65%), search and rescue operations (57%), and fingerprint processing (52%).

Relatively few departments had primary responsibility for civil defense (20%), animal control (20%), emergency medical services

(10%), training academy operation (7%), fire services (7%), laboratory testing of substances (5%), or ballistics testing (3%) (table 8). Sheriffs' departments in jurisdictions under 10,000 in population were most likely to perform civil defense functions, and those in jurisdictions with fewer than 50,000 residents were most likely to provide animal control services. Departments in the largest jurisdictions (over 1 million) were the most likely to operate a training academy, conduct laboratory tests of substances, or perform ballistics tests.

Table 8. Functions for which less than half of sheriffs' departments had primary responsibility, by size of population served, 1990

Population served	Percent of departments with primary responsibility for:						
	Civil defense	Animal control	Emergency medical services	Training academy operation	Fire services	Laboratory testing of substances	Ballistics testing
All sizes	20%	20%	10%	7%	7%	5%	3%
1,000,000 or more	11%	10%	19%	62%	7%	32%	29%
500,000-999,999	7	2	7	33	0	12	12
250,000-499,999	15	10	9	25	1	20	9
100,000-249,999	14	10	9	17	3	13	8
50,000-99,999	19	13	6	16	5	4	2
25,000-49,999	14	24	8	1	4	6	1
10,000-24,999	20	21	11	4	9	2	3
Under 10,000	30	25	13	2	11	1	1

About 42% of all sheriffs' departments participated in a 911 emergency telephone system during 1990 (table 9). This percentage represented a substantial increase from 1987, when 28% of the departments participated. Significant increases in participation from 1987 to 1990 occurred in all population categories.

In 1990 over half the departments serving 100,000 or more residents, almost half the departments serving a population from 25,000 to 99,999, and about a third of the departments serving a population of less than 25,000 participated in a 911 system. (A department's lack of participation did not necessarily mean that citizens in its jurisdiction had no 911 service, because another agency could have provided it.) As in 1987, about a fourth of participating sheriffs' departments had a system with enhanced capabilities, allowing electronic identification of the source of a call.

Table 9. Sheriffs' departments participation in 911 emergency telephone system, by size of population served, 1990 and 1987

Population served	Percent of departments participating in 911 system					
	1990			1987		
	Total	Regular	Enhanced/expanded	Total	Regular	Enhanced/expanded
All sizes	42%	31%	11%	28%	20%	8%
1,000,000 or more	73%	26%	47%	53%	20%	33%
500,000-999,999	54	12	42	48	22	26
250,000-499,999	60	23	36	43	19	24
100,000-249,999	62	30	31	43	31	12
50,000-99,999	48	32	17	42	31	10
25,000-49,999	46	38	8	28	20	8
10,000-24,999	35	28	7	25	18	7
Under 10,000	32	30	2	16	14	2

Note: Participation is defined as the capability to dispatch a unit as the result of a call to 911. Detail may not add to total because of rounding.

Nine percent of sheriffs' departments were operating one or more lockup facilities separate from a jail in 1990 (table 10). Departments serving a population of 250,000 or more were the most likely to be operating a lockup facility. Departments in jurisdictions of 1 million residents or more had the largest average lockup capacity, about 68 persons; departments serving a population of under 25,000 had the smallest average lockup capacity, about 6.

Sworn officers

In 1990, 72.6% of full-time sworn personnel in sheriffs' departments were white (non-Hispanic) men (table 11). Officers in larger jurisdictions were less likely to be white men than those in small ones: About two-thirds of officers in departments serving a population of 500,000 or more were white men, compared to about three-fourths of the officers in smaller jurisdictions. Overall, 84.6% of sworn officers were men, and 84.5% were white. An estimated 1 in 10 officers were black, the largest representation of any minority group and about twice the proportion of Hispanic officers.

The percentages of women and minorities among sheriffs' department officers increased from 1987 to 1990. Over the 3 years, the proportion of women went from 12.6% to 15.4%, blacks from 8.3% to 9.8%, and Hispanics from 4.3% to 4.7%. Overall, minority representation increased from 13.4% to 15.5%.

Table 10. Operation of lockup facilities by sheriffs' departments, by size of population served, 1990

Population served	Percent operating lockup(s)	Average total capacity
All sizes	9%	17
1,000,000 or more	26%	68
500,000-999,999	34	36
250,000-499,999	31	28
100,000-249,999	16	21
50,000-99,999	8	33
25,000-49,999	5	10
10,000-24,999	5	5
Under 10,000	12	7

Note: Only temporary holding or lockup facilities separate from a jail are included. Computation of average total capacity excludes departments not operating a lockup.

Sheriffs' departments were estimated to have employed nearly 19,000 more full-time sworn officers in 1990 than in 1987. Significant increases in the number of women and minorities accompanied this overall increase. An estimated 21,778 women were full-time officers in sheriffs' departments in 1990, about 6,000 more than in 1987. Black officers numbered nearly 14,000 in 1990, compared to just over 10,000 in 1987. The number of sworn employees who were members of any racial or ethnic minority was about 22,000 in 1990, compared to 16,400 in 1987.

	Full-time sworn officers in sheriffs' departments			
	1990		1987	
	Percent	Number	Percent	Number
Total	100.0%	141,418	100.0%	122,544
Male	84.6%	119,640	87.4%	107,103
Female	15.4	21,778	12.6	15,441
White	84.5%	119,498	86.6%	106,124
Black	9.8	13,859	8.3	10,171
Hispanic	4.7	6,647	4.3	5,269
Other	1.0	1,414	.8	980

Nearly all (97%) sheriffs' departments had a formal education requirement for new officer recruits (table 12). The minimum requirement in 93% of the departments was a high school diploma. About 4% of sheriffs' departments required education beyond high school, either specified non-degree college courses (1%) or a 2-year college degree (3%). Less than 0.5% of all departments required new officer recruits to have a 4-year college degree.

Newly hired officers were required to complete formal training in 89% of sheriffs' departments (table 13). All departments in the 250,000-499,999 population category had a training requirement. Departments serving a population of 500,000 or more had the highest average of classroom hours required — about 500. The averages for departments in other population categories were close to the overall average of 354 hours.

Table 11. Characteristics of full-time sworn personnel in sheriffs' departments, by size of population served, 1990

Population served	Percent of full-time sworn employees								
	Total	White		Black		Hispanic		Other	
		Male	Female	Male	Female	Male	Female	Male	Female
All sizes	100%	72.6%	11.9%	7.2%	2.6%	3.9%	.8%	.9%	.1%
1,000,000 or more	100%	64.0%	14.2%	6.8%	2.9%	8.2%	1.9%	1.9%	.2%
500,000-999,999	100	68.9	9.7	11.8	4.0	4.1	.5	.9	.1
250,000-499,999	100	74.7	10.6	6.1	2.0	5.0	1.0	.6	.1
100,000-249,999	100	72.7	12.4	8.1	3.1	2.3	.5	.8	--
50,000-99,999	100	78.8	12.1	5.6	2.2	.8	.2	.3	.1
25,000-49,999	100	77.7	11.4	5.4	1.5	2.0	1.0	.8	.2
10,000-24,999	100	79.5	11.5	4.6	1.0	2.3	.2	.8	.1
Under 10,000	100	76.4	14.0	4.7	.9	2.9	.4	.5	.2

Note: "Black" and "white" categories do not include Hispanics. "Other" category includes American Indians, Alaskan Natives, Asians, and Pacific Islanders. Detail may not add to total because of rounding.
--Less than 0.05%.

Table 12. Minimum educational requirement for new officer recruits in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments						
	Total	Without requirement	All with requirement	Requiring minimum of:			
				High school diploma	Some college*	2-year college degree	4-year college degree
All sizes	100%	3%	97%	93%	1%	3%	—
1,000,000 or more	100%	0%	100%	100%	0%	0%	0%
500,000-999,999	100	0	100	95	2	2	2
250,000-499,999	100	0	100	93	2	5	0
100,000-249,999	100	2	98	87	4	8	0
50,000-99,999	100	3	97	93	1	4	0
25,000-49,999	100	2	96	95	0	3	0
10,000-24,999	100	4	95	90	—	5	—
Under 10,000	100	2	98	96	1	1	0

Note: Detail may not add to total because of rounding.
--Less than 0.5%.

*No degree requirement.

The overall average number of field training hours required was 117. The average requirements for field training ranged from 42 hours for departments in the smallest jurisdictions to about 10 times that number in departments serving a population of 1 million or more.

The average starting salary for an entry-level deputy in sheriffs' departments was \$17,420, an increase of 12% from 1987 (table 14). Average starting salaries varied with population size, ranging from an average of about \$26,000 in departments serving a population of 1 million or more, to an average of about \$16,000 in departments serving a population of under 10,000.

Across population categories, the salaries of sergeants and sheriffs had a pattern similar to that of salaries of entry-level

Table 13. Training requirements for new officer recruits in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments requiring training	Average number of hours required		
		Total	Classroom	Field
All sizes	89%	471	354	117
1,000,000 or more	85%	946	538	408
500,000-999,999	94	821	511	310
250,000-499,999	100	638	379	259
100,000-249,999	90	581	384	197
50,000-99,999	93	553	372	181
25,000-49,999	90	498	352	146
10,000-24,999	85	410	342	68
Under 10,000	91	367	325	42

Note: Computation of the average number of training hours excludes departments not requiring training.

Table 14. Average base starting salary for selected positions in sheriffs' departments, by size of population served, 1990

Population served	Average base starting salary		
	Entry-level deputy	Sergeant	Sheriff
All sizes	\$17,420	\$21,870	\$33,530
1,000,000 or more	\$26,180	\$35,530	\$80,350
500,000-999,999	22,950	32,100	61,490
250,000-499,999	20,130	26,860	53,710
100,000-249,999	19,530	24,830	44,900
50,000-99,999	18,300	23,100	38,460
25,000-49,999	16,950	21,510	33,050
10,000-24,999	16,940	20,840	30,320
Under 10,000	15,860	18,560	24,530

Note: Average salaries are based on the minimum starting salary offered by a department and have been rounded to the nearest 10 dollars. Computation of average salary excludes departments with no full-time employee in that position.

officers. The overall average base starting salary for a sergeant was about \$22,000, starting at an average of \$35,530 in the largest jurisdictions and at \$18,560 in the smallest. A sheriff's average starting salary in departments serving a population of 1 million or more was about \$80,000, over 3 times as much as in departments serving a population of under 10,000.

About 43% of sheriffs' departments with 100 or more sworn officers authorized collective bargaining for employees in 1990. Some of these larger departments also authorized the following types of special pay for full-time sworn officers:

Type of special pay	Percent of large sheriffs' departments authorizing
Educational incentive	50%
Merit	44
Shift differential	29
Hazardous duty	27

Equipment

About 3 in 4 sheriffs' departments authorized the use of some type of semiautomatic sidearm by officers (table 15). About two-thirds of all departments authorized the use of 9mm semiautomatic sidearms.

One or more types of revolvers were authorized for use by officers in 82% of sheriffs' departments. The two most frequently authorized types were the .357 (authorized by 72% of the departments) and the .38 (authorized by 47%).

Nonlethal weapons were authorized for use in 80% of all sheriffs' departments (table 16). The types of these weapons most frequently mentioned were impact devices such as sidearm batons or soft projectiles and chemical agents like tear gas and mace — both types were authorized by 52% of the departments.

Table 15. Types of sidearms authorized for use by sworn officers in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments authorizing:											
	Semiautomatic						Revolver					
	One or more types	.357	.380	.45	9mm	10mm	One or more types	.357	.38	.45	9mm	10mm
All sizes	74%	4%	6%	32%	67%	12%	82%	72%	47%	11%	10%	4%
1,000,000 or more	71%	7%	22%	40%	67%	11%	100%	77%	80%	21%	21%	4%
500,000-999,999	79	0	10	30	70	9	86	54	70	12	2	2
250,000-499,999	84	3	9	43	81	17	86	70	68	1	2	0
100,000-249,999	78	5	5	34	75	12	84	74	47	10	15	6
50,000-99,999	82	6	9	39	74	16	81	72	59	10	8	5
25,000-49,999	71	2	4	30	67	15	79	73	42	10	9	3
10,000-24,999	75	3	5	31	65	10	82	73	42	11	10	3
Under 10,000	67	5	5	30	59	10	80	70	46	14	12	4

Note: Some types of sidearms not included in this table may have been authorized for use in some departments.

Table 16. Types of nonlethal weapons authorized for use by sworn officers in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments authorizing:				
	One or more types	Impact devices	Chemical agents	Electrical devices	Restraining devices
All sizes	80%	52%	52%	25%	23%
1,000,000 or more	96%	77%	80%	39%	26%
500,000-999,999	82	65	59	23	24
250,000-499,999	94	80	74	27	40
100,000-249,999	91	67	54	22	30
50,000-99,999	84	52	60	27	18
25,000-49,999	74	51	47	25	21
10,000-24,999	80	50	49	26	26
Under 10,000	75	45	49	23	18

Note: Impact device category includes sidearm batons, soft projectiles, and rubber bullets. Chemical agent category includes tear gas and mace. Electrical device category includes tasers and stun guns. Restraining device category includes three-pole trips and capture nets, but not handcuffs.

About 3 in 5 sheriffs' departments supplied at least some officers in regular field operations with protective body armor or gave them a cash allowance to purchase it (table 17). About half of the departments serving a population of under 10,000 supplied officers with armor or gave them a cash allowance for it — a smaller proportion than in larger jurisdictions.

Overall, 27% of sheriffs' departments required that at least some officers in regular field operations wear body armor

while on duty, including 21% that required all such officers to wear it. Of the departments serving a population of 1 million or more, 44% required at least some officers on duty in regular field operations to wear body armor, with about half of these departments applying the policy to all regular field operations officers. Among departments serving a population of 250,000 to 499,999, 42% required at least some officers to wear armor. About three-fourths of these departments applied the policy to all regular field operations officers.

Nationwide, sheriffs' departments operated about 7 cars for every 10 sworn officers (table 18). The ratio of cars to officers was lowest in jurisdictions of 1 million residents or more — 3 cars per 10 officers — and highest in departments serving a population of under 50,000 — about 7 cars per 10 officers.

Approximately 28% of all the cars operated by sheriffs' departments were unmarked. The 62% of cars that were unmarked in departments serving a population of 1 million or more represented nearly 3 times the percentage of unmarked cars in departments serving a population of under 25,000.

About 82% of sheriffs' departments permitted sworn officers to take marked cars home (table 19). Departments serving a population of under 10,000 (91%) were twice as likely to allow marked vehicles to be taken home as departments serving a population of 1 million or more (45%). Overall, 28% of sheriffs' departments allowed officers to take a marked car home and drive it for personal use.

Table 17. Body armor policies for regular field operations officers in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments:					
	Supplying officers with armor or giving officers cash allowance for armor			Requiring officers to wear armor while on duty		
	Total	All officers	Some officers	Total	All officers	Some officers
All sizes	61%	54%	7%	27%	21%	6%
1,000,000 or more	85%	65%	20%	44%	23%	21%
500,000-999,999	71	54	17	26	17	9
250,000-499,999	59	51	8	42	30	12
100,000-249,999	71	59	12	31	24	7
50,000-99,999	69	57	12	27	17	10
25,000-49,999	63	59	4	25	24	2
10,000-24,999	62	57	5	30	23	7
Under 10,000	48	40	8	20	16	4

Note: Detail may not add to total because of rounding.

Table 18. Number of cars per sworn officer and percent of cars that were unmarked in sheriffs' departments, by size of population served, 1990

Population served	Ratio of cars to sworn officers	Percent of cars that were unmarked
All sizes	.69	28%
1,000,000 or more	.29	62%
500,000-999,999	.41	46
250,000-499,999	.47	43
100,000-249,999	.53	42
50,000-99,999	.59	32
25,000-49,999	.70	30
10,000-24,999	.74	23
Under 10,000	.78	21

Table 19. Vehicle-use policies for sworn officers in sheriffs' departments, by size of population served, 1990

Population served	Total	Percent of departments not allowing officers to take vehicles home	Percent of departments allowing officers to take vehicles home		
			Total	Off-duty use allowed	Off-duty use not allowed
All sizes	100%	18%	82%	28%	54%
1,000,000 or more	100%	55%	45%	7%	38%
500,000-999,999	100	43	57	21	37
250,000-499,999	100	29	71	18	53
100,000-249,999	100	32	68	29	39
50,000-99,999	100	27	73	25	48
25,000-49,999	100	18	82	20	62
10,000-24,999	100	13	87	33	54
Under 10,000	100	9	91	34	57

Note: Detail may not add to total because of rounding. Table refers to marked vehicles only.

Computers

About 63% of sheriffs' departments, employing 85% of all officers, reported the use of computers in 1990 (table 20). All departments serving a population of 1 million or more were using computers, and only in jurisdictions of under 10,000 were less than half of the departments using some type of computer.

Overall, the personal computer was the most commonly used type of computer, with use reported by 46% of all sheriffs'

departments and by every department in jurisdictions with 1 million residents or more. About 30% of departments had either exclusive or shared access to a mainframe computer, including 65% of departments serving a population of 100,000 or more. Laptop computers, used by 5% of all departments, were being used by 39% of the departments serving a population of 1 million or more. While only 1% of all departments reported having car-mounted digital terminals, 24% of departments in the largest jurisdictions reported such equipment.

About half of all sheriffs' departments reported using computers for record-keeping, including three-fourths of all departments serving a population of 50,000 or more (table 21). Other computer functions reported by at least a fourth of all departments included criminal investigations (35%), jail management (33%), budgeting (26%), and dispatch (25%). A majority of departments serving 250,000 or more residents reported using computers for these 4 functions. About half of departments serving a population of 500,000 or more were using computers for crime analysis, and about two-thirds of departments serving a population of 1 million or more reported using computers for fleet management.

The most common types of computerized files maintained by sheriffs' departments pertained to warrants (47%) and arrests (42%) (table 22). About a third of all sheriffs' departments also maintained files on criminal histories and stolen property. At least 30% of the departments in each of the 6 largest population categories (25,000 and up) maintained files on Uniform Crime Reports (UCR), calls for service, summons, and traffic citations. A majority of departments serving a population of 250,000 or more had computer files on payroll and personnel and departmental inventory.

Table 20. Types of computers used by sheriffs' departments, by size of population served, 1990

Population served	Percent of departments using each type of computer						
	One or more types	Personal	Mainframe	Mini	Laptop	Digital terminal	
						Car-mounted	Hand-held
All sizes	63%	46%	30%	9%	5%	1%	--
1,000,000 or more	100%	100%	85%	59%	39%	24%	15%
500,000-999,999	93	87	74	28	22	15	5
250,000-499,999	87	79	69	29	17	5	2
100,000-249,999	91	72	60	17	7	4	1
50,000-99,999	86	60	47	17	10	0	0
25,000-49,999	72	47	37	7	4	1	0
10,000-24,999	53	37	18	5	2	0	0
Under 10,000	38	28	12	2	2	0	0

-- Less than 0.5%

Table 21. Selected functions of computers in sheriffs' departments, by size of population served, 1990

Population served	Percent of departments using computers for:							
	Record-keeping	Criminal investigations	Jail management	Budgeting	Dispatch	Crime analysis	Fleet management	Man-power allocation
All sizes	51%	35%	33%	26%	25%	20%	16%	11%
1,000,000 or more	85%	81%	70%	65%	62%	52%	67%	46%
500,000-999,999	79	66	75	70	50	57	42	38
250,000-499,999	72	56	63	64	49	42	38	30
100,000-249,999	80	50	54	54	46	31	30	24
50,000-99,999	75	55	61	40	36	28	31	16
25,000-49,999	59	43	40	21	32	25	15	10
10,000-24,999	42	28	21	15	18	16	9	5
Under 10,000	26	16	15	15	9	8	4	5

Table 22. Types of computerized information files maintained by sheriffs' departments, by size of population served, 1990

Population served	Percent of departments maintaining computer files on:											
	Warrants	Arrests	Criminal histories	Stolen property/vehicles	Uniform Crime Reports	Calls for service	Summons	Traffic citations	Payroll/personnel	Inventory	Evidence	License registration
All sizes	47%	42%	35%	34%	29%	28%	27%	26%	24%	23%	20%	18%
1,000,000 or more	89%	71%	81%	62%	54%	70%	41%	45%	73%	71%	52%	58%
500,000-999,999	68	70	68	49	52	41	45	43	68	54	35	30
250,000-499,999	79	66	59	48	53	58	45	38	62	60	46	20
100,000-249,999	74	56	54	41	38	45	45	40	49	47	35	34
50,000-99,999	65	65	45	52	45	48	33	35	39	27	33	24
25,000-49,999	58	51	45	41	36	33	33	32	24	25	26	19
10,000-24,999	36	34	24	30	23	21	22	21	17	15	13	14
Under 10,000	25	24	20	17	16	11	15	16	8	12	8	13

Programs and policies

Departments with 100 or more sworn officers reported on the types of special units operated (table 23). About 82% of these departments were operating special units for drug education in schools and community crime prevention. More than half of large sheriffs' departments had special units for child abuse (65%), missing children (61%), and juvenile delinquency (59%). Other types of special units operated by more than a third of large sheriffs' departments dealt with gangs (47%), drunk drivers (45%), domestic violence (40%), and victim assistance (35%).

Departments with 100 or more officers also reported on the types of written policy directives maintained (table 24). The most commonly cited subject areas were the use of deadly force (96%), off-duty employment

(96%), codes of conduct and appearance (95%), and pursuit driving (90%). Most large departments also had written policy directives dealing with strip searches (88%), juveniles (86%), citizen complaints (84%), mentally ill/handicapped persons (81%), domestic disturbances (77%), use of confidential funds (70%), and employee counseling (70%).

Methodology

The Law Enforcement Management and Administrative Statistics (LEMAS) survey collects data from a nationally representative sample of the nearly 17,000 publicly funded State and local law enforcement agencies in the United States. This report focuses solely on sheriffs' departments.

All 780 State and local law enforcement agencies in the United States with 100 or more sworn officers (as reported in the 1986 Directory Survey of Law Enforcement Agencies) received the full-length LEMAS questionnaire. The 780 self-representing (SR) agencies were supplemented by a nationally representative sample of all agencies with fewer than 100 sworn officers. These nonself-representing (NSR) agencies were chosen using a stratified random sample with cells based on the type of agency (local police, sheriff, or special police), size of population served, and number of sworn officers. The 2,338 NSR agencies received a slightly abbreviated LEMAS questionnaire, which did not contain items about job classifications, residency requirements, special pay, collective bargaining, police membership organizations, special units, or written policy directives.

The initial mailing of the survey questionnaire was conducted in July 1990. The pay period containing June 15, 1990, was used as the reference date for personnel-related questions and June 30, 1990, for other questions. The data were collected by the Bureau of the Census for the Bureau of Justice Statistics.

After two followup mailings and additional telephone calls as needed, a final total of 2,945 agencies responded to the LEMAS questionnaire, including 738 SR agencies and 2,207 NSR agencies. The overall response rate was 94.5%. The final data-

base includes responses from 1,830 local police departments, 840 sheriffs' departments, 226 special police departments, and the 49 primary State police departments.

The base weight for all SR agencies is 1. For NSR local and special police departments, the base weight is 8.128, and for NSR sheriffs' departments it is 4.09857. The final weight associated with every agency, both SR and NSR, is the product of the base weight and a factor that adjusted for any nonresponding agencies in each sample cell. This agency nonresponse factor was based on number of sworn officers for SR agencies and on number of agencies for NSR agencies.

Some responding agencies did not completely answer the LEMAS questionnaire. When an agency did not supply a response to an item, a donor agency was randomly selected from responding agencies in the same sample cell. The donor agency's value for the item was placed into the nonresponding agency's response field with an indicator that the value had been imputed. Complete documentation regarding sampling procedures and non-response adjustments is available upon request.

Data on the number of employees and on the amount of agency expenditures in this report are not comparable with other BJS reports, such as the Survey of Criminal Justice Expenditure and Employment series. In the latter, these data are presented by governmental function, whereas in the LEMAS survey expenditures are classified by type of agency. For example, what might be attributed to sheriffs' departments in the LEMAS survey would be apportioned among various functions, such as police protection and corrections, in the Expenditure and Employment series. It should be noted that the LEMAS figures for operating expenditures include employee benefits, but the Expenditure and Employment figures do not.

Because the data from agencies with fewer than 100 sworn personnel were collected from a sample, the results are subject to sampling error. All statements of comparison in this report have been tested to ensure that observed differences between values are significant at 2 standard errors (the 95-percent confidence level) or higher.

Table 23. Types of special units operated by large sheriffs' departments, 1990

Type of special unit	Percent of large departments
Drug education in schools	82%
Community crime prevention	82
Child abuse	65
Missing children	61
Juvenile delinquency	59
Gangs	47
Drunk drivers	45
Domestic violence	40
Victim assistance	35
Prosecutor relations	31
Repeat offenders	28
Bias-related crimes	24

Note: Unit may be full-time or part-time. Table excludes departments with fewer than 100 sworn personnel.

Table 24. Selected types of written policy directives maintained by large sheriffs' departments, 1990

Subject area of directive	Percent of large departments
Use of deadly force	96%
Off-duty employment	96
Code of conduct and appearance	95
Pursuit driving	90
Strip searches	88
Juveniles	86
Citizen complaints	84
Mentally ill/handicapped persons	81
Domestic disturbances	77
Use of confidential funds	70
Employee counseling	70
Private security firms	29
Homeless persons	19

Note: Table excludes departments with fewer than 100 sworn personnel.

How to order the dataset

Data utilized in this report are available from the National Archive of Criminal Justice Data at the University of Michigan, P.O. Box 1248, Ann Arbor, MI 48106; 1-800-999-0960. The data set is archived as Law Enforcement Management and Administrative Statistics 1990 (ICPSR 9749).

Brian Reaves wrote this report. Tom Hester edited it. Pheny Z. Smith provided statistical review. Michael W. Agopian, Lawrence A. Greenfeld, and Richard W. Dodge reviewed the publication. It was produced by Marilyn Marbrook, assisted by Jayne Pugh and Yvonne Boston. Sample design, selection, and weighting were provided by David Hubble and Elizabeth Sweet of the Statistical Methods Division, Bureau of the Census. The data were collected and processed by Martha Greene, Linda Huang, Theresa Reitz, Ellen Rhodes, and Charlene Sebold of the Governments Division, Bureau of the Census.

February 1992, NCJ-133283

The Assistant Attorney General is responsible for matters of administration and management with respect to the OJP agencies: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. The Assistant Attorney General establishes policies and priorities consistent with the statutory purposes of the OJP agencies and the priorities of the Department of Justice.

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Bulletin

DEPARTMENT OF JUSTICE ACCOMPLISHMENTS

FACT SHEET

INCREASED RESOURCES

During the Bush Administration:

- o The Department saw its budget increase by 56 percent -- to \$10.457 billion in FY 1992 from \$6.690 billion in FY 1989. FY 1993 request of \$11.433 billion represents a 71% increase over FY 1989.
- o The Department added over 12,400 new positions, from FY 1989 through FY 1992, including about 1,200 new Assistant U.S. Attorneys, a 40 percent increase.

COMBATTING VIOLENT CRIME

The Department has made fighting violent crime a top priority across the board and has implemented several new major initiatives designed to fight violent crime, most notably enhanced efforts focused on armed criminals, fugitives, criminal gangs, and other career violent offenders.

Project Triggerlock. In April 1991, Project Triggerlock was initiated nationwide to use federal firearms laws to identify and incapacitate the nation's worst armed criminals.

- o 8200 defendants have been charged with federal firearms violations during Project Triggerlock through July 1992.
- o The vast majority of these offenders are felons, drug dealers or other violent offenders in possession of firearms.
- o The average sentence received by an armed career criminal under Project Triggerlock is 18 years, no parole.

Operation Gunsmoke. At the direction of the Attorney General, the United States Marshals Service conducted earlier this spring the most successful criminal manhunt in the history of federal law enforcement. Over a ten week period, more than 70 local, state, and federal law enforcement agencies joined the U.S. Marshals across the nation to implement this special violent career criminal fugitive operation. 3313 violent fugitives were arrested and detained during this operation, including 224 charged with or previously convicted of murder and 365 who were armed at the time of arrest. Seizures included more than 730 guns or other weapons and \$1.9 million in cash and property.

Gang Initiative (Safe Streets). On January 9, 1992, the Attorney General announced a significant expansion of federal resources to combat gangs. The initiative called for 300 FBI agents to be reassigned from counterintelligence work to fight violent crimes.

The FBI created Safe Streets task forces consisting of federal, state and local law enforcement officers. FBI agents are assigned to 64 task forces in 42 cities to augment the 1,600 FBI agents already assigned to violent crime. An additional 50 FBI agents have been reassigned to violent gang investigations in California in the wake of the Los Angeles riots. Another 85 FBI agents will be assigned to the effort in FY 1993. The new initiative also includes the creation of FBI-ATF anti-gang task forces.

Violent Crime Report. The Attorney General, joined by bipartisan law enforcement officials, released a Violent Crime Report making 24 recommendations to states and local governments. The Report suggested important reforms for the states' criminal justice systems. The Attorney General continues to work with state and local law enforcement to assist in obtaining the necessary procedural mechanisms and substantive reforms.

DRUG ENFORCEMENT

Drug enforcement remains a top Departmental priority. During the past three years, the Department has successfully prosecuted drug kingpins and violent traffickers, achieved record drug seizures, and worked cooperatively on numerous international and multi-agency cases and initiatives. The Department has encouraged the task force approach to drug enforcement and, in particular, the OCDETF model. During FY 1989 through 1991, U.S. Attorneys filed 33,152 indictments involving 67,933 defendants. The Department has led international cooperative efforts to enter mutual legal assistance treaties, to control diversion of drug-producing chemicals, and to share financial information across national borders.

FIGHTING FRAUD AND PUBLIC CORRUPTION

Financial Institution Fraud (FIF). The Department has dramatically increased resources devoted to FIF with over 1,600 FBI Special Agents and prosecuting attorneys dedicated this fiscal year to FIF cases. They are supported by 1,200 support personnel bringing the total to over 2,800 Department of Justice employees working on financial institution fraud.

- o **Overall Statistics.** From October 1988 through June 1992, the Department charged 3,270 defendants in major financial institution fraud cases. During that period, 2,603 defendants were convicted -- a 96% conviction rate. Of those convicted, 77% were sentenced to prison terms. In addition, \$37 million in court ordered restitution has been paid, as well as more than \$110 million in other forms of recoveries obtained.
- o **BCCI.** In December 1991, the Bank of Credit and Commerce International agreed to plead guilty to federal and state charges of conspiracy to commit racketeering and fraud. BCCI agreed to forfeit all of its assets in the United States (\$550 million), the largest forfeiture in history, and to cooperate fully in ongoing investigations of individuals. On January 24, 1992 the Court accepted the plea and ordered the \$550 million forfeiture praising the intra-governmental cooperation

that produced the plea.

WEED AND SEED

In 1991, the Department launched a major new initiative -- Operation Weed and Seed. Weed and Seed targets hard-core gang members and other violent offenders, while simultaneously working to revitalize crime-infested neighborhoods. This two-pronged approach represents an innovative concept, never before attempted by federal law enforcement. The Weed and Seed concept promotes community policing and a coordinated partnership between law enforcement and social services. This year, the effort has been expanded to 16 more urban areas. In FY 1993, the program will be dramatically expanded and resources enhanced to over \$500 million.

PRISONS

Since 1989, BOP has increased capacity by 18,000 beds as part of the 37,000 bed expansion program funded during this Administration. This program will double the Federal prison capacity. BOP also modified its policy to expand double bunking in medium, low, and minimum security facilities.

ASSET FORFEITURE

Since 1989, over \$2.1 billion in cash and property has been forfeited under the Asset Forfeiture Program. These proceeds from criminal activity, primarily drug trafficking, money laundering and racketeering, have been used for a variety of law enforcement purposes:

- o Approximately \$770 million shared with State and Local law enforcement.
- o Over \$500 million for the construction and activation of federal prison facilities.
- o \$166.5 million transferred to ONDCP for implementation of the National Drug Control Strategy.
- o \$345 million to federal law enforcement agencies.

Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice



Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice



Office of the Attorney General

Washington, D.C. 20530

July 28, 1992

MEMORANDUM

TO: The President

FROM: William P. Barr
Attorney General

SUBJECT: Recommendations for State Criminal Justice Systems

The problem of violent crime in America is largely the problem of the repeat, violent offender. A small segment of our population is responsible for a large share of the violent crime. Study after study has identified a small group of hardened, chronic offenders who commit a staggering number of crimes -- well over one hundred per year for many of these violent predators.

The primary goal of the criminal justice system must be to identify and incarcerate this hard core group of chronic offenders.

Common sense tells us that incapacitating these chronic offenders will reduce the level of violence in society. While we can debate the rehabilitative and deterrent effect of imprisonment, there can be no doubt that chronic criminals are not committing crimes while they are in prison.

Moreover, the experience of the past thirty years supports the common sense notion that tough law enforcement works. The permissiveness of the 1960s and early 1970s resulted in skyrocketing crime rates. As incarceration rates fell, violent crime rates soared, nearly quadrupling from 1960 to 1980. The tougher approach of the 1980s turned this around -- dramatically slowing the increase in crime and even bringing about some decreases, notwithstanding the wave of violence associated with drug trafficking during this period. There is little doubt that there is less crime today than there would have been had we not substantially increased incarceration of criminals in the 1980s.

The challenge for the 1990s is to build upon and increase these partial successes of the 1980s. We have within our grasp the opportunity to bring about real reductions in the level of violent crime in this country. We must continue to target and incapacitate the chronic violent offender.

This will take a continued increase in resources and continued legal reform. The criminal justice system is a pipeline, ranging from investigation, to arrest, to prosecution, to punishment. Resources are needed at every stage of the system, particularly the last, where a shortage of state prison space is resulting in the premature release of violent offenders, with tragic results for society.

As you have recognized, protecting public safety is the first duty of government. Even in times of tight budgets, adequate resources must be provided for law enforcement. However, tough law enforcement is not only morally right, and right in terms of public safety; it is also a good investment. The cost of apprehending and incarcerating a career, violent offender is only a small fraction of the economic costs such an individual imposes on society through the scores of crimes he commits each year. And that is not even considering the incalculable value to the law abiding public of a safe and secure community.

In addition to adequate budgets, the law enforcement community also needs the right tools in terms of tough laws and reasonable procedures. Our law enforcement professionals put their lives on the line every day to protect the public. They deserve our full support.

We also need to be smarter in coordinating law enforcement and social spending so they reinforce each other. Neither can do the job alone; rather, they must work together in a coordinated fashion. But social programs, while essential, are not a substitute for law enforcement, and spending for such programs cannot be at the expense of law enforcement. Social rehabilitation simply is not possible in an atmosphere of crime and violence. Progress is not possible in the midst of chaos. Tough law enforcement can create the atmosphere in which real progress in our inner cities is achievable and in which education, job training and other programs can succeed and break the tragic cycle of poverty that affects too many of our citizens.

Although more remains to be done the federal government has accomplished much in law enforcement over the last decade. Our accomplishments include:

Enhanced Resources

Over the last decade, we have substantially increased resources at all stages of the federal law enforcement system. The Department of Justice has experienced nearly a 50% increase in authorized personnel from FY 1981 to FY 1992, and over a 345% increase in its budget. Since 1989 alone, the Department has added 813 FBI agents, 735 DEA agents, and 1,237 Federal

prosecutors. There has also been an increase in the number of federal judges during this period. And the budget of the Federal Bureau of Prisons has increased 470% from FY 1981 to 1992. From 1988 to date, federal prison capacity has increased 62%, on its way to a 228% increase.

Legal Reform

The Federal system also experienced significant legal reforms during the 1980s. A critical step was the ability to keep dangerous defendants in jail before trial. The 1980s also witnessed the abolition of parole in the Federal system and the adoption of sentencing guidelines. We now have "truth in sentencing" in Federal court -- by law, prisoners must serve at least 85% of the sentence they receive. Federal law also now imposes tough mandatory minimum sentences for serious firearm, drug and repeat offenders.

We have also achieved great success in stripping criminals, especially drug traffickers, of their ill-gotten gains and the instrumentalities of their trade. Since the inception of the federal asset forfeiture program in 1985, over 2.5 billion dollars in such assets have been forfeited. Of that amount, we have returned over one billion dollars to state and local law enforcement agencies to be reinvested in law enforcement programs.

Focusing the Effort on Violent Crime

We are deploying these new resources and using these new tools in innovative ways to assist our state and local colleagues in helping law abiding citizens take back their streets. Project Triggerlock is a cooperative effort among state and federal prosecutors to target the most dangerous armed offenders. In its first year of operation, Project Triggerlock has produced over 6,450 arrests. Tough federal sentencing laws are resulting in thousands of armed dangerous offenders being behind bars, preventing countless crimes. And this is just the first year of this effort.

We have taken advantage of the changed international situation to redeploy substantial investigative assets from counterintelligence work to the fight against violent crime.

And your Weed and Seed initiative represents a coordinated approach among federal, state and local law enforcement, social programs, and, most critically, the community itself, to help law abiding citizens reclaim their communities. Our demonstration projects are already showing that this approach can work. It is the wave of the future.

Protecting Victims' Rights

The 1980s also saw the emergence of a strong victims movement that assisted in bringing about much needed recognition of, and protection for, the basic rights of victims of crimes. The landmark Victims of Crime Act in 1984 created the crime victims fund, which has provided hundreds of millions of dollars to the States for victim assistance and victim compensation programs. We have also supported additional victims legislation such as the Child Abuse Act of 1990, the Victims' Rights and Restitution Act, and the Federal "Bill of Rights" for victims. The victims movement has proven to be an indispensable ally of law enforcement in the fight against violent crime, and deserves a large measure of credit for the successes of the last decade.

* * *

As a result of these efforts, in many important respects the Federal criminal justice system has been revamped and retooled to fight the battles of the 1990s. While additional investments in resources and legal reforms are still needed, fundamental change has occurred.

Violent crime is, however, still primarily a state and local problem. Although the federal role is an important one -- especially in areas of particular federal interest such as organized crime (including gangs), drugs, and firearms -- 95% of violent crime is prosecuted by state and local authorities.

Unfortunately, although many states have done much, most have, at least to some degree, lagged behind the major enhancements made at the Federal level in the 1980s. A primary challenge for the 1990s is to work with state and local law enforcement to help them identify, prosecute and incapacitate chronic violent offenders. To that end, I have consulted with a group of law enforcement experts and developed the attached set of recommendations for state criminal justice systems.

These recommendations are divided into six groups: establishing pretrial detention; providing for effective deterrence and punishment of adult offenders; providing for effective deterrence and punishment of juvenile offenders; providing efficient trial, appeal and collateral attack procedures; providing for effective prevention and detection of crime; and providing adequate protection for victims' rights.

I would like to thank the following individuals, among others, for their valuable comments and suggestions in the development of these recommendations:

- William F. Weld, Governor of Massachusetts
- Robert Miller, Governor of Nevada
- Robert J. Del Tufo, Attorney General of New Jersey
- Ernest Preate, Attorney General of Pennsylvania
- Daniel Morales, Attorney General of Texas
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- Michael M. Baylson, United States Attorney for the Eastern District of Pennsylvania
- Jean Paul Bradshaw II, United States Attorney for the Western District of Missouri
- Marvin Collins, United States Attorney for the Northern District of Texas
- Jeffrey R. Howard, United States Attorney for the District of New Hampshire
- J. B. Sessions III, United States Attorney for the Southern District of Alabama
- Thomas J. Charron, District Attorney, Cobb County, Georgia, and President, National District Attorneys Association
- Jack O'Malley, State's Attorney, Cook County Illinois
- Johnny L. Hughes, Chairman, Legislative and Congressional Affairs, National Troopers Coalition
- William M. Rathburn, Chief of Police, Dallas, Texas
- Roland Vaughn, Chief of Police, Conyers, Georgia
- Willie Williams, Chief of Police, Los Angeles Police Department
- John Walsh, "America's Most Wanted".

The first duty of government is the protection of its citizens, and it is incumbent upon us to take the necessary steps to fulfill that responsibility. By working cooperatively with state and local law enforcement we can build on the progress of the 1980s and achieve substantial, real reductions in violent crime in the United States. We owe our citizens no less.

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The Attorney General's guidelines for an effective criminal justice system

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1. Provide statutory and, if necessary, State constitutional authority for pretrial detention of dangerous defendants.

II. Effective deterrence and punishment of adult offenders

2. Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.

3. Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.

4. Provide sufficient prison and detention capacity to support the criminal justice system.

5. Provide an effective death penalty for the most heinous crimes.

6. Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.

7. Adopt drug testing throughout the criminal justice process.

8. Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

III. Effective deterrence and punishment of youthful offenders

9. Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.

10. Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.

11. Provide for use of juvenile offense records in adult sentencing.

IV. Efficient trial, appeal, and collateral attack procedures

12. Enact and enforce realistic speedy trial provisions.

13. Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.

14. Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

V. Detection and prevention of crime

15. Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.

16. Maintain computerized criminal history data that are reliable, accurate and timely.

17. Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.

18. Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

VI. Respecting the victim in the criminal justice process

19. Provide for hearing and considering the victims' perspective at sentencing and at any early release proceedings.

20. Provide victim-witness coordinators.

21. Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.

22. Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.

23. Permit victims to require HIV testing before trial of persons charged with sex offenses.

24. Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

I. Protecting the community from dangerous defendants

No failure of a criminal justice system is more tragic than the release of a demonstrably dangerous criminal defendant back into the community. A citizen who is victimized by such a defendant has a right to question society's commitment to ensuring the safety of its law-abiding members. Every State should authorize its judges to order the detention, without bail, of defendants who are a proven danger to witnesses, victims, or the community at large. States should also provide that convicted violent offenders will be detained during their appeals absent special circumstances.

Recommendation 1

Provide statutory and, if necessary, State constitutional authority for pretrial detention of dangerous defendants.

One of the most pressing problems of public safety in this country is the release of major drug traffickers and those accused of violent crimes back into our communities pending trial. Providing authority for pretrial detention of defendants charged with serious offenses is a key step States can take to improve their criminal justice systems. The Hernando Williams case in Illinois illustrates in graphic terms the tragedies that pretrial detention can avoid. Williams was released after being arrested on charges of aggravated kidnaping, rape, and armed robbery. While on release, he kidnaped another woman, raped her, and held her in the trunk of his car for several days. He actually drove to his appearance on the prior charges with his second victim locked in the trunk of his car. After his court appearance, Williams committed further sexual assaults on his second victim and then shot and killed her. *See Williams v. Chrans*, 945 F.2d 926, 929-30 (7th Cir. 1991).

Had Williams been detained before trial on the serious charges he then faced, his second victim might be alive today.

Unfortunately, cases like this are all too common. Every law enforcement official — indeed every casual reader of newspapers — knows of cases of individuals who commit crimes while awaiting trial for other crimes. A study of pretrial release in 75 of the Nation's most populous counties in 1988 found that 18% of released defendants were known to have been rearrested for the commission of a felony while on pretrial release. Two-thirds of those rearrested while on release were *again* released.¹ In many jurisdictions, arrest is little more than an inconvenience for the recidivist criminal, who is back on the streets plying his illicit trade within hours.

Moreover, this revolving-door justice has a devastating impact on the public's confidence in the criminal justice system and on the ability of the police to obtain the cooperation from the community they need to do their jobs effectively. As law enforcement officers know from experience, the best way to combat crime is for the community and the police to cooperate closely with each other. When the government fails to protect the community through pretrial detention, this essential cooperation breaks down. Communities are reluctant to provide police with information or assistance when they see that those arrested will be back on the street within days or even hours. Citizens fear that criminals will retaliate against them if they help the police. Where citizens see pretrial detention put into effect for dangerous defendants, the grip of fear is loosened and community cooperation is substantially increased.

¹ See Bureau of Justice Statistics, U.S. Department of Justice, *Pretrial Release of Felony Defendants, 1988*, p. 1 (1991). See also Lazar Institute, *Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact*, p. 48 (1981) (reporting similar rates of pretrial rearrest).

Congress responded to this problem on the Federal level with the Bail Reform Act of 1984 [18 U.S.C. §§ 3141-56]. The Act gives Federal judges the authority to deny bail or pretrial release to defendants who pose a danger to a particular individual or to the community at large. Under the Act, criminal defendants with serious prior records that include the commission of crimes while on release and those charged with serious drug felonies are presumed to be a danger to the community and therefore unsuitable for release [18 U.S.C. § 3142(e)]. The Act also creates a strong presumption that a convicted offender will remain imprisoned during any post-conviction appeal [18 U.S.C. § 3143].

In the hands of Federal prosecutors, pretrial detention has proven an extremely effective tool for dismembering organized crime and drug enterprises. Participants in criminal enterprises are taken from the streets, and they do not return. This sends a powerful message to these groups and is highly disruptive of their operations. In addition, pretrial detention is critical to effective witness protection and to protecting both the physical and psychological security of victims.²

Despite the success of the Federal statute and its validity as a matter of Federal constitutional law,³ few States have adequate provisions for detaining dangerous defendants before trial. Numerous State constitutions provide an absolute right to bail, thus making pretrial detention

² As one United States district judge noted in an organized crime case:

The activities of a criminal organization such as the Genovese Family do not cease with the arrest of its principals and their release on even the most stringent of bail conditions. The illegal businesses, in place for many years, require constant attention and protection, or they will fail. Under these circumstances, this court recognizes a strong incentive on the part of its leadership to continue business as usual. When business as usual involves threats, beatings, and murder, the present danger such people pose to the community is self-evident. [United States v. Salerno, 631 F. Supp. 1364, 1375 (S.D.N.Y. 1986), aff'd, 481 U.S. 739 (1987).]

³ The Supreme Court rejected a constitutional challenge to the pretrial detention provisions of the Bail Reform Act in *United States v. Salerno*, 481 U.S. 739 (1987).

impossible. States should provide trial judges with authority to detain potentially dangerous defendants before trial and should make detention pending appeal the norm, with only narrow exceptions for extraordinary cases. Where State constitutional reform is necessary, it should be undertaken. In addition, States should consider other important provisions found in the Bail Reform Act of 1984. Chief among these are serious penalties for bail jumping and enhanced penalties for crimes committed while on release. *See* 18 U.S.C. §§ 3146, 3147.

By way of example, recent experience in Philadelphia graphically demonstrates both the effectiveness of pretrial detention in reducing crime and the danger to the community if pretrial detention is not available. Philadelphia jails are subject to a court-imposed population cap that requires release of arrestees who otherwise would likely be held without bail or on very high bond. City officials report that those released as a result of the cap have committed thousands of additional crimes, including numerous murders.

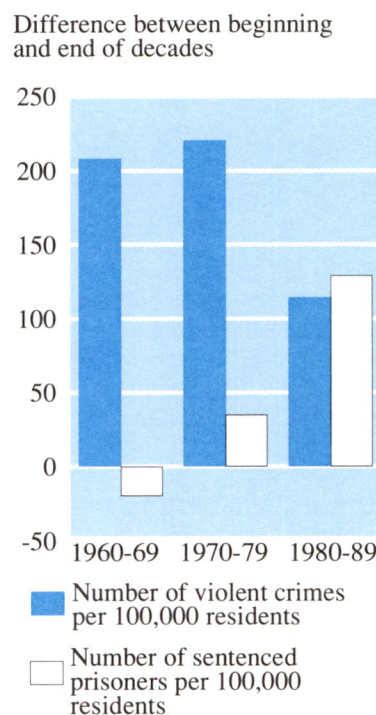
This inability to impose effective pretrial detention essentially resulted in revolving-door justice for many criminals in Philadelphia. Recognizing the danger to the community posed by this situation, the Federal Government stepped in to use Federal pretrial detention law in conjunction with a Federal-State initiative. Over 600 members of local gangs were arrested and held, the number of defendants held in pretrial detention status doubled, and the homicide rate in Philadelphia has declined.

II. Effective deterrence and punishment of adult offenders

Common sense dictates that imprisonment of chronic violent offenders will reduce the amount of violent crime. When these criminals are on the streets, they are preying on society. When they are in prison, they are not committing crimes.

The experience of the last 30 years confirms this common-sense notion. In the 1960's and early 1970's incarceration rates fell and crime rates skyrocketed. By contrast, when incarceration rates increased substantially in the 1980's, the rate of increase of crime was substantially reduced.⁴

When incarceration rates dropped in the 1960's, crime rates skyrocketed; increasing rates of incarceration have largely checked that increase

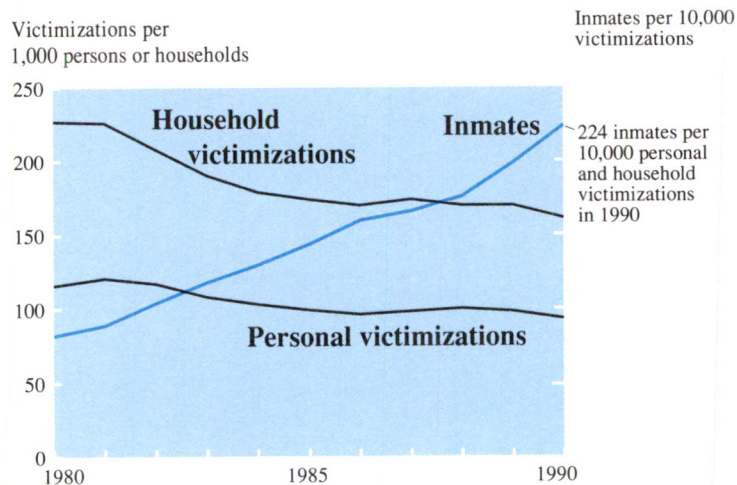


Sources: See footnote 4.

There is no question but that crime rates today are lower than they would have been if the low-incarceration policies of the 1960's and 1970's had been continued into the 1980's. If we are to make further

⁴ See Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, Uniform Crime Reports 1959-90*; Bureau of Justice Statistics, U.S. Department of Justice, *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86* (1988) and *Prisoners in 1989* (1990).

From 1980 to 1990, the number of criminal victimizations per 1,000 persons or households decreased as the number of inmates per 10,000 victimizations more than doubled



Sources: Bureau of Justice Statistics, U.S. Department of Justice, *Criminal Victimization 1990*, p. 4 and *Prisoners in 1990*, p. 1. Personal victimizations include rapes, robberies, assaults, and personal thefts experienced by persons 12 years old or

older. Household victimizations include burglary, household theft, and motor vehicle theft. The inmates were serving sentences for all categories of crimes, including drug offenses.

progress in reducing violent crime, we need to incarcerate more of the violent offenders who prey on our society.

It is no mystery why this is the case. Again and again, studies have indicated that a relatively small portion of the population is responsible for a large part of the criminal violence in this country. One California study found that 3.8% of a group of males born in 1956 was responsible for 55.5% of all serious felonies committed by the study group.⁵

⁵ These numbers are derived from Robert Tillman, *Prevalence and Incidence of Arrest among Adult Males in California* (1987). This study traced the criminal records of more than 236,000 California men born in 1956 from age 18 to age 29. The study counted all FBI Index Crimes committed by the group — murder, nonnegligent manslaughter, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

A Philadelphia cohort study conducted by Professor Marvin Wolfgang of the University of Pennsylvania found that about 7% of males in two birth cohorts (1945 and 1958) accounted for over two-thirds of all violent crimes committed by each group.⁶

Identification and neutralization of this hard-core criminal element is the key to reducing violent crime, and incarceration has a critical role to play in this battle. Preventing a large portion of this group from committing more crimes by putting them in prison for long periods of time after conviction for a second or third serious offense is the most effective way to reduce violent crime rates. In addition, there is evidence that certain and firm punishment early in a criminal career can reduce recidivism (and in contrast, leniency can actually encourage additional criminal behavior).⁷

Recommendation 2

Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.

In many jurisdictions in this country, punishment is not swift enough, not certain enough, and not severe enough. The fact that sentences imposed by many State systems bear almost no resemblance to time actually served breeds disrespect for the criminal justice system on the part of criminals, the public, juries, and the victims of crime.

Most violent offenders who are sentenced to State prison serve only a fraction of their sentence. Research concerning release practices in 36 States and the District of Columbia in 1988 found that although violent offenders received an average sentence of 7 years and 11 months imprisonment, they actually served an average of only 2 years

⁶ See P.E. Tracy, M.E. Wolfgang, and R.M. Figlio, *Delinquency Careers in Two Birth Cohorts*, pp. 279-80 (1990).

⁷ See generally P.E. Tracy, *et al.*, *Delinquency Careers*.

and 11 months in prison — 37% of their imposed sentences.⁸ Overall, 51% of the violent offenders in the survey were discharged from prison in 2 years or less, and 76% were back on the streets in 4 years or less.⁹ In 1988, the median sentence and time served in prison for those released for the first time on a sentence¹⁰ were:

<u>Offense</u>	<u>Median sentence length</u>	<u>Median time served in prison</u>
Murder	15 years	5.5 years
Rape	8	3.0
Robbery	6	2.25
Assault	4	1.25

States can increase the certainty and honesty of sentencing and both its deterrent and incapacitative effects by restricting parole practices. Parole rests on the flawed notions that the primary purpose of incarceration is rehabilitation and that success in reforming inmates can be measured by their behavior in prison. These notions overlook the fact that deterrence, incapacitation, and retribution are independent reasons for incarceration and that each deserves consideration in sentencing. All three of these important goals of sentencing are served by a clear sentence and are disserved by the uncertainty that parole creates.

Parole is also a failure in practice, and that failure has had significant costs for public safety. An 18-year-old honor student, 3 weeks away from graduation, left her home in Texas with two friends, 19 and 20 years old, on May 4, 1986. Her body was found the next day after she had been raped, beaten, and strangled. Her two companions were shot to death; their bodies were found 10 days later in a ditch. Charged

⁸ See Bureau of Justice Statistics, U.S. Department of Justice, *National Corrections Reporting Program, 1988*, table 2-7 (1992).

⁹ See Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-4.

¹⁰ See Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-7.

and convicted for the capital murder of Suzanne Harrison was Jerry Walter McFadden, who was on parole at the time of the killing.

McFadden had been convicted of two 1973 rapes and sentenced to two 15-year sentences in the Texas Penitentiary. Paroled in December 1978, he was again sentenced to 15 years in 1981 for a three-county crime spree in which he kidnaped, raped, and sodomized a Texas woman. Released on parole again in July of 1985 even though his record now contained three sex-related convictions and two prison commitments, McFadden was convicted of a capital murder that occurred less than a year after his parole.

McFadden, who calls himself "Animal," was sentenced to death in July of 1987 for killing Ms. Harrison. That is the one sentence under Texas law that is not parolable. This example is all too common. All studies show that parolees have a high recidivism rate. A 1987 study that traced a sample of young adult parolees from prisons in 22 States found that 69% were rearrested for serious crimes within 6 years of being paroled.¹¹ In 1989, 10% of inmates in local jails, or about 39,000 persons, committed the crimes for which they were being held while on parole.¹² In short, conduct in prison has not proven to be an accurate predictor of behavior after prison, and the costs of indeterminate sentencing in reduced deterrence and incapacitation have not been justified.

The sole remaining justification for parole is an illegitimate one. In some States, parole is employed as a response to prison overcrowding, resulting in the premature release of dangerous offenders into the community. The proper response to insufficient prison space is to build more prisons, not to release dangerous criminals. Misusing parole or early release to deal with lack of prison space only increases crime.

¹¹ See Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Recidivism of Young Parolees*, p. 1 (1987).

¹² See Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Profile of Jail Inmates, 1989*, p. 5 (1991).

The Texas prison system, which until recently added very little new capacity, is illustrative of this problem. Under Federal court order to remain at a maximum of 95% of capacity, the Texas prison system has been releasing 150 inmates each day to make room for new convicts. The number of felons on parole increased by 430%.¹³ Inmates in Texas serve an average of only 62 days for each year of their sentence.¹⁴ As a result, reported crime rates in Texas increased 29% in the 1980's while they fell for the Nation as a whole.¹⁵

In Florida, early release measures have been adopted to make room for newly sentenced felons. One measure is mandatory grants of "basic gain-time" to all but a limited category of prisoners, essentially deducting a third of the sentence imposed.¹⁶ Another measure is the discretionary award of "control release time" to some inmates, a weekly cumulative reduction of an offender's sentence. In just the first 6 months of this year, control release credits of more than 6½ years have been awarded to many prisoners.¹⁷

States should adopt "truth in sentencing." Parole should be limited so that the sentence served closely approximates the sentence assessed. This guide should apply to parole or any other mechanism that affects early release. While "good-time" accrual might be retained to modify or control institutional behavior, it should not exceed Federal standards that require 85% of the sentence to be served.

¹³ See Bureau of Justice Statistics, U.S. Department of Justice, *Probation and Parole 1981*, p. 2 (1982); *Probation and Parole 1989*, table 1 (1990).

¹⁴ See Texas Department of Corrections, *1991 Fiscal Year Statistical Report*, Summary Table 4 (1992).

¹⁵ See Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, Uniform Crime Reports, 1980*, table 3 (1981) and 1989, table 5 (1990).

¹⁶ Fla. Stat. Ann. §944.275(4)(a) (West 1985).

¹⁷ See Fla. Stat. Ann. §947.146 (West Supp. 1991). The control release days are issued each Tuesday by the Control Release Authority of the Florida Parole Commission. From January 7, 1992, through June 30, 1992, the authority granted 2,350 days of control release time.

Recommendation 3

Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.

In many jurisdictions, the sentences for crimes of violence are too short. In the eyes of many repeat offenders, crime offers much and the criminal justice system punishes little. For example, in 1988, of an estimated 100,000 persons convicted of murder, rape, robbery, and aggravated assault in State court, 17% — or about 17,000 violent offenders — received sentences that included no prison or jail time at all. Of all convicted rapists, 13%, or about 2,000 offenders, received a sentence involving no incarceration. In that same year, almost 30% of all those convicted of drug distribution felonies in State court received no prison or jail time.¹⁸

States should adopt mandatory minimum penalties for aggravated crimes of violence. In particular, imprisonment should be mandatory where a firearm is used or possessed in the commission of certain serious felonies.¹⁹

Every State should also have a statute similar to the Federal armed career criminal law [18 U.S.C. § 924(e)], which is designed to target and incapacitate repeat violent offenders who possess a firearm. The Federal statute provides that any person who has been convicted of three violent felonies or serious drug offenses and is in illegal possession of a firearm shall be sentenced to at least 15 years imprisonment without possibility of parole. A graduated punishment scheme

¹⁸ See Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 2 (1990).

¹⁹ See 18 U.S.C. § 924(c)(1).

can be utilized that imposes a mandatory minimum for a person possessing a firearm who has one prior violent conviction and increases the mandatory minimum for each additional prior violent conviction. The President has proposed such a graduated scheme for the Federal system — it would impose mandatory minimums of 5, 10, and 15 years for armed felons with one, two, or three or more prior convictions, respectively.

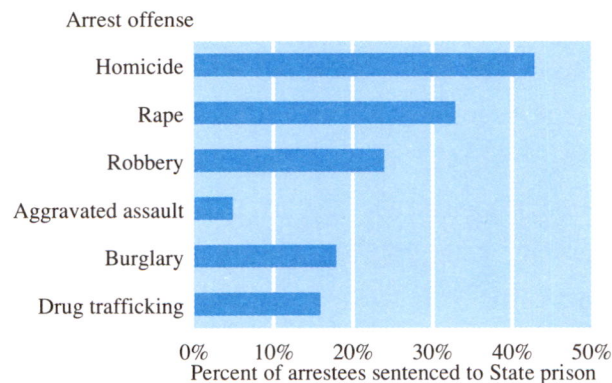
In addition to mandatory minimums tied to firearm violations, States should also adopt mandatory minimum statutes that are based on prior convictions for crimes of violence. Repeat offenders demonstrate by their own actions that rehabilitation is not an achievable goal for them. Public safety requires their incapacitation.

Recommendation 4

Provide sufficient prison and detention capacity to support the criminal justice system.

Adequate prison and detention space is critical to the effectiveness of a State criminal justice system. Jail and prison space is necessary to detain dangerous defendants before trial and to incapacitate, often through the use of mandatory minimum sentences, repeat and violent offenders. Any criminal justice system that absolves prisoners of their sentences because of a lack of space, or makes lack of space a factor in sentencing or parole, is cheating its citizens. When a violent offender is prematurely released after conviction because of lack of prison space, all the criminal justice resources used in apprehending, trying, and convicting the offender are wasted. Instead, the offender is returned to

Less than half of persons arrested for murder and a third or less of those arrested for other offenses were sentenced to prison



Source: Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 4 (1990).

the community to commit further crimes. Moreover, failure to adequately punish the criminal the first time due to lack of prison space breeds lack of respect for the law and can lead to a career of crime.

The case of Texas, documented above, is illustrative. A shortage of prison space resulted in the premature release of numerous violent offenders. As a result, reported crime rates in Texas increased significantly at the same time they were declining for the Nation as a whole.

The choice is clear: More prison space or more crime. However, building more prisons is not only the morally right thing to do and the best way to protect the community from violent criminals, it is also the right thing to do in purely economic terms. Simply put, prisons are a sound investment. The premature release of violent offenders costs society far more than the expense of building and operating adequate prison space. Although incarceration is not cheap, the cost to society of *not* incarcerating criminals is far greater.

A study published in 1988 by Mark Cohen, formerly on the staff of the U.S. Sentencing Commission, estimated the 1984 aggregate cost of crime to victims — including direct losses, pain and suffering, and risk of death — at \$92.6 billion in 1985 dollars.²⁰ This total did not include some of the larger costs to society of crime, such as lost sales, when people are afraid to go out to do their shopping; lost jobs, when businesses move out of high-crime areas; lost opportunities, when schools become the playgrounds of gangs and drug dealers, rather than places where inner-city kids can learn their way out of poverty; and lost tax revenues, when sales, businesses, and jobs evaporate.

Similarly, one study by the Bureau of Alcohol, Tobacco and Firearms (BATF) of a group of career criminals found that each had committed an average of 160 crimes per year.²¹ A 1982 Rand Corporation study found that about 24% of inmates surveyed admitted to having committed more than 135 crimes a year apiece, and about 10% claimed responsibility for over 600 crimes a year apiece.²² Mark Cohen's 1988 study looked at the costs of victimization and estimated the cost of a rape at over \$51,000, the cost of a robbery at over \$12,500, and the cost of an assault at over \$12,000.²³ A 1987 National Institute of Justice study estimated that the *average* societal cost per crime in the Nation was slightly more than \$2,300.²⁴ When these costs are associated with the multiple crimes committed by the habitual offenders identified above, the cost to society per criminal of not incarcerating them could exceed \$300,000 per year.

²⁰ See Mark A. Cohen, "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," vol. 22 *Law and Society Review*, p. 539 (1988).

²¹ See Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Protecting America: The Effectiveness of the Federal Armed Career Criminal Statute*, p. 29 (1992).

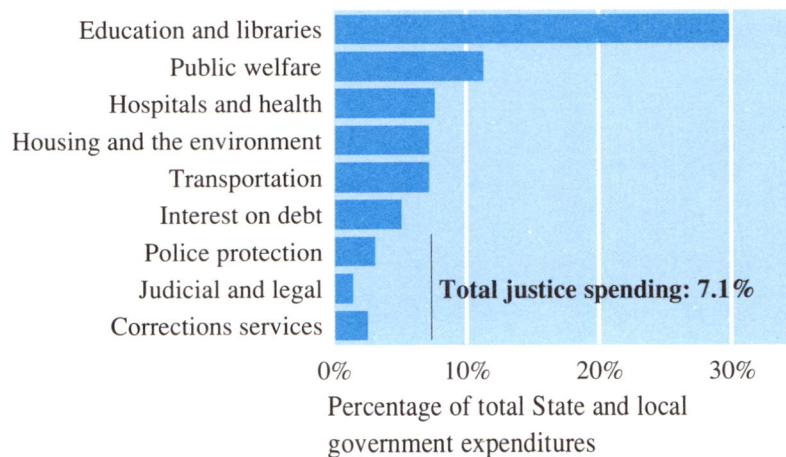
²² See Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior*, p. 215 (1982).

²³ See Mark A. Cohen, "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," p. 539.

²⁴ See National Institute of Justice, U.S. Department of Justice, *Making Confinement Decisions*, p. 4 (1987).

Corrections services are only 2.5% of State and local government spending

Spending for selected functions for State and local government, fiscal year 1990



Source: Bureau of the Census, U.S. Department of Commerce, *Government Finances, 1989-90*, p. 2 (1991).

Despite the fact that lack of adequate prison space actually costs States money, we have underinvested in this critical component of the criminal justice system. According to one estimate, more than 120,000 additional prison beds were needed across the Nation at the close of 1990.²⁵ While there are those who will argue that we are using prison space for people who do not belong there, the simple fact is that 93% of those in prison are repeat or violent offenders.²⁶ Despite the enormous need for additional prison space, spending on corrections remains a very small percentage of State and local budgets. In fiscal year 1990, only 2.5% of the \$975.9 billion in total expenditures by State and local governments was for corrections (about \$24.7 billion). Investment in new prison construction is only a small fraction of that figure.²⁷

²⁵ See Bureau of Justice Statistics, U.S. Department of Justice, *Prisoners in 1990*, table 9 (1991).

²⁶ See Bureau of Justice Statistics, U.S. Department of Justice, *Prisons and Prisoners in the United States*, p. 16 (1992).

²⁷ See Bureau of the Census, U.S. Department of Commerce, *Government Finances: 1989-90*, p. 2 (1991).

States must commit adequate resources to prison construction and operation or risk presiding over the collapse of their criminal justice systems. Every State should review its incarceration needs for the next decade and seek funds through appropriation or bond initiatives to meet those needs. To do less is to fail in government's first duty — protecting its citizens.

Recommendation 5

Provide an effective death penalty for the most heinous crimes.

The death penalty has an important role to play in deterring and punishing the most heinous violent crimes. Our entire criminal justice system is shaped by the common sense notion that the more severe the penalty the greater its deterrent effect on would-be offenders. Studies indicate that this general proposition holds true in the area of capital punishment.²⁸ Beyond its deterrent value, the death penalty serves to permanently incapacitate extremely violent offenders who cannot be controlled even in an institutional setting. Finally, the death penalty serves the important societal goal of just retribution. It reaffirms society's moral outrage at the wanton destruction of innocent human

²⁸ See generally Stephen J. Markman and Paul G. Cassell, "Protecting the Innocent: A Response to the Bedau-Radelet Study," vol. 41 *Stan. L. Rev.*, pp. 121, 154-156 (1988) (collecting studies that demonstrate deterrent effects of the death penalty); Stephen K. Layson, "Homicide and Deterrence: A Reexamination of the United States Time-Series Evidence," vol. 52 *Southern Economics Journal*, pp. 68, 75-80 (1985) (estimating that each execution in the United States deters approximately 18 murders).

life and assures the family and other survivors of murder victims that society takes their loss seriously.²⁹

There are a number of situations when the death penalty is an appropriate sanction, and the Federal Government and a number of States have been moving to expand its use. At the very least, there are three situations where penological considerations compel the death penalty as an available sentence. At a minimum, States should make the death penalty an option for the jury to consider in these three situations.

The first is the killing of a law enforcement officer. Society owes those who put their lives on the line for public safety every measure of protection it can offer. The death penalty sends the strongest possible message that the killing of a peace officer to avoid detection or apprehension is not worth it — no matter how long a prison term the suspect faces.

Second, the death penalty should be available for those who kill in the course of serious felonies. Rapists, armed robbers, and other felons often have an incentive to eliminate witnesses to their crime to avoid detection. The death penalty raises the stakes for these criminals and thus gives the victims of these crimes an added protection. Reported cases indicate that the availability of the death penalty does influence felons' decisions to carry or use firearms while committing another felony.³⁰

²⁹ See, for example, *Senate Comm. on the Judiciary, Establishing Constitutional Procedures for the Imposition of Capital Punishment*, S. Rep. No. 251, 98th Cong., 1st Sess. 13 (1983) ("Murder does not simply differ in magnitude from extortion or burglary or property destruction offenses; it differs in kind. Its punishment ought to also differ in kind. It must acknowledge the inviolability and dignity of innocent human life. It must, in short, be proportionate.").

³⁰ See, for example, *People v. Love*, 366 P.2d 33, 41-42 (Cal. 1961) (McComb J., dissenting) (collecting convicts' statements from police files and other sources indicating that their decisions to use toy guns during felonies, not to use firearms to resist arrest, and not to kill hostages were motivated by fear of the death penalty).

The third is killing in prison. Offenders who will spend large portions of the remainder of their lives behind bars may feel that they have little to lose by killing a correctional officer or a fellow inmate. Loss of privileges or temporary isolation is simply not an adequate punishment for taking the life of another human being.³¹

Effective procedures to implement the death penalty are equally important. In particular, State death penalty laws should bind the jury to its conclusions concerning aggravating and mitigating factors. Where the former outweigh the latter, a sentence of death should be required. *See Blystone v. Pennsylvania*, 110 S. Ct. 1078 (1990); *Boyde v. California*, 110 S. Ct. 1190 (1990). State laws should also provide for the consideration of evidence relating to the victim and the harm to the victim's family at the penalty phase of a capital trial. *See Payne v. Tennessee*, 111 S. Ct. 2597 (1991). In a capital sentencing hearing, the defendant is free to present any sympathetic aspect of his character or background to the jury as justification for a sentence other than death. Victim-impact evidence ensures that the jury sees the victim and the victim's family as unique individuals as well, whose loss is relevant to proper punishment.

³¹ In the 5-year period from 1982 to 1987, five Federal prison officials were killed by inmates. Inmates involved in at least three of these killings were already serving life sentences for murder. *See* W. Weld and P. Cassell, *Report to the Deputy Attorney General on Capital Punishment and the Sentencing Commission*, p. 28 (Feb. 13, 1987).

Recommendation 6

Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.

Law-abiding citizens have a right to expect that those who have violated the law will not lead a life of leisure in prison. Taxpayers provide for prisoners' room, board, medical care, and other expenses. In return, prisoners should perform some labor useful to the public. In addition to maintenance of the prison facility itself, inmates can perform tasks such as sorting trash for recycling, and doing nonhazardous environmental cleanup. (In identifying suitable projects for prison labor, care should be taken to avoid reducing opportunities for employment by law-abiding workers.)

Requiring prisoners to work is consistent with the punitive function of imprisonment. Prison work also teaches discipline and prepares prisoners for reintegration into the community. Prison work may also assist in reducing crime by lowering recidivism rates. The Office of Research at the Federal Bureau of Prisons recently published preliminary findings from its Post Release Employment Project (PREP). The PREP study is designed to compare Federal convicts who received training and work experience while in prison with a control group of inmates who did not. The study's preliminary findings offer strong support for prison labor programs: Inmates who worked in prison were less likely to engage in prison misconduct, less likely to commit crimes after release, and significantly more likely to be gainfully employed 1 year after release.³²

³² See Federal Bureau of Prisons, U.S. Department of Justice, *Post Release Employment Project, Preliminary Findings*, pp. 6, 10-11 (1991).

Every State should provide by statute or regulation that, as a general matter, able-bodied felony offenders incarcerated in the State must perform some labor useful to the public. States should also consider enacting laws that make a specified percentage of the cost of each prisoner's incarceration part of a mandatory fine levied as part of the sentence. While many prisoners are indigent, some can and should pay for their incarceration.³³ Proceeds from this fine should be used for correctional costs.

Recommendation 7

Adopt drug testing throughout the criminal justice process.

Elaboration of the correlation between drugs and violent crime is unnecessary. Study after study confirms what any urban dweller in America knows to be true: Violence is a way of life for those who use and distribute narcotics. More than a third of State prisoners serving time for a violent offense said they were under the influence of drugs at the time the offense occurred.³⁴ Data from drug testing in major urban centers indicate that between 50% and 90% of all male arrestees use drugs.³⁵ A 1988 survey of State prisoners incarcerated for murder indicated that over 28% were intoxicated by drugs when they committed the killing.³⁶

³³ The Department of Justice is implementing such a proposal on the Federal level.

³⁴ See Bureau of Justice Statistics, U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics*, 1988, p. 624 (1988).

³⁵ See Bureau of Justice Assistance, U.S. Department of Justice, *1988 Report on Drug Control*, p. 2 (1989).

³⁶ See Bureau of Justice Assistance, *1988 Report*, p. 19.

States should consider drug testing of at least certain felony arrestees to allow judges to make more informed decisions about conditions for pretrial release and sentencing after conviction. Random drug testing of those in prison would help ensure that drugs are not being smuggled into the institution. And, given the clear connection between drug use and criminal violence, periodic drug tests should generally be required of individuals on any form of supervised release after conviction for a serious felony. Use of drugs during probation or parole should result in automatic revocation of release. Where possible, the cost of drug testing of arrestees and those on supervised release should be offset by fees. However, even if small costs result, States will reap large gains in safer streets and neighborhoods.

Recommendation 8

Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

Asset forfeiture is a valuable tool in removing the profit from crime and converting criminals' assets to law enforcement purposes. Asset forfeiture is a double-barreled weapon. First, it deprives criminals of their ill-gotten gains and the instrumentalities of their crimes — making sure that crime does not pay. Second, the proceeds from the sales of these assets are reinvested in law enforcement as premium funding for priority programs and to cover the costs of asset forfeiture program administration. Thus, the criminals foot the bill for both the forfeiture program and the expanded law enforcement operations it makes possible.

It is critical that the integrity of these funds, seized from drug traffickers and other criminals, be maintained for law enforcement purposes, and that they should not be viewed as a substitute for adequate law enforcement funding, but rather as augmentation to existing efforts. It is also critical that asset forfeiture laws be applied consistently with constitutional principles and that the rights of innocent parties be fully protected. The Federal forfeiture statutes have been amended to provide timely seizure and minimal procedural delays consistent with due process.

Asset forfeiture has proven to be an extremely effective law enforcement tool. In fiscal 1991 alone, the Department of Justice deposited \$643.6 million into the DOJ Asset Forfeiture Fund and equitably shared \$266.8 million in cash and \$21.2 million in property with State and local law enforcement as a result of joint operations.³⁷

States are encouraged to utilize this sanction as a complement to criminal prosecution in drug trafficking and appropriate violent crime cases. States should review their asset forfeiture laws to ensure that they do not contain loopholes such as that in the California statute, which makes forfeiture of land used to grow marijuana difficult. The Department of Justice, in conjunction with the National District Attorneys Association and the National Association of Attorneys General, has developed the Model Asset Seizure and Forfeiture Act that contains a comprehensive set of recommendations.

³⁷ Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, U.S. Department of Justice, *Annual Report of the Department of Justice Asset Forfeiture Fund, Fiscal Year 1991*, pp. 53, 55 (1992).

To deter and punish adult criminals:

- Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.
- Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.
- Provide sufficient prison and detention capacity to support the criminal justice system.
- Provide an effective death penalty for the most heinous crimes.
- Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.
- Adopt drug testing throughout the criminal justice process.
- Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

III. Effective deterrence and punishment of youthful offenders

To a large extent, the success or failure of the criminal justice system will depend upon its effectiveness in handling youthful offenders — ensuring that for the vast majority of juvenile offenders their first brush with the law is the last, and ensuring that the small group of chronic hardened youthful offenders are incapacitated for extended periods.

Juvenile crime, especially violent juvenile crime, is on the increase. Between 1965 and 1989 the arrest rate for juveniles for murder almost tripled, the arrest rate for aggravated assault tripled, and the arrest rate for weapons violations by juveniles increased 2½ times.³⁸ Indeed, the increase in crimes by juveniles is responsible for a large share of the increase in violent crime.

The long-term solution to the problem of juvenile crime falls largely outside of the law enforcement system. It requires strengthening those basic institutions — the family, schools, religious institutions, and community groups — that are responsible for instilling values and creating law-abiding citizens.

From the law enforcement standpoint, however, we must deal better with two groups of juveniles. The larger group have only one or two brushes with the law and then straighten out as they mature, and the smaller group, the hardened chronic offenders, commit the majority of all violent juvenile crime.³⁹

³⁸ See Federal Bureau of Investigation, U.S. Department of Justice, *Age-Specific Arrest Rates and Race-Specific Arrest Rates for Selected Offenses, 1965-1989*, pp. 31, 73, 213 (1990).

³⁹ See generally P.E. Tracy, et al., *Delinquency Careers in Two Birth Cohorts* (1990).

With respect to the first, larger group of juvenile offenders, the juvenile justice system must be better designed to deter them from committing additional crimes. The goal is to prevent juveniles in this group from becoming chronic offenders. Indeed, the success of the criminal justice system in preventing these juvenile offenders from becoming career criminals is perhaps the single greatest determinant of future levels of criminality. The best way to accomplish this is by imposing tough, smart sanctions that are carefully tailored for the first-time juvenile offender and are designed to instill the values of discipline and responsibility that are necessary to prevent further criminality. Such punishment actually benefits the juvenile more than lenient sanctions, or no sanctions at all. Excessive leniency can result in additional transgressions, culminating in a life of crime. The juvenile does not get the message that crime does not pay because he is not made to pay for his crime. A juvenile justice system that is too lenient can become, in effect, a conveyor belt for career criminals. In contrast, tough but fair sanctions can turn the juvenile around and stop the all too common pipeline from juvenile offender to adult offender.⁴⁰

States need a range of such sanctions that are designed to instill discipline and responsibility and ensure that the juvenile does not commit further offenses. These should include structured institutional settings such as boot camps.

⁴⁰ See P.E. Tracy, *et al.*, *Delinquency Careers in Two Birth Cohorts*, p. 295 (1990). ("We know that the chronic offender is detached from the schools and other community-based socialization and control agents. Failure to impose sanctions at all, or failure to impose necessary controls early on, can encourage further delinquency.")

The challenge for the juvenile justice system is different with respect to that small segment of the juvenile population that commits most of the violent juvenile crime and progresses to become hardened career criminals. The task for a successful juvenile justice system is to identify this group of chronic offenders and incapacitate them through extended periods of incarceration.

The juvenile justice system needs to become tougher and smarter in its handling of both groups. With respect to the larger group of juveniles, excessive leniency wastes the opportunity to salvage the youth and instead encourages them to become career criminals. As to the group of chronic offenders, excessive leniency fails to adequately protect society from these violent criminals. Tough, smart sanctions tailored to the particular offender will both reduce the number of juveniles who become chronic offenders and better protect society from those who do.

Recommendation 9

Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.

One of the key challenges for a State juvenile justice system is to deter the youthful offender from further transgressions. For the vast majority of juveniles, this should be possible if we are smart in imposing sanctions. To this end, States should develop a range of tough but fair sanctions for nonviolent first-time juvenile offenders, where the emphasis is on instilling values of discipline and responsibility. These sanctions should include the option of institutional settings.

One promising possibility is boot camps. Another is mandatory, highly structured community service or public works programs. A

sentence to a boot camp or a public works program, rather than probation, could change a first-time offender's attitude toward himself and society, thereby preventing the commission of further crimes.

It must be remembered, however, that boot camps and similar sanctions involve attempts to change behaviors that have often been learned over a period of years. This cannot be accomplished overnight. Rather, commitment must be for a sufficiently long period to affect behavior patterns. The discipline of the boot camp, or similar sanction, may also need to be followed by a period of regimented work to underscore the behavior modification and commitment.

By imposing tough but carefully tailored sanctions on juvenile offenders, the justice system can deter the vast majority from further crime. Excessive leniency, on the other hand, is a misguided attempt at kindness that all too often will simply result in additional crime and hardened criminals.

Recommendation 10

Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.

Unfortunately, there is a small group of juvenile offenders who are as hardened as any adult criminal. One of the most troubling statistics of the 1980's is the sharp increase in juvenile arrests for murder. The number of juveniles arrested for murder increased by 60% between 1981 and 1990. The corresponding adult increase was 5.2%. In 1990, more than a third of all murders in this country were committed by individuals under the age of 21.⁴¹

⁴¹ See Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, FBI Uniform Crime Reports, 1990*, tables 27 and 36 (1991). The data also suggest an increased percentage of forcible rapes by offenders under 18 in the 1980's.

Anecdotal evidence suggests that the emergence of new violent youth gangs and the tendency of criminal drug enterprises to use young teens as drug couriers, enforcers and even hired killers have contributed to this trend. The notorious leniency of many juvenile justice systems has led to an attitude of "Let the kid do it" among criminals on the street.⁴²

The criminal justice system must recognize that some youthful offenders are simply criminals who happen to be young. Every experienced law enforcement officer has encountered 15- or 16-year-olds who are as mature and as criminally hardened as any adult offender. Although this group represents only a small fraction of our youth, they commit a large percentage of all violent crimes. As painful as this fact may be, public safety demands that law enforcement recognize and respond to this criminal element. The challenge for a State's juvenile justice system is to identify this group of hard-core offenders and to treat them as adults.

This may require some reform of existing juvenile justice systems. Discretionary waiver or certification of juveniles into adult court is often a cumbersome process, filled with delays. The uncertainty of waiver reduces any deterrent effect that the threat of adult punishments might have on juveniles. States should ensure that their systems permit treatment of juveniles as adults in appropriate circumstances. One approach is to create a legislative presumption that any juvenile age 14 or older who commits an enumerated crime of violence (for example, murder, rape, kidnaping, or armed robbery) will be tried as an adult. The presumption could be rebutted by showing mitigating factors that justify juvenile treatment of the offense. Where the juvenile has a

⁴² Last year a 14-year-old drug runner in the District of Columbia shot and killed three people on the same day. The drug dealer for whom the juvenile worked was convicted of felony murder, but the juvenile served a total of only 26 months in juvenile detention for the three killings. He was back out on the streets taunting local police before his 17th birthday. See *Washington Post*, July 31, 1991, p. A20, col. 1.

previous adjudication for an enumerated offense, then the certification would be automatic. Where violence is involved, a firearm is used, or multiple offenses have occurred, the juvenile has through volitional criminal conduct moved outside the intended focus of the juvenile system.

Recommendation 11

Provide for use of juvenile offense records in adult sentencing.

A major problem in dealing with young offenders is lack of information about, and accountability for, serious crimes committed before the age of 18. Many apparent first-time offenders in this country have in fact committed numerous serious crimes as juveniles, yet evidence of these crimes may not be available or, by law, may be considered legally irrelevant to sentencing for adult offenses. While the desire to forgive a youthful indiscretion and not saddle an otherwise law-abiding adult with a criminal record is commendable, that rationale simply does not apply to a juvenile offender who continues a life of crime in adulthood.

This lack of adequate juvenile criminal histories creates a void with respect to the criminal conduct of certain offenders. For example, the Bureau of Justice Statistics estimates that 38% of inmates incarcerated for murder in State prison in 1986 had a prior juvenile conviction. Thirteen percent of those inmates had no adult record and thus only prior juvenile convictions.⁴³ To address this problem, the Department of Justice has authorized the FBI to accept juvenile records from the States for inclusion in the national criminal records system.

⁴³ The figures are similar for other violent crimes. For example, 54% of State prisoners convicted of robbery as adults had a juvenile record — 15% had only prior juvenile convictions. (These figures are based on the raw data underlying the BJS Special Report, *Profile of State Prison Inmates, 1986* (1988).)

States are urged to forward juvenile criminal history information for serious offenses to the FBI. States should review their expungement and confidentiality statutes concerning juvenile offenses to ensure that they are able to provide such information. States should also ensure that State law allows for the fingerprinting of juveniles convicted of serious offenses. Records are useless without a reliable means of identification. Finally, States should amend their career criminal statutes to provide that juvenile convictions for serious drug and violent crimes are relevant factors for sentence enhancement.

To deter and punish young criminals:

- Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.
- Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.
- Provide for use of juvenile offense records in adult sentencing.

IV. Efficient trial, appeal, and collateral attack procedures

The primary purposes of a criminal trial are to ascertain the truth and to impose just punishment on the wrongdoer. Society's ability to identify and punish wrongdoers is at the very heart of the social compact with its citizens. A criminal justice system that loses sight of its primary goal will quickly — and deservedly — lose the confidence of its citizens.

Other sections of this report have discussed methods for increasing the certainty and severity of punishment. Whatever its content, punishment must occur within a reasonable time after the crime to be effective. This means that the criminal justice system must move as swiftly as possible in adjudicating guilt or innocence. The system must also speak with reasonable finality. Endless reopening and reexamination of a determination of guilt and sentence serves only to undermine the effectiveness of punishment. The changes suggested in this section would substantially enhance the efficiency of State criminal justice systems and the deterrent effect of the punishments they dispense.

Recommendation 12

Enact and enforce realistic speedy trial provisions.

Justice delayed may be justice denied — for society, for the victims of crime, and for the accused. All three have substantial interests in bringing criminal cases to trial as quickly as possible. Society has an interest in maximizing the deterrent effect of its punishments and in quickly identifying and removing offenders from society. The victims of crime have a strong interest in seeing justice done and in bringing emotional closure to a terrifying experience. The defendant has an

interest in clearing his name if innocent, or in knowing his punishment and beginning to serve his sentence if guilty. Finally, all three have an interest in determining the facts while physical evidence and the memories of witnesses are still fresh.

Despite the shared interest in speedy trials, and despite the existence of some form of speedy trial provision in 45 States,⁴⁴ delays in prosecution in many State systems are too long. Many State laws set extremely lax standards for a speedy trial—up to 1 year from the date of arrest. As a result, a 1988 study of felony convictions in 300 counties across the country found that the average time between arrest and sentencing was 208 days. Delays were even higher in violent felony and drug trafficking cases. For example, the average delay from apprehension to trial for murder is 347 days, the delay for rape is 253 days, and the delay for drug distribution offenses is 211 days. All these figures include cases disposed of by pleas as well as those that go to trial.⁴⁵

Delays in bringing criminals to trial benefit no one except the guilty, and they particularly hurt victims, who suffer prolonged anguish while awaiting the trial. States should take all necessary steps to ensure the trial of criminal charges at the earliest possible date. Many docket-management techniques are available to help States meet this important goal.

⁴⁴ See Bureau of Justice Statistics, U.S. Department of Justice, *Prosecution of Felony Arrests, 1981*, table 30 (1986).

⁴⁵ See Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 7 (1990).

Recommendation 13

Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.

States should undertake a complete review of their evidence codes and rules to ensure that they operate to promote the search for truth. The cost of keeping probative evidence from juries in criminal cases is extremely high, and can include the release of guilty offenders to victimize innocent citizens. As Justice O'Connor has written:

While Federal courts must and do vindicate constitutional values outside the truth seeking function of a criminal trial, where those values are unlikely to be served by the suppression remedy, the result is positively perverse. Exclusion in such a situation teaches not respect for the law, but casts the criminal system as a game and sends the message that society is so unmoved by the violation of its own laws that it is willing to frustrate their enforcement for the smallest of returns. [Duckworth v. Eagan, 492 U.S. 195, 211-12 (1989) (O'Connor, J., concurring)].

In recent years, the Supreme Court has identified a number of situations where it has declined to apply the exclusionary rule to enforce the Fourth Amendment. Primary among these is *United States v. Leon*, 468 U.S. 897 (1984), which held that where police act in reasonable, good faith reliance on a warrant issued by a neutral magistrate, evidence will not be suppressed even where it later turns out that probable cause was lacking or that the warrant suffered from some other defect. Two Federal courts of appeals have extended the "good faith" principle to warrantless searches. See, for example, *United States v. Williams*, 622 F.2d 830, 840 (5th Cir. 1980), cert. denied, 449 U.S. 1127 (1981); *United States v. Beck*, 729 F.2d 1329, 1331 (11th Cir.), cert. denied, 469 U.S. 981 (1984).

States should ensure that their own law allows for admission of evidence seized by officers acting with an objectively reasonable belief that they are obeying the law. This rule should apply in both warrant and warrantless situations. One approach is to provide by statute that whenever police officers act in good faith, but commit a technical error of law or fact, evidence should nevertheless be admitted in court. *See*, for example, Colo. Rev. Stat. 16-3-308 (1986) (codifying good faith exception for both warrant and warrantless cases). In several States, this may require constitutional change.⁴⁶

States should also review evidence rules concerning the use of prior convictions or acts in two settings. The first is the impeachment of a defendant who takes the stand. Under the traditional approach to impeachment, any past conviction for either a felony or a crime involving dishonesty was admissible to impeach the credibility of a witness.⁴⁷ At present, Federal Rule of Evidence 609 imposes a general 10-year time limit on admissible convictions and requires a special determination by the judge that the probative value of a defendant's felony convictions outweighs any prejudicial effect.

Several States have adopted impeachment rules that are even more restrictive than the Federal rule. Alaska and Iowa limit the general category of admissible offenses to those involving dishonesty. Montana completely prohibits the admission of prior offenses for impeachment purposes.

⁴⁶ Six States appear to suppress evidence as a matter of State constitutional law even where the police have reasonably relied upon a facially valid warrant. *See State v. Oakes*, 598 A.2d 119 (Vt. 1991); *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991); *State v. Marsala*, 579 A.2d 58 (Conn. 1990); *State v. Carter*, 370 S.E.2d 553 (N.C. 1988); *State v. Novembrino*, 519 A.2d 820 (N.J. 1987); *People v. Bigelow*, 488 N.E.2d 451 (N.Y. 1985). Two additional States have statutory exclusionary rule provisions that have been interpreted to preclude application of the *Leon* "good faith" exception in the State. *See Mason v. State*, 534 A.2d 242 (Del. 1987); *Commonwealth v. Upton*, 476 N.E.2d 548 (Mass. 1985).

⁴⁷ At common law, felons were not allowed to testify at all. As this prohibition eased, the rule arose that felons could testify, but the jury was to be made aware of their criminal record.

States are urged to adopt the traditional impeachment rule by providing for the admission of all felony convictions and convictions of crimes involving dishonesty against all witnesses, including a defendant. At a minimum, State evidence codes should be no more restrictive than Federal Rule 609.

Second, many State evidence codes are also unduly restrictive and unnecessarily frustrate the search for truth through limitations on the use of past criminal conduct of the defendant as evidence of guilt. Evidence that the defendant has committed offenses of the same type on other occasions is particularly probative and critical in the area of sex crimes such as rape and child molestation. Studies suggest that a substantial percentage of sex offenders have a strong disposition to recidivism.⁴⁸ In addition, because the victim is often the only eyewitness in these cases, evidence that the defendant has committed other sexual offenses can be critical to informed evaluation of the relative credibility of the complaining witness' allegations and the defendant's denial.

Judicial decisions in many jurisdictions have recognized the utility of past crimes evidence in sex offense cases despite the absence of explicit statutory authority for its admission. *See generally* 1A *Wigmore's Evidence* § 62.2 (Tillers ed. 1983). However, this view is not unanimous, and cases have been lost because of the exclusion of such evidence under State law.⁴⁹ States should provide clear statutory

⁴⁸ *See, for example*, Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Recidivism of Prisoners Released in 1983*, table 10 (1989).

⁴⁹ The examples of convictions reversed because of the admission of relevant past crimes evidence are striking. *See, for example*, *People v. Ogunmola*, 701 P.2d 1173 (Cal. 1985) (conviction of gynecologist for raping patients during medical examinations reversed due to admission of evidence of same conduct toward other patients); *People v. McMillan*, 407 N.E.2d 207 (Ill. App. 1980) (conviction of defendant for molesting his 13-year-old daughter reversed because evidence was admitted at trial of similar abuse of his 15-year-old daughter).

authority for the admission of evidence of past sex offenses whenever a crime of sexual assault or child molestation is charged.⁵⁰

Recommendation 14

Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

Abuse of both State and Federal habeas corpus laws has reached crisis proportions. Traditionally, habeas corpus was a remedy for detention without trial, an important protection against government overreaching. In recent years, the writ of habeas corpus has been converted from a bulwark of individual liberty into a device employed by prisoners to endlessly reexamine issues decided at trial and on appeal. The constant relitigation of criminal convictions saps judicial and prosecutorial resources, while diminishing the deterrent and retributive effect of punishment. Repetitive habeas corpus proceedings also needlessly reopen the wounds of victims and survivors.⁵¹ The abuse is particularly troubling in the death penalty area, where it is not

⁵⁰The President's proposed Comprehensive Violent Crime Control Act of 1991 (S.635 and H.R.1400) in § 801 calls for a general rule of admissibility in sexual assault and child molestation cases for evidence that the defendant has committed offenses of a similar nature on other occasions.

⁵¹ More than 20 years ago, Justice Harlan expressed his concern over the negative effects that repetitive habeas corpus filings have on the administration of justice:

At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definite answer to the questions litigants present or else it never provides an answer at all. . . . No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. [Mackey v. United States, 401 U.S. 667, 690-91 (1971) (Harlan, J., dissenting)].

unusual for condemned prisoners to file two or three applications for habeas corpus relief in both State and Federal court.

States should undertake a thorough review of their habeas corpus systems to guard against needless relitigation and to close loopholes that can be abused. Four specific reforms are strongly recommended:

1. States should allow only truly collateral claims (such as ineffective assistance of counsel) to be raised on State habeas corpus. Any claim that was or could have been brought forward in a prisoner's direct appeals should be explicitly barred in habeas corpus proceedings.

2. States should adopt explicit time limits for the filing of State habeas corpus petitions, running from the time the petitioner has concluded his direct appeals. Every cause of action, from tort suits to contract claims, has a statute of limitations. In most States, there is no time limit on the filing of a habeas corpus petition challenging a final criminal judgment entered years, and sometimes decades, ago.

3. States should bar successive habeas corpus petitions except where sufficient cause is shown for the previous failure to raise the claim and the claim, if proved, would undermine the court's confidence in the prisoner's factual guilt.

4. States should adopt the retroactivity approach of *Teague v. Lane*, 489 U.S. 288 (1989), and subsequent cases in State habeas proceedings. *Teague* provides that changes in the law after trial and appeal will not apply retroactively unless they prohibit a particular crime or sentence entirely or significantly enhance the truth seeking function of the trial.

In addition, States may wish to consider the adoption of "unitary review" procedures in capital cases, like those in effect in California, which allow direct review and the adjudication of collateral claims to take place concurrently. This approach potentially provides additional economies of time by avoiding successive direct review and collateral proceedings.

**To enable courts to find the truth
and to punish wrongdoers:**

- Enact and enforce realistic speedy trial provisions.
- Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.
- Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

V. Detection and prevention of crime

State and local governments must give police and prosecutors the tools they need to apprehend and convict violent offenders. These tools include proper equipment, proper training and appropriate legal authority to get the job done. For many States this may require an increased budgetary commitment to the fight against violent crime. On the Federal level, the Department of Justice has increased its full-time personnel by nearly 50% from 1981 to 1992. In the last 3 years, the Department's budget has increased by almost 60%. Increases of similar magnitude are necessary in all critical areas of the criminal justice system in many States and localities.

In 1989, State and local direct spending for law enforcement and criminal justice was only 6.9% of all State and local spending. Recognizing that conditions in the States vary greatly and that efficient use of resources is more important than measures of absolute expenditures, it nonetheless appears that some States and jurisdictions are under-investing in public safety. Creating an environment where law-abiding citizens are free from fear and violence is the primary duty of government, and this should be reflected in budgetary priorities.

There are those who will say that rather than increase funding for law enforcement, it is better to invest in programs that address the so-called "root causes" of crime. This view mistakenly sees social programs as an alternative to law enforcement. While it is true that law enforcement cannot do the job of community revitalization alone, it is even more certain that social programs cannot succeed without effective law enforcement. The best schools and the finest housing programs will have little positive impact if they are overrun by violent crime. The challenge of the 1990's is to coordinate our social programs with tough law enforcement to help law-abiding citizens reclaim their communities.

Recommendation 15

Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.

Law enforcement personnel deserve the full support of the public in their work. A high quality police force is central to the safety of any community. Moreover, police work itself involves substantial risk, long hours and much personal sacrifice. Prosecutors make substantial economic sacrifices by foregoing often lucrative private practices for government service. Judges work long hours and often risk retaliation from criminal defendants. Correctional officers put their lives on the line in a hostile environment every day. The public has a substantial interest in retaining the services of seasoned professionals in each of these critical areas, and compensation for law enforcement personnel at all levels should be sufficient to recruit and retain such professionals. Adequate training and equipment are also essential.

Police deserve top quality equipment. This includes adequate firepower to defend themselves and body armor to protect themselves from armed criminals. As of 1990, 73% of local police departments and 80% of State police departments authorized officers to carry semiautomatic sidearms.⁵² Only a quarter of all local police departments required personnel to wear body armor on the job and only 12% of State police forces had such a requirement.⁵³ States should make sure their officers have adequate firepower and should make body armor available to every officer. Use of body armor should be mandatory for execution of arrest and search warrants.

⁵² See Bureau of Justice Statistics, U.S. Department of Justice, *State and Local Police Departments, 1990*, p. 1 (1992).

⁵³ See Bureau of Justice Statistics, U.S. Department of Justice, *State and Local Police Departments, 1990*, p. 1 (1992).

Prosecutors deserve and require adequate training. This includes basic clinical training as well as specialized training in particularly difficult or complex areas such as capital punishment or the law of search and seizure. State and local prosecutors are overextended in many jurisdictions, and continue to face increasingly complex cases involving money laundering, racketeering, and intricate drug distribution schemes. Adequate training is essential if they are to continue to meet these challenges.

Judges require adequate support staff and equipment. This includes law clerks and computer equipment for case management. It also includes the use of magistrates and judicial adjuncts within constitutional strictures.

While prison space appears to be the most pressing need in many State criminal justice systems, States should assure that other aspects of their criminal justice systems are adequately funded.

States should also ensure that use of their law enforcement resources is coordinated with other public health and welfare expenditures. Investment in law enforcement and investment in social programs should not be viewed as alternative or competing strategies. Both are needed and, to be effective, they must be coordinated. If the streets are not safe, if they are controlled by a criminal element, neighborhood rehabilitation programs are doomed to failure. By the same token, sporadic "sweeps" by law enforcement, without a sustained commitment to neighborhood redevelopment, result in little, if any, permanent improvement in a community's security or quality of life. Enterprise zones, rehabilitation of public housing, and strengthening of community groups must be combined with tough law enforcement to successfully reduce violence and enhance the quality of urban life.

The "weed and seed" concept, adopted as a model program by the Department of Justice, involves a coordinated approach to reclaiming our communities. Federal, State, and local law enforcement officials

pool their resources to take out street gangs and drug dealers. Once this is accomplished, social programs have a fighting chance. Law enforcement remains on the scene, assisting in the rehabilitation effort and building a new relationship with community leaders.

An essential component of Weed and Seed is an effective community policing program. Under community policing, law enforcement works closely with residents of the community to develop solutions to the problems of violent and drug-related crime. Rather than simply responding after the fact to crime, the police build a productive relationship with the community to prevent crime from occurring. As such, community policing serves as the bridge between the "weed" and the "seed" side of the program. However, because it relies upon a more established police presence in the community, community policing takes adequate resources. States and localities should invest sufficient amounts in their police departments to permit community policing.

In addition to its model program, the Department of Justice will assist State and local leaders in establishing their own "weed and seed" sites in urban areas.

Recommendation 16

Maintain computerized criminal history data that are reliable, accurate and timely.

Ready access to reliable criminal history records is essential to an efficient criminal justice system. First, criminal history records are necessary to the effective use of pretrial detention. A history of violence or failures to appear is often the key to convincing a judge to detain a defendant before trial. The inability to provide detailed criminal histories at a first appearance can result in the release of a dangerous defendant.

In addition, accurate criminal history records are critical to effective use of career criminal statutes and for general sentencing purposes. A criminal history data base can also form the basis for a point of sale check prior to the purchase of a firearm. This type of system, which has been adopted in Virginia, Delaware and several other States, can make a contribution to public safety by preventing those with criminal records from purchasing firearms through legitimate channels. Reliable criminal history data is also essential for long-term planning for criminal justice resource needs from police to prisons.

Although many States have made substantial progress in improving and automating criminal history records in recent years, there is much yet to do. Disposition reporting continues to be a serious problem. Only eight States in the Nation have final dispositions recorded for as many as 80% of all their arrest records. There also is a serious problem with delays and backlogs. Ten States reported in 1989 that there was a delay of three months or longer between a trial court disposition and the entry of that information into the State data base. In a recent survey representing over 2,300 chief prosecutors, two-thirds said that incomplete criminal history information was a major problem for them.⁵⁴

States should invest in updating and computerizing their criminal history records. States should also consider adopting point of sale systems for firearms purchase checks. In this regard, the Department of Justice recently has set aside \$27 million to be made available to the States over 3 fiscal years to upgrade the quality of their criminal history systems. In addition, beginning in late 1992, all States must dedicate at least 5% of Federal formula grants from the Department of Justice to improve their criminal justice records. At present funding levels, this would total more than 21 million additional Federal dollars per year dedicated to improvement of State criminal justice records.

⁵⁴ See Bureau of Justice Statistics, U.S. Department of Justice, *Prosecutors in State Courts, 1990*, p. 1 (1992).

Recommendation 17

Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.

Selective grants of immunity are the prosecutor's method of lifting the veil of secrecy from drug enterprises, violent gangs, and organized crime associations.⁵⁵ Accomplices are often the only witnesses to suspected criminal acts. The testimony of lower-echelon members of criminal organizations is critical to establishing the guilt of leaders and organizers, and thus to putting the whole organization out of business for good.

At present, State laws are a patchwork on the subject of immunity. Despite the fact that the Supreme Court has held that use immunity is constitutionally sufficient,⁵⁶ several State statutes still provide for only transactional immunity.⁵⁷ This reduces the effectiveness of immunity as an investigatory tool and can result in a windfall for the clever witness.

In addition, several States provide for automatic immunity, thus taking the immunity decision and the substantial leverage that goes with it out of the hands of the prosecutor. For example, New York provides for automatic transactional immunity for all witnesses

⁵⁵ Grants of immunity to compel the testimony of witnesses are made necessary by the Fifth Amendment, which provides: "No person shall . . . be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V.

⁵⁶ *Kastigar v. United States*, 406 U.S. 441 (1972).

⁵⁷ "Use" immunity prohibits the government from using the compelled testimony, either directly or indirectly, to build a case against a witness. Prosecution remains possible based on other evidence. "Transactional" immunity protects an immunized witness from prosecution for *any* criminal transaction mentioned in the compelled testimony. Prosecution is barred by transactional immunity even where independent evidence of criminality is uncovered.

appearing before its grand juries. A 1988 report by the New York State District Attorneys Association documents at least six occasions in recent years where the New York rule has literally allowed a witness to "get away with murder" by testifying about it under mandatory transactional immunity.⁵⁸ Alabama courts will not grant immunity without the consent of the witness, thus eliminating the effectiveness of immunity as an investigatory tool.⁵⁹

State immunity statutes should be comparable to 18 U.S.C. § 6002. They should vest authority to request immunity in the prosecutor and give him or her the choice between use or transactional immunity.

Recommendation 18

Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

Electronic surveillance of suspects is an essential tool for the investigation and prosecution of large-scale drug trafficking and organized crime cases. The leaders of these organizations are often able to avoid direct involvement in criminal acts while planning and coordinating criminal activity over the telephone. Use of electronic surveillance can build an extremely effective case based on the wrongdoers' own words, while avoiding the risks of using undercover agents or informants.

Congress provided Federal wiretap authority in the Omnibus Crime Control and Safe Streets Act of 1968. *See* 18 U.S.C. §§ 2510-21. The statute provides for the granting of applications for wire surveillance upon specific findings of probable cause and necessity, and places

⁵⁸ *See* New York State District Attorneys Association, "The Case for a New Immunity Law in New York," p. 6 (1988).

⁵⁹ *See* Ala. R. Crim. P. 12.7(b) (only transactional immunity available and only with consent of the witness).

careful limits on the scope and duration of electronic surveillance. The statute also explicitly authorizes the consensual monitoring of electronic communications where a law enforcement officer is a party to a conversation.

Another important tool in the investigation of sophisticated criminal networks is the pen register. A pen register records the numbers dialed from a telephone by monitoring the electrical impulses caused by dialing. In *Smith v. Maryland*, 442 U.S. 735 (1979), the Supreme Court held that the use of a pen register is not a search within the meaning of the Fourth Amendment, and thus neither probable cause nor a warrant is necessary to employ such a device.

Congress has provided a detailed statutory scheme for the use of pen registers and "trap and trace" devices⁶⁰ by Federal investigators. 18 U.S.C. §§ 3121-27. The statute requires application to a court and a demonstration that "the information likely to be obtained is relevant to an ongoing criminal investigation" [*Id.* at § 3123(a)]. The statute also creates a legal obligation on the part of telephone companies, landlords and other third parties to assist law enforcement personnel in the installation of authorized pen registers. Finally, the statute insulates both the providers of communications services and law enforcement officers from civil and criminal liability for actions undertaken pursuant to the statute.

State law on the subject of electronic surveillance, pen registers and trap and trace devices is presently a hodgepodge. At present, 15 States make no provision for court-ordered electronic surveillance. Other States, such as California, have weak electronic surveillance laws. And in several States, the courts have held that the use of a pen register is a search under the State constitution for which a warrant supported by probable cause is required. *See, for example, People v. Sporleder*, 666 P.2d 135 (Colo. 1983); *State v. Hunt*, 450 A.2d 952 (N.J. 1982). At

⁶⁰ A "trap and trace" device reveals the telephone number of the source of all incoming calls to a particular number.

least one State supreme court has held that a pen register should be treated as if it were a wiretap for purposes of the State's electronic surveillance law, thus requiring a warrant as a statutory matter. *See Ellis v. State*, 353 S.E.2d 19 (Ga. 1987). States should thoroughly review their laws in this area to ensure that statutory authority exists for electronic surveillance and for the effective use of pen registers and "trap and trace" devices. Statutory and constitutional change should be sought where necessary.

To detect and prevent crime:

- Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.
- Maintain computerized criminal history data that are reliable, accurate, and timely.
- Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.
- Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

VI. Respecting the victim in the criminal justice process

To be both effective and humane, a criminal justice system must respond to the needs of victims of crime at all stages of the criminal justice process. From the time law enforcement officers arrive at the scene of a crime, through apprehension of a suspect, the trial, sentencing, appeals and punishment, victims are profoundly affected, and their perspective deserves consideration. It is incumbent upon all criminal justice professionals to think of the victim and to evaluate how their decisions affect the victim and the victim's family.

One way to ensure appropriate consideration of victims' rights is to codify and enforce a "Victims' Bill of Rights." Congress took this step in the Victims' Rights and Restitution Act of 1990 ("Victims' Rights Act"), Pub. L. No. 101-647, 104 Stat. 4820, and at the same time urged the States to follow suit.

Victims should not have to wait until they are attacked to have effective recourse. States should enact "stalking" laws that would make it a crime to repeatedly harass or follow a person if it places the victim in reasonable fear of death or serious bodily injury. If, in addition, a restraining order or similar order is in effect at the time of an offense, an enhancement of the penalty should be considered.

Victims' needs can include protection from further violence or retribution, restitution to cover economic loss, and information about and participation in the criminal justice process. Victims should have the right to place their story before sentencing authorities and parole boards. Victims' views should be given consideration in both sentencing and release decisions. Finally, the criminal justice system should do all it can to minimize the pain of victims and victim-witnesses. This includes the provision of adequate compensation and the protection of victim-witnesses from further emotional trauma.

Recommendation 19

Provide for hearing and considering the victims' perspective at sentencing and at any early release proceedings.

In most States, the defendant has the right to address the tribunal after conviction and before sentencing. At this point, the defendant is allowed to tell his or her story, to offer any facts in mitigation of his crime, and to ask for mercy. States should provide the victim with a similar right of allocution, that is, a right to inform the sentencing authority about the impact of the crime on his or her life.⁶¹ States that retain a system of parole or early release should afford victims a right of allocution at parole hearings. Parole statutes should provide that the impact of early release on the victim and the victim's family or survivors should be a consideration bearing on early release.

States should also provide for the use of victim-impact evidence in capital cases. In the penalty phase of a capital case, the defendant is allowed to present any evidence of his character or background in mitigation. Where survivors desire it, the State should compile and present evidence from survivors detailing the loss suffered by the victim's family and friends. The jury should know the victim as well as the defendant as a unique human being, worthy of its consideration in passing sentence.

Finally, the victim should have a right to be present at all public court proceedings related to the offense, including pretrial motions, voir dire and trial, appeals, and collateral litigation. For most victims, the

⁶¹ In just over half the States, the victim now has the right of allocution. The President's violent crime bill would establish a right of allocution for the victim in Federal criminal proceedings.

crimes committed against them or their loved ones are the most traumatic events of their lives. They deserve the right to watch the criminal justice system as it addresses the wrong committed against them.

Recommendation 20

Provide victim-witness coordinators.

One of the greatest innovations in victims' rights in Federal cases was the establishment of a victim-witness coordinator in each United States Attorney's Office. These officials can provide an important liaison between victims and the criminal justice system. They can keep victims and survivors apprised of the status of proceedings, as well as whether or not the defendant has been released on bail before trial. They can also make victims aware of restitution or other remedies available to them. Victim-witness coordinators should be aware of the State programs funded through the Victims of Crime Act and administered by the Office for Victims of Crime in the Department of Justice. These programs offer such services as victim compensation and assistance, counseling, and housing for battered women.

Recommendation 21

Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.

While all 50 States have some form of victim restitution law, in many cases these laws are not adequately enforced. Mechanisms must exist for monetary fines and restitution payments to be collected during imprisonment and after release. These mechanisms should be structured so as to relieve victims of the burden of pursuing the offender for restitution.

States should also ensure that profits a criminal derives directly or indirectly from his criminal activity are made available to the victim for restitution. This includes profits from literary or other depictions of the crime. Crime victims should not have to watch criminals reap fame and fortune from their victimization. The Department of Justice has prepared new Federal "Son of Sam" legislation that addresses the constitutional concerns expressed by the Supreme Court in *Simon & Schuster, Inc. v. N.Y. State Crime Victims Bd.*, 112 S. Ct. 501 (1991). The Department will assist States in reviewing and, if necessary, revising their forfeiture and victim compensation statutes in light of the Court's decision in *Simon & Schuster*.

States should also provide for adequate compensation for victim-witnesses. This should include payment for travel, loss of work time, and assistance with day care and other needs. The victim should not suffer an additional economic and emotional blow dealt by the criminal justice system itself. States should consider placing victim-witnesses in a category separate from other witnesses, allowing the former more services and compensation for costs incurred as a result of cooperation in the prosecution.

Recommendation 22

Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.

Every State should have two evidentiary protections for complaining witnesses. The first is a rape-shield law. Federal Rule of Evidence 412 provides a model. It makes reputation or opinion evidence concerning the past sexual behavior of the alleged victim inadmissible in the trial for a sexual offense. It also makes evidence of the past sexual behavior of the complaining witness generally inadmissible, unless that behavior occurred with the defendant or the defendant seeks to show

that another individual was responsible for the sexual contact or the victim's injuries.

Evidence of reputation and past sexual conduct of the victim generally has no place in the trial for a sexual offense. Past consensual activity of the victim has little or no relevance to whether the defendant sexually assaulted the complainant. Its admission violates the victim's privacy, increases the trauma of trial, and discourages victims from cooperating in prosecution. Too often this kind of evidence is used by the defense to embarrass and intimidate the victim.

Every State should also protect child witnesses, where necessary, from traumatic confrontations with their alleged abusers. As the Supreme Court has noted, placing a child witness in close proximity to an alleged abuser or molester may do serious psychological damage. In addition, it may actually disserve the truth-seeking function of the trial by so overwhelming the child as to prevent him or her from accurately remembering and testifying to painful events. *See Craig v. Maryland*, 110 S. Ct. 3157, 3168-70 (1990). The Maryland statute, upheld by the Supreme Court in *Craig*, provides a good model. If the trial judge finds that courtroom testimony will result in serious emotional trauma to a child witness, such that the child will not reasonably communicate the facts by direct testimony, the testimony is taken by closed-circuit television with only the attorneys and, if necessary, a guardian present [Md. Cts. & Jud. Proc. Code Ann. § 9-102 (1989)].

Recommendation 23

Permit victims to require HIV testing before trial of persons charged with sex offenses.

With the advent of the deadly HIV infection, sex offenses have become even more painful and traumatic for victims. Now victims must confront the possibility that they have contracted an incurable disease. The uncertainty alone is terrifying. The criminal justice system must respond to this added trauma for victims of sexual offenses.

States should provide, at the request of the victim, for the mandatory HIV testing of defendants in sexual offense cases *before* trial.⁶² The latest medical evidence indicates that early testing and treatment can delay the onset of AIDS in those who test HIV-positive and prolong survival of those with AIDS.⁶³ Moreover, the victim is entitled to end the dread and uncertainty that surrounds this question. Test results should be provided to the victim and to the court. States should also require that, at the request of the victim, the defendant be tested again periodically, for example, after 6 months and 12 months given the latency period of the virus. Finally, States should provide enhanced penalties for offenders infected with HIV who commit sexual offenses that may transmit the virus to the victim.

All such testing, and the use of test results, should be done in a manner that safeguards the victim's confidentiality.

⁶² At least 11 States now provide for HIV testing of *accused* sex offenders, in addition to those States providing for testing of convicted offenders. The Administration has proposed similar legislation to the Congress for Federal sex crimes. In 1990, Congress provided a funding incentive to encourage States to adopt HIV testing for convicted sex offenders and to reveal the results to victims.

⁶³ See Massachusetts Medical Society, vol. 326 *The New England Journal of Medicine*, "The Effects on Survival of Early Treatment of Human Immunodeficiency Virus Infection," p. 1037 (1992).

Recommendation 24

Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

As the party directly harmed by the crime, the victim has a keen interest in understanding the criminal justice process and knowing its results. Victims and survivors of victims need to bring their traumatic experience to closure. The criminal justice system has an important role to play in this process.

Victims of crime should also be apprised of any change in a convicted offender's status, such as entrance into work release, weekend furlough or community incarceration. Many victims of crime live with the fear (often justified) that they may be victimized by the same offender again after release. States should also ensure that adequate protective measures are taken before release, where objective facts create a legitimate fear of further victimization.

To respect the victim's needs in the criminal justice process:

- Provide for hearing and considering the victim's perspective at sentencing and any early release proceedings.
- Provide victim-witness coordinators.
- Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.
- Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.
- Permit victims to require HIV testing *before* trial of persons charged with sex offenses.
- Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

Citizen's checklist: Questions about criminal justice to ask your State and local leaders

How well does your State and local government stack up against the Federal Government and other States in the area of public safety? Do your police and prosecutors have the tools they need to combat violent street gangs, drug dealers and gun-toting criminals? Does your State invest enough in prisons to keep violent repeat offenders in prison instead of in your neighborhood?

Ask those responsible for law enforcement and public safety in your State and local community these questions:

☐ Do our courts have authority to detain dangerous defendants without bail or are these defendants released back into the community before trial?

☐ How much of the sentences they are given in court do violent offenders in our State actually serve in prison on average? Does our State still have parole? Why?

☐ Are there mandatory minimum penalties in our State for the use of a firearm in the commission of a felony for repeat offenders who are caught in illegal possession of a firearm and for repeat violent offenders?

☐ What percentage of the State budget is devoted to prisons? Can profits from the seizure of criminals' property be used for prison construction in our State?

☐ Does State law provide the death penalty for those who kill law enforcement personnel, for those who kill while committing another felony such as rape or robbery, and for those who kill in prison?

☐ Are prisoners convicted of felonies required to perform some labor in our prisons?

☐ Are persons arrested for serious crimes in our State drug-tested? Are probationers and parolees in our State drug-tested? Is drug use while on probation or parole grounds for mandatory revocation of release?

☐ Do our State and local law enforcement agencies use asset forfeiture against drug traffickers and other violent criminals? Are assets seized used to supplement law enforcement funding?

☐ Does our State provide a range of criminal sanctions that emphasize discipline and responsibility for the nonviolent first-time juvenile offender?

☐ Are juveniles over the age of 14 who commit serious crimes, like murder and rape, prosecuted in adult court unless special circumstances are shown by the defense?

☐ Does our State keep detailed records of juvenile offenses and share them with the FBI? Does our State provide that an offender's serious juvenile crimes should be considered at sentencing? Can juvenile offenders be fingerprinted for law enforcement records in our State?

☐ What is the average delay from time of arrest to time of trial for violent felonies in our State? Do we have a speedy trial law with specific limits on delay?

☐ Do our courts exclude evidence from trial even where the police act in a good faith attempt to follow the law? Do our

courts exclude more evidence than is required by the Federal Constitution?

☐ If a defendant testifies in his defense, can our prosecutors let the jury know that the defendant has a prior criminal record?

☐ Are prior rape and child molestation offenses admissible in our courts to show that a defendant has a disposition to commit those crimes?

☐ Is there a time limit on filing a petition for habeas corpus in our State courts to prevent months and even years of delay? Are prisoners limited to one habeas corpus challenge to their convictions in State court?

☐ Are our police and sheriffs provided with protective body armor and adequate weaponry to defend themselves against well-armed criminals? Are our law enforcement personnel adequately compensated?

☐ What percentage of State and local budgets are spent on law enforcement and criminal justice? Is it less than 6.9% (the national average)?

☐ Does our State maintain complete, accurate, and up-to-date computerized criminal history records?

☐ Do our prosecutors have authority to grant "use" and "transactional" immunity?

☐ Can police in our State obtain court orders for wiretaps or use pen registers and trap and trace devices on phone lines to investigate large-scale drug rings and organized crime networks?

☐ Do victims have the right to address the court at sentencing in our State, or may only the defendant do so? Do

victims have the right to attend all court proceedings in our State? Is the victim's perspective considered before early release is granted to a convicted felon?

☐ In a death penalty case where the defendant puts on evidence of his background and family life to evoke sympathy, can our prosecutors present evidence about the victim and the victim's family to give the jury a sense of their loss?

☐ Does our State have victim-witness coordinators?

☐ Does our State provide for victim restitution and assistance for victims and witnesses?

☐ If a criminal profits from his crime by writing a book or giving a paid interview, does our law require that some of that money go to the victim?

☐ Does our State provide professional assistance or counselors to assist victims and witnesses in the criminal process? Are adequate witness fees paid to cover food, travel, and lost work time?

☐ Do our evidence laws protect rape victims against courtroom attacks on their reputations and revelation of irrelevant details of their private sex lives? Does our State provide for protection of child witnesses by allowing closed-circuit televised testimony where testifying in the presence of the defendant would cause the child serious emotional trauma?

☐ Can victims of sex offenses in our State require HIV testing of the accused before trial?

☐ Are victims in our State notified of the status of criminal justice proceedings and the release status of the offender?

Acknowledgments

The following individuals deserve special recognition for their participation in the formulation and drafting of these Recommendations at the request of the Attorney General:

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Office of the Deputy Attorney General
Washington, D.C. 20530

September 25, 1992

MEMORANDUM

FOR: Allan B. Hubbard
Deputy Chief of Staff
Office of the Vice President

FROM: George J. Terwilliger, III 
Deputy Attorney General

SUBJECT: Violent Crime Material

Attached is the material you asked for this morning.

Enclosures

Crime
File



U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

September 24, 1992

MEMORANDUM

TO: William P. Barr
Attorney General

George J. Terwilliger, III
Deputy Attorney General

FROM:  Amy M. Lecocq
Associate Deputy Attorney General

SUBJECT: TRIGGERLOCK UPDATE

As of August 31, 1992:

- * **8,748 defendants** have been charged with Triggerlock offenses.
- * **89 months** is the average sentence under the program.
- * **4,761 defendants** have been convicted.
- * Only **3.9%** of the disposed cases resulted in acquittal.

The newly automated charts, prepared by EOUSA, are attached for your convenience.

More information is, of course, available on request.

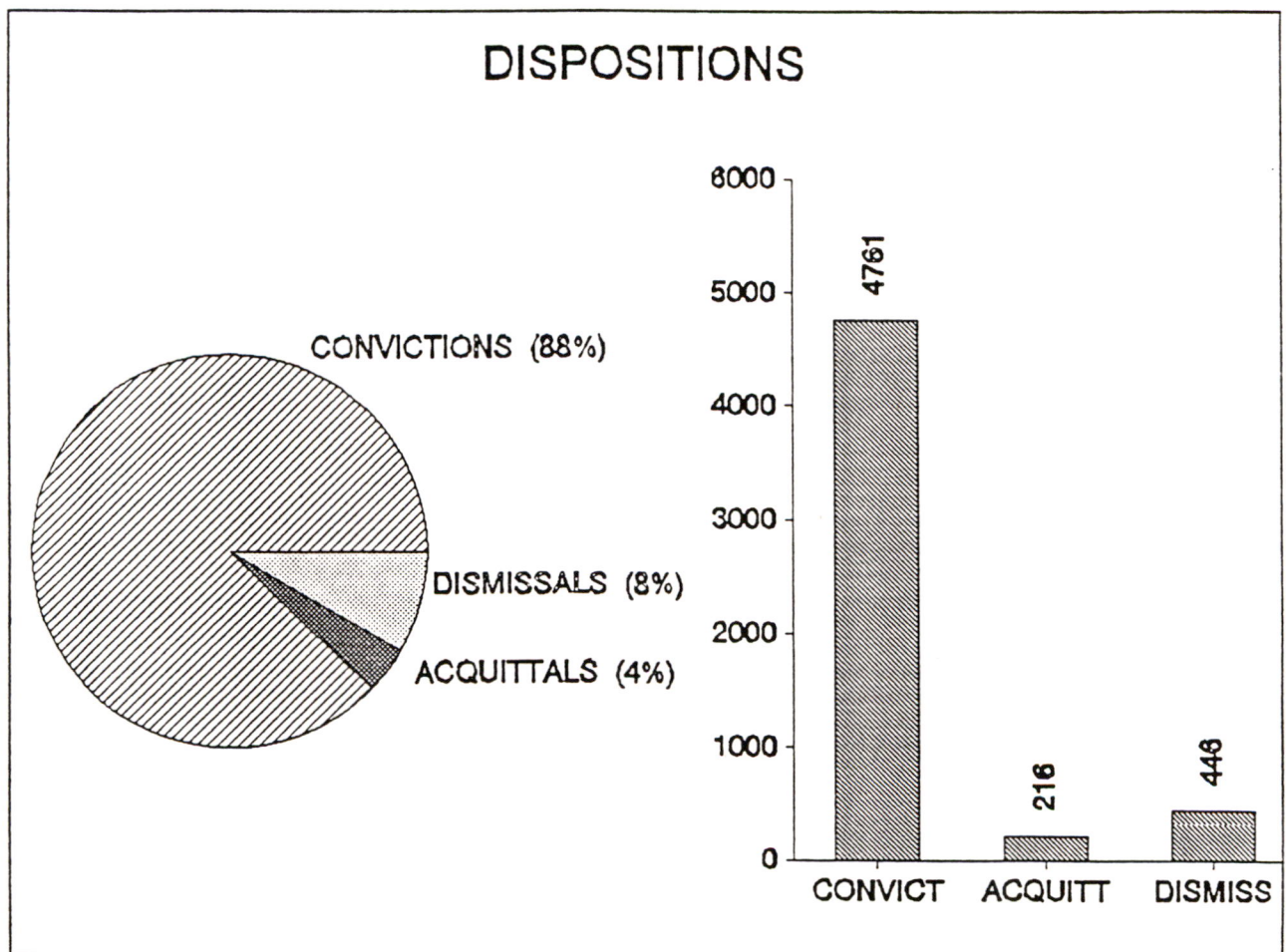
Attachments

cc: Daniel Levin
Robert Q. Whitwell
Paul J. McNulty
Julie E. Samuels
Eugene Scalia
Kristen M. Gear
Kathleen M. Kahoe
J. Mark Gidley

PROJECT TRIGGERLOCK DISPOSITIONS

April 10, 1991 through August 31, 1992

DISPOSITIONS		
DISPOSITION	PROJECT TOTAL	TOTAL PERCENT
Convictions	4,761	87.79
Dismissals	446	8.22
Acquittals	216	3.98
TOTAL	5,423	100.00



PROJECT TRIGGERLOCK SENTENCINGS

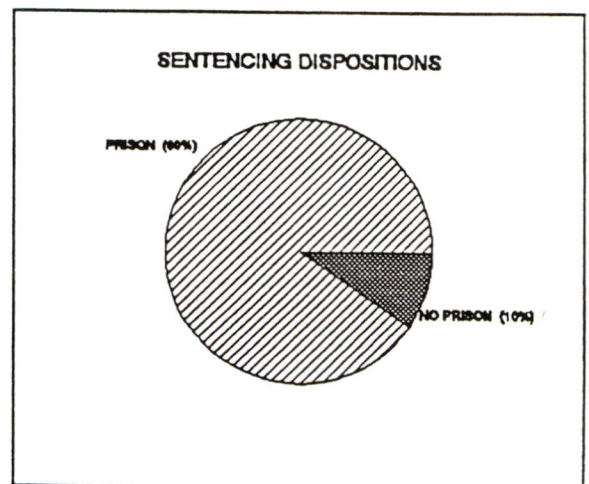
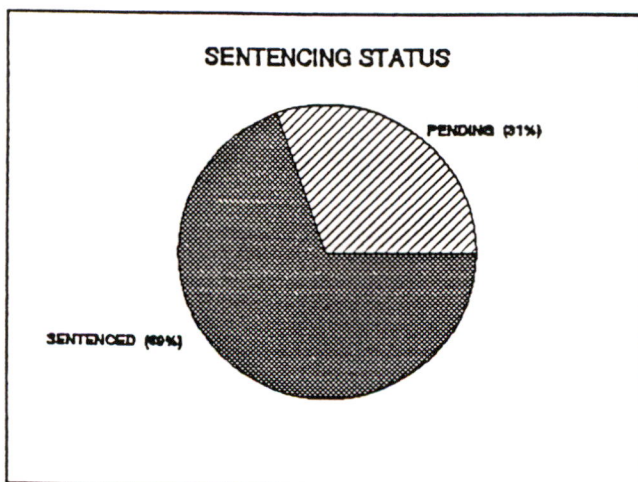
April 10, 1991 through August 31, 1992

SENTENCING STATUS	
Defendants Convicted	4,761
Defendants Sentenced	3,305

SENTENCING DISPOSITION		
DISPOSITION	PROJECT TOTAL	PROJECT PERCENT
Prison Sentenced Imposed	2,990	90.47
No Prison Sentence	315	9.53
DEFENDANTS SENTENCED	3,305	100.00

Total Prison Sentences ===== > 22,170 years

Average Prison Sentence ===== > 89 months

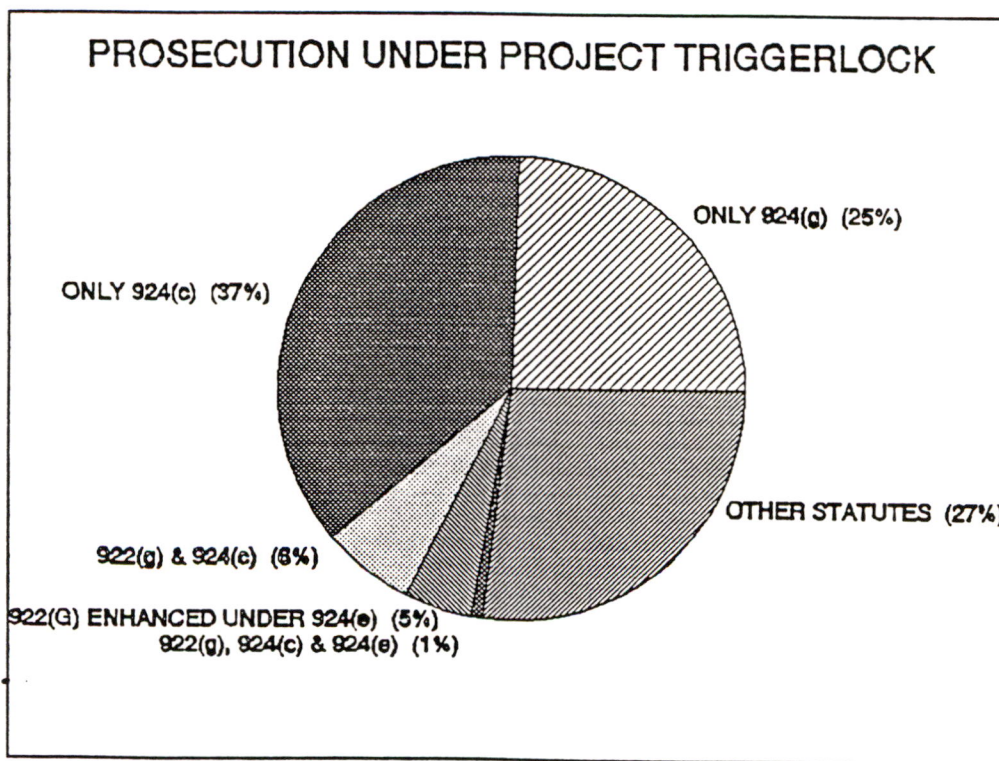


PROJECT TRIGGERLOCK

PROSECUTION UNDER PROJECT TRIGGERLOCK¹

April 10, 1991 through August 31, 1992

STATUTES CHARGED UNDER:	PROJECT TOTAL	TOTAL PERCENT
Only 922(g)	2144	24.51
Only 924(c)	3219	36.80
Both 922(g) and 924(c)	568	6.49
922(g) W/ Enhanced Penalty Under 924(e)	406	4.64
922(g), 924(c) & Enhanced Penalty 924(e)	69	0.79
SUB-TOTAL CHARGED UNDER 922(g), 924(c) + (e)	6,406	73.23
Other Firearms Violations	2342	26.77
GRAND TOTAL W/ FIREARMS	8,748	100.00



¹ Section 924(e) is a sentence enhancement provision in those instances where a defendant, prosecuted under 922(g), has three or more prior state or federal felony convictions for violent offenses or serious drug offenses. It is commonly referred to as the Armed Career Criminal Act and carries a 15 year mandatory minimum sentence.

PROJECT TRIGGERLOCK

DISTRICT BREAKDOWN

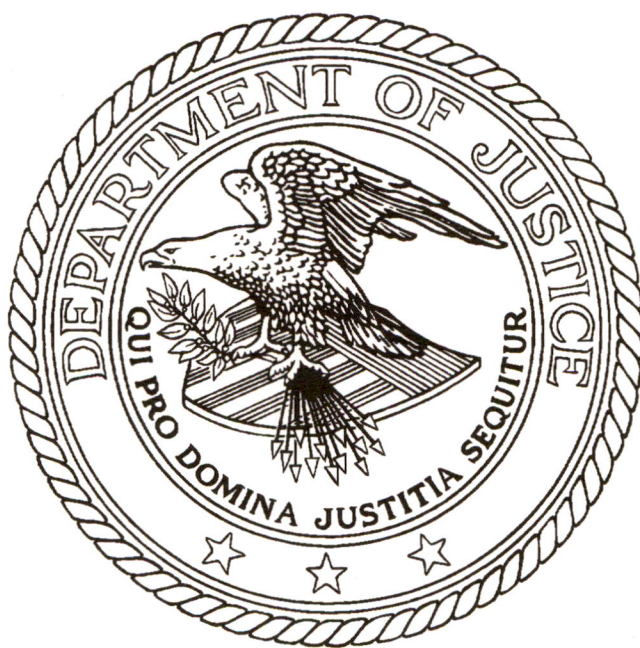
PERIOD ENDING AUGUST 31, 1992

DISTRICT		only 922(g)	only 924(c)	922(g) & 924(c)	922(g) & 924(e)	924(e)(c) & 922(g)	OTHER	TOTALS
1.	ALASKA	5	9	4	1	1	3	23
2.	ALABAMA, M	33	33	4	2	0	15	87
3.	ALABAMA, N	14	30	8	0	1	15	68
4.	ALABAMA, S	31	21	2	1	2	28	85
5.	ARKANSAS, E	18	44	3	3	0	18	86
6.	ARKANSAS, W	6	7	1	2	0	3	19
7.	ARIZONA	51	113	10	0	0	78	252
8.	CALIFORNIA, C	40	128	13	3	0	64	248
9.	CALIFORNIA, E	16	22	3	7	0	18	66
10.	CALIFORNIA, N	22	15	5	4	2	18	66
11.	CALIFORNIA, S	12	34	5	12	3	54	120
12.	COLORADO	23	31	3	0	0	19	76
13.	CONNECTICUT	32	4	0	5	0	18	59
14.	DIST. OF COLUMBIA	25	84	27	0	0	42	178
15.	DELAWARE	13	2	1	1	0	3	20
16.	FLORIDA, M	28	47	11	16	3	19	124
17.	FLORIDA, N	31	41	9	10	1	15	107
18.	FLORIDA, S	26	27	2	23	2	34	114
19.	GEORGIA, M	27	30	6	22	2	17	104
20.	GEORGIA, N	21	50	14	10	2	47	144
21.	GEORGIA, S	9	37	4	3	1	23	77
22.	GUAM	12	0	0	1	0	3	16
23.	HAWAII	12	6	0	9	0	8	35
24.	IOWA, N	11	6	1	1	0	5	24
25.	IOWA, S	5	30	1	1	0	4	41
26.	IDAHO	1	18	1	0	2	15	37
27.	ILLINOIS, C	34	24	5	13	0	13	89
28.	ILLINOIS, N	44	61	9	4	0	43	161
29.	ILLINOIS, S	23	26	5	3	0	13	70
30.	INDIANA, N	15	9	1	2	0	24	51
31.	INDIANA, S	20	33	6	4	0	1	64
32.	KANSAS	25	34	3	0	1	32	95
33.	KENTUCKY, E	20	36	9	4	0	39	108
34.	KENTUCKY, W	23	17	12	3	2	26	83
35.	LOUISIANA, E	17	27	5	4	0	28	81

DISTRICT		* only 922(g)	only 924(c)	922(g)& 924(c)	922(g)& 924(e)	924(e)(c) &922(g)	OTHER	TOTALS
36.	LOUISIANA, M	5	0	0	0	0	4	9
37.	LOUISIANA, W	8	32	9	4	1	15	69
38.	MASSACHUSETTS	32	8	4	17	2	12	75
39.	MARYLAND	40	37	13	1	0	20	111
40.	MAINE	17	5	0	8	1	22	53
41.	MICHIGAN, E	65	60	25	5	0	66	221
42.	MICHIGAN, W	6	16	1	0	0	0	23
43.	MINNESOTA	17	23	1	7	1	42	91
44.	MISSOURI, E	33	21	7	5	0	12	78
45.	MISSOURI, W	9	28	7	9	1	14	68
46.	MISSISSIPPI, N	8	14	11	0	0	26	59
47.	MISSISSIPPI, S	21	30	7	2	0	22	82
48.	MONTANA	18	3	1	0	0	11	33
49.	N. CAROLINA, E	18	52	6	11	1	19	107
50.	N. CAROLINA, M	12	108	12	1	1	38	172
51.	N. CAROLINA, W	36	119	13	6	2	62	238
52.	NORTH DAKOTA	15	2	0	2	0	9	28
53.	NEBRASKA	13	11	3	1	0	7	35
54.	NEW HAMPSHIRE	7	12	2	2	1	14	38
55.	NEW JERSEY	20	20	0	1	1	27	69
56.	NEW MEXICO	30	50	9	8	1	20	118
57.	NEVADA	15	49	4	2	0	43	113
58.	NEW YORK, E	19	20	3	2	0	14	58
59.	NEW YORK, N	9	10	0	0	0	10	29
60.	NEW YORK, S	22	94	19	2	1	31	169
61.	NEW YORK, W	10	38	0	0	0	11	59
62.	OHIO, N	37	50	12	3	5	17	124
63.	OHIO, S	19	52	4	2	0	28	105
64.	OKLAHOMA, E	11	7	7	0	0	7	32
65.	OKLAHOMA, N	25	19	2	1	0	28	75
66.	OKLAHOMA, W	24	11	6	7	1	21	70
67.	OREGON	32	11	7	12	0	49	111
68.	PENN., E	52	63	21	3	2	28	169
69.	PENN., M	13	21	7	5	2	12	60
70.	PENN., W	12	15	1	2	1	19	50

DISTRICT		only 922(g)	only 924(c)	922(g) & 924(c)	922(g) & 924(e)	924(e)(c) & 922(g)	OTHER	TOTALS
71.	PUERTO RICO	8	60	1	2	0	33	104
72.	RHODE ISLAND	16	10	3	1	0	14	44
73.	SOUTH CAROLINA	37	62	8	2	0	18	127
74.	SOUTH DAKOTA	16	9	4	0	0	14	43
75.	TENNESSEE, E	37	44	21	6	1	25	134
76.	TENNESSEE, M	14	25	3	2	0	14	58
77.	TENNESSEE, W	39	100	15	8	0	8	170
78.	TEXAS, E	24	70	16	6	2	26	144
79.	TEXAS, N	74	107	27	15	6	57	286
80.	TEXAS, S	45	85	13	13	1	106	263
81.	TEXAS, W	114	86	5	8	0	98	311
82.	UTAH	17	22	1	1	0	24	65
83.	VIRGINIA, E	50	54	9	2	0	166	281
84.	VIRGINIA, W	28	24	8	4	0	37	101
85.	VIRGIN ISLANDS	5	11	0	1	0	10	27
86.	VERMONT	13	6	1	5	2	2	29
87.	WASHINGTON, E	53	83	6	8	2	27	179
88.	WASHINGTON, W	22	45	3	1	1	5	77
89.	WISCONSIN, E	16	21	2	4	0	23	66
90.	WISCONSIN, W	2	4	1	3	3	6	19
91.	WEST VIRGINIA, N	16	8	3	2	0	14	43
92.	WEST VIRGINIA, S	18	24	1	4	0	15	62
93.	WYOMING	5	12	0	3	1	15	36
GRAND TOTAL		2144	3219	568	406	69	2342	8,748

Project Triggerlock: Incarcerating the Armed Criminal



Year One
May 1991 - April 1992

July 1992

Project Triggerlock:

Incarcerating the Armed Criminal

- - The First Year

"A common sense approach to crime means that if we're going to affect people's behavior we must have a criminal justice system in which there is an expectation that if you commit a crime you will be caught; and if caught, you will be prosecuted; and if convicted, you will do time. For far too long, a privileged class of violent and repeat offenders have calculated that crime really does pay, that our criminal justice system is a crapshoot where the risks are worth the rewards. Well it's time we change the odds and up the stakes enormously."

President George Bush
May 15, 1989
National Peace Officers'
Memorial Day Ceremony

Foreword

The American standard of living has long been the envy of the rest of the world. A blot on our society, however, is violent crime. For far too long, many Americans have been held hostage in their own homes, afraid to venture out for fear of violent crime.

When violent crime is an ever present reality, a decent standard of living becomes an illusion. Babies who sleep in bathtubs to avoid stray bullets, elderly who are shut in their own homes, women who fear rape -- all are robbed of the fundamental right to safety in their homes and communities.

We cannot and must not stand idly by and watch our society deteriorate. Measures can be taken to stem the tide of violent crime. It has become increasingly clear that the "revolving door" system of justice that is typical of far too many of our communities simply does not work. What does work is the swift and certain incarceration of society's most heinous and violent criminals.

Study after study has shown that a relatively small group of chronic violent offenders are responsible for a huge proportion of all violent crimes committed in America. By removing these felons from society, we can prevent them from committing future crimes.

In our fight against violent crime, the Department of Justice has adopted a multi-faceted approach, working in close coordination with state and local law enforcement. This includes: (i) additional resources for law enforcement across the board, including more police, more prosecutors and more prisons; (ii) reform of criminal justice systems to stop "revolving door" justice; (iii) joint operations to target and incarcerate the most dangerous chronic offenders; and (iv) Operation Weed and Seed which brings together tough law enforcement and social programs to rehabilitate communities and help law abiding citizens take back their streets.

As part of our joint operations with state and local law enforcement, the Department of Justice has begun Project Triggerlock, which targets for federal prosecution and incarceration armed offenders who violate federal firearms laws. By working closely with state and local authorities, federal officials are able to identify and incapacitate America's worst violent criminals.

The participation of state and local law enforcement officials is an essential feature of Project Triggerlock. Triggerlock gives these officials access to tougher federal tools such as pretrial detention, mandatory minimum sentencing and a functioning federal prison system.

Project Triggerlock is a strong weapon in the war against crime. Once we have established civil order in our neighborhoods and communities, we can truly begin to rebuild our cities and raise the quality of life for all Americans.



William P. Barr
Attorney General

Overview

Last year the Department of Justice initiated a nationwide program to combat the crimes the public fears most -- violent offenses committed by criminals armed with guns. This program relies on stiff federal penalties and the dedicated joint efforts of federal, state, and local law enforcement officials.

In its first full year of operation, Project Triggerlock successfully mobilized federal, state and local law enforcement efforts to accomplish the following:

- **6454 defendants have been charged with federal firearms violations.**
- **Federal firearms prosecutions have more than doubled.**
- **More than one out of ten of all federal prosecutions now include firearms charges.**
- **84% of Triggerlock defendants are felons, drug dealers or violent criminals in possession of a firearm.**
- **The average sentence received by an armed career criminal under Project Triggerlock is 18 years without parole.**

“[Triggerlock is] a superlative example of coordinated efforts among local, state, and federal officials. [It] has enabled us to identify and bring to justice many of those persons who pose the greatest threat to our communities.”

- Thomas J. Charron, District Attorney, Cobb Judicial Circuit, Georgia. President, National District Attorneys Association

Project Triggerlock targets armed criminals, utilizing the tough penalties contained in federal firearms laws. While Project Triggerlock includes all federal firearms prosecutions, the program emphasizes the use of federal firearms statutes against violent repeat offenders whose criminal behavior has not been deterred by state or local prosecutions.

Project Triggerlock is a long-term crime prevention program. Not only are armed criminals brought to justice, but that justice means incapacitation for the worst offenders for extended periods of time. Career criminals or persons who use firearms to deal drugs or commit other violent crimes will not soon be released to commit more crimes. Project Triggerlock is an investment that will pay dividends for years to come.

Launching Project Triggerlock

The Department of Justice announced Project Triggerlock on April 10, 1991. While federal efforts to combat violent crime have increased significantly during the previous decade, Triggerlock represents the culmination of these efforts -- with resources meeting strategy. Tough federal gun and drug laws, more prison space and more investigative resources are being brought to bear under the Triggerlock strategy of coordinated state and local involvement. Project Triggerlock is the most extensive cooperative effort ever undertaken to combat violent crime.

“Project Triggerlock has had a positive impact on this community by taking violent criminals off of the streets for substantial periods of time. It is a substantial step in the right direction. We need to continue such efforts in order to ensure the protection of our community.”

- Captain Alfred Broadbent, Commander, Homicide Branch, Metropolitan Police Department, Washington, D.C.

A. Removing Armed Criminals

The goal of Project Triggerlock is quite simple: **Incarcerate those violent and repeat offenders who violate federal firearms statutes.** Career

criminals are Triggerlock targets for the specific reason that by removing the worst offenders from society we can prevent the crimes which they would undoubtedly commit if allowed to roam free.

The Bureau of Alcohol, Tobacco and Firearms study of career criminals, Protecting America, released in March 1992, documents the devastating impact of career criminals. In studying inmates incarcerated under the Armed Career Criminal Act, ATF discovered that the typical inmate surveyed had committed an average of 160 crimes a year, or three crimes a week: a tremendous cost to society. Using National Institute of Justice data, it has been estimated that Americans save \$323,000 net per inmate, per year, by incarcerating these criminals. This is to say nothing of the incalculable human toll that violent crime takes on its victims.

Although violent “street crime” has historically been the province of state and local criminal justice systems, two factors have led the federal government to assume a greater role. First, sophisticated drug trafficking networks and violent gangs, which have spawned much of the violence on our streets, often operate across state and even international boundaries. Combating organized criminal activity has traditionally been an area of particular federal success. Second, law enforcement efforts in many states are hampered by legal and resource limitations, such as overcrowded prison systems. With the passage of tough federal firearms statutes and bail and sentencing reforms, the federal criminal justice system has become far tougher on armed criminals. Until state legislatures act,¹ if armed career criminals are to be taken off the street and incarcerated for long periods of time, there is often no better way to do this than by “making a federal case” of these crimes.

¹The Attorney General, in consultation with state and local law enforcement officials, has compiled a list of recommendations for action by the states. See, Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice, July 28, 1992.

One Triggerlock defendant came to the attention of an Assistant United States Attorney in the Western District of North Carolina through a newspaper article. The article quoted Mike Flory, Statesville, North Carolina Police Narcotics Investigator as saying, "I'm sick and tired of it. They get four years and serve a few months and even when they are out on parole they're breaking the law." Flory's comments came after learning that Caper Strickland had again been arrested -- this time for cocaine trafficking and three counts of carrying a concealed weapon. Strickland's arrest occurred after service of a warrant for a parole violation only five weeks after his release from state prison. Strickland had been on parole after serving 18 months of a four year sentence resulting from a previous cocaine arrest by Investigator Flory in 1989. Strickland's criminal history included several drug convictions.

Then Strickland became a Triggerlock defendant. He was charged with and pled guilty to possessing a firearm in the course of a drug felony, drug trafficking and being a felon in possession of a firearm. Strickland has not yet been sentenced, but faces 15 years to life.

Lt. John F. Goshert, Commander of the Organized Crime and Vice Control Unit of the Harrisburg, Pennsylvania, Police Department wrote to the U.S. Attorney for the Middle District of Pennsylvania extolling the cooperative efforts in the prosecution of Triggerlock cases. "One of the many times that comes to mind is an individual who was

arrested over 40 times for various offenses, including: robbery, burglary, assault, firearms violations and drug law violations. In each of these past arrests the suspect did not serve any significant prison sentence. However, his last arrest for carrying a firearm was prosecuted by your office under the Armed Career Criminal Statute. The suspect received 15 years in prison without parole to be served consecutively with his local prison sentence."

B. The Strengths of the Federal Criminal Justice System

Project Triggerlock applies the strengths of the federal criminal justice system to the problem of violent crime. These strengths include: stiff penalties, no parole, pretrial detention, available prison space, and speedy trials.

1. Stiff Penalties

Underlying the enforcement strategy of Project Triggerlock are federal firearms statutes that provide substantial penalties for gun violations.

"These extra tough sentences are a real surprise to the people we charge."

- Lt. L. H. Brown,
Assistant Commander,
Narcotics and Intelligence Bureau
Montgomery, Alabama, Police Department

Although Triggerlock encompasses the full spectrum of firearms violations, three statutes form its core:

- Possession of a Firearm by a Felon or Fugitive, 18 U.S.C. § 922(g): Maximum term of imprisonment 10 years.
- Possession of a Firearm by an Armed Career Criminal, 18 U.S.C. § 924(e): Applies to defendants with three prior felony convictions for violent crimes or serious drug offenses. Minimum term of imprisonment 15 years, maximum of life imprisonment.
- Carrying or Using a Firearm during a Federal Crime of Violence or Drug Trafficking Crime, 18 U.S.C. § 924(c): First conviction carries mandatory minimum imprisonment of 5 years (10 years for a short barrel rifle and 30 years for a machine gun) consecutive to all other sentences. Subsequent convictions carry mandatory terms of imprisonment ranging from 20 years to life, consecutive to all other sentences.

“Federal courts are needed to prosecute repeat offenders because prison terms are not stiff enough under state law.”

- Dale E. Kitching,
Supervising Deputy District Attorney,
Sacramento County, California

2. No Parole

Perhaps the most significant advantage of the federal system is that parole is not available in the federal system for any offense committed after November 1, 1987. As a result, there is “truth in sentencing.” The only possible reduction is a credit of not more than 54 days per year for satisfactory compliance with prison disciplinary regulations. In

contrast, in many states, prisoners regularly serve only one-third -- or even less -- of their imposed term of imprisonment because of early release or parole.

“Gary Lewis Davis will spend more time in federal prison for drug and weapons violations than he will in state prison for killing a man three years ago.”

- Charlotte Observer, March 5, 1992

3. Pretrial Detention

Another important tool in the federal system is the Bail Reform Act of 1984, which gives federal prosecutors the ability -- using pretrial detention of violent offenders -- to curtail witness harassment and the commission of crimes by offenders who are awaiting trial. Further, once convicted, violent criminals are detained pending sentencing and appeal, except in very limited circumstances.

“Last summer, the Atlanta Police received an emergency call reporting a man wielding a sawed-off shotgun. We responded and notified BATF. Within seven hours, a felon with multiple convictions was once again behind bars. The sawed-off shotgun, a 9mm semi-automatic and a submachine gun were recovered from his apartment. I am proud of that success and believe it is one example of the promise of the combined local federal perspective of Triggerlock. . . . Triggerlock is an essential tool in our efforts against violence in our streets.”

- Eldrin Bell,
Chief of Police, Atlanta, Georgia

Taking into account the ATF finding that the average armed career criminal commits 3 crimes per week, pretrial detention of defendants immediately spares the community the trauma of additional victimization.

4. Availability of Prison Space

The federal system also provides the certainty of prison space availability. The federal battle against violent crime has been supported by a commitment to expend the necessary resources. In addition to assigning hundreds of federal agents and prosecutors to this mission, the federal government has undertaken an aggressive federal prison construction program to assure that convicted offenders "do the time." The budget of the Bureau of Prisons has increased 470% from FY 1981 to 1992. Since 1989 alone, federal prison capacity has increased 44%. In contrast, due to lack of facilities, many states regularly are forced to release prisoners before they have completed even the minimum period of incarceration.

5. Speedy Trial

In the federal system, both the defendant and the public are entitled to a fair and speedy trial. Very often, cases proceed to trial within 70 days of indictment. As a consequence, cases are resolved in the federal system much faster than in many states, where crowded dockets and rules of procedure prevent expeditious resolution.

"I have found a benefit working with federal authorities in that the defendant is processed with expediency. The person is arrested, tried and convicted in the federal system oftentimes before a state defendant gets to the state superior court for arraignment."

- Paul Brodeur,
Chief of Detectives,
Manchester, New Hampshire,
Police Department

C. Working in Partnership with State and Local Law Enforcement

Project Triggerlock depends on the effective cooperation of law enforcement agencies at all levels of government. State and local police officers play a particularly important role, as they serve as the initial investigators and intake points for a large number of potential Triggerlock defendants. While federal investigative agencies develop many Triggerlock targets in carrying out their law enforcement responsibilities, many Triggerlock cases originate from state or local arrests.

Implementing Triggerlock

With the announcement of Project Triggerlock in April 1991, each of the 93 United States Attorneys throughout the country established a Triggerlock Task Force comprised of representatives from the U.S. Attorney's Offices, the offices of state and local prosecutors, and federal, state, and local investigative agencies. The federal participants include the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, the United States Marshals Service, and the Drug Enforcement Administration. A senior Assistant U.S. Attorney is designated to work with state and local counterparts to insure coordination and effective prosecution.

"Operation Triggerlock is an excellent example of practical, in-the-trenches, assistance federal law enforcement can provide state and local law enforcement."

- Bryant Mixon,
Sheriff,
Dale County, Alabama

Task Force functions include the sharing of information and evidence, coordination of prosecutorial decisions, and joint investigative operations. In such operations, agents from one or more federal investigative agencies work hand-in-hand with local police gang units or drug units to target particular types of firearms offenders. Similarly, in some instances federal, state, and local fugitive units have combined their operations.

In Tennessee, illegal possession of a firearm is a misdemeanor carrying a \$50 fine. On average, criminals who are sentenced to state prison serve one month for every year sentenced because of prison overcrowding. On the federal level, however, the response to violent crime has been significantly tougher. Federal prosecutors in the Western District of Tennessee formed a Violent Crime Task Force which also includes two local law enforcement officers who are detailed full-time to Triggerlock. Lt. Steve Crouch, a 17-year veteran of the Shelby County Sheriff's Department and Sgt. Mark Collins, Memphis Police Department, say that the payoff for the task force members is seeing people who have thwarted the state justice system for years receive substantial prison terms from a federal judge.

"It's like a bolt of lightning" when a Triggerlock defendant hears the amount of prison time he faces, Collins says. "They don't know exactly what it (Triggerlock) is, but they know they don't want it." Collins continued, "It's a great feeling when you can go back and tell the field officer 'you'll never have to see this guy again.'"

As part of its effort to meet its expanding responsibilities in the violent crime area, the Justice Department's Criminal Division created the Terrorism and Violent Crime Section in 1991. That section was instrumental in the initial development of Project Triggerlock and in the formulation of model enforcement strategies for consideration by the newly-created task forces. In addition, the section regularly provides legal and policy assistance to United States Attorneys on Triggerlock issues.

Since enforcement strategies are tailored to the needs of particular communities, there are a wide variety of strategies in place. Examples include:

- Screening state and local arrests to identify persons who are convicted felons and who thereafter:
 - possess a firearm at the time of an arrest;
 - commit any crime by use of a firearm; or
 - commit a crime of violence or drug trafficking crime, prosecutable in federal court, while using a firearm.
- Institutionalizing this screening process by making it a routine part of the processing of every state and local arrestee. This has been done by incorporating questions concerning the involvement of firearms and the existence of a prior felony record on fingerprint card booking forms.
- Reviewing state prison records or parole decisions to identify persons who qualify for prosecution as armed career criminals.
- Reviewing state and federal fugitive warrants to identify fugitives who qualify for prosecution as armed career criminals, if apprehended in possession of a firearm.

“Not only will [Project Triggerlock] result in the incarceration of dangerous criminals, it will also serve to build and enhance good working relations between the many diverse elements of the criminal justice system.”

- Terrance W. Gainer,
Director,
Illinois State Police

Louis “Big Lou” Samuels had been arrested 40 times since 1975, including 25 arrests for violent crimes such as rape, assault with a deadly weapon, assault on a child under 12, and other violent offenses. His last conviction in 1986 for felony riot stemmed from his role as the key combatant in a shoot-out when his drug gang and a rival gang traded more than 100 shots one afternoon. The shoot-out left seven persons wounded -- including a 14-year old pregnant bystander. Samuels served only 3 1/2 years of the fifteen year sentence.

Based on this extensive criminal history, Samuels was charged with four counts of violating the Armed Career Criminal Statute, including one count based on the repetitive rape of an 18-year old at gunpoint.

Other evidence of Samuels' violence offered in court by the United States Attorney included four other rapes, an ice pick stabbing, a shooting which caused permanent paralysis, assault with a deadly weapon and numerous attempts by Samuels to threaten and intimidate victims and witnesses to his crimes.

Samuels' prosecution in federal court in the Western District of North Carolina for illegal possession of firearms resulted in a prison sentence of 45 years.

Results to Date: Triggerlock's First Year

A. Doubling the number of Firearms Prosecutions

Project Triggerlock has resulted in a dramatic increase in federal firearms prosecutions. In the first 12 complete months of Project Triggerlock (May 1, 1991, to April 30, 1992), federal prosecutors initiated firearms prosecutions against 6,454 defendants.

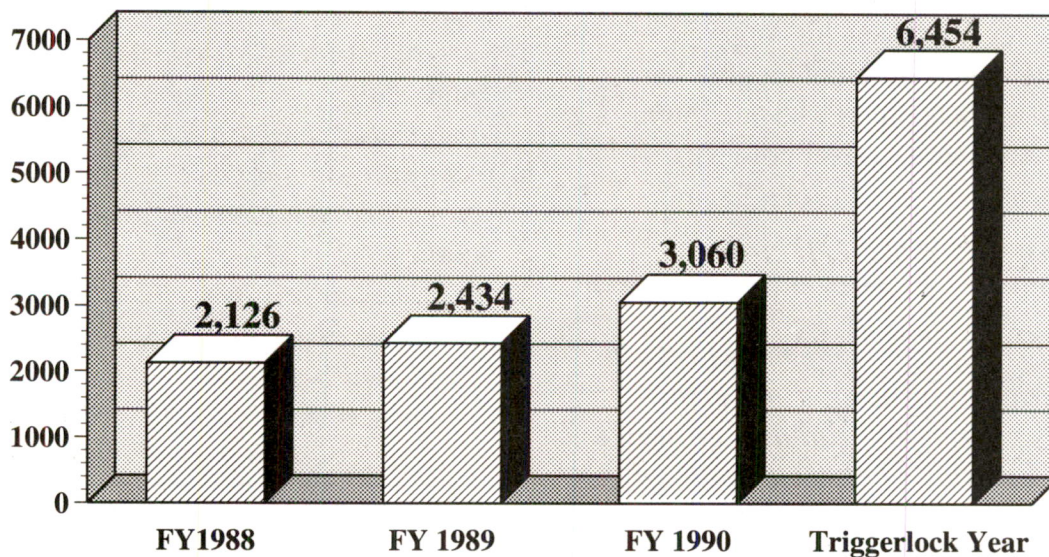
Prosecutions initiated in Project Triggerlock's

first year more than doubled the firearms prosecutions in recent years.¹ Triggerlock prosecutions account for more than one out of every ten federal prosecutions.²

The firearms charges against 84% of the Triggerlock defendants involved violations of one of two tough federal statutes:

- 18 U.S.C. § 922(g)—felon or fugitive in possession of a firearm; this statute also encompasses prosecutions which receive enhanced, mandatory minimum sentencing under the armed career criminal sentencing provision contained in 18 U.S.C. § 924(e).
- 18 U.S.C. § 924(c)—carrying or using a firearm in the commission of a federal crime of violence or drug trafficking crime.

**Firearms Defendants Prosecuted
Prior Fiscal Years v. Triggerlock Year (May 1, 1991-April 30, 1992)**



1. Sources: Statistical Reports, Executive Office for United States Attorneys (EOUSA), Department of Justice, Fiscal Years 1988-1990, Table 3; TVCS, Criminal Division. The cited figures exclude non-firearms cases from the "weapons control" data contained in these reports and include armed bank robberies; to approximate Triggerlock cases. Statistical Reports may understate actual prosecutions in FY 88 - 90 and should be viewed as approximations.

2. In Fiscal Year 1991, federal charges were initiated against a total of 57,828 defendants. Source: Statistical Reports, EOUSA, Fiscal Year 1991.

Firearms charges against the remaining Triggerlock defendants were brought under a variety of firearms statutes, such as possession of a machine gun, or gun trafficking.

The average convicted Triggerlock felon receives a sentence of seven years with no parole. That is the equivalent of a 21 year sentence under the old federal system and many state systems. The average sentence of an armed career criminal under Project Triggerlock is 18 years with no parole.

B. Impact on Communities

Violent crime erodes the quality of life in many communities throughout the United States. As noted earlier, repeat offenders are responsible for much of the problem. Many violent recidivists and career criminals are nothing short of individual crime waves. The trauma of victimization that is spared by the incarceration of such individuals is incalculable. Death, injury, and loss of property are averted. A review of specific Triggerlock cases prosecuted to date reflects the long-term potential of the program.

1. Removing Chronic Offenders

Project Triggerlock protects communities by achieving long-term incarceration of habitual violent criminals. Too often, these criminals have served brief terms for heinous crimes. Triggerlock evens the scales.

- Despite a significant prior criminal history, in 1990, James Charles Minefield was sentenced in state court to only five to 10 years for a homicide which he committed while dealing crack. Minefield shot his

Charles Fredrick Walker, age 42, exemplifies the need for Project Triggerlock. Walker was convicted of numerous juvenile offenses including grand theft, battery and resisting arrest. He received a probation sentence for his first adult conviction -- armed robbery. Within a year, Walker had been convicted of 12 armed robberies. After serving 8 years in prison, he was released on parole. Within 2 years of his release, Walker plead guilty to 22 armed robberies. After serving 9 years for these crimes, Walker was again paroled. Within two months into his parole, Walker had to be subdued with a taser gun because he refused to leave a woman's house, lay down an 8 inch knife and submit to arrest. Walker was paroled within months again and committed three bank robberies within four months of his release. As he fled the last bank, Walker "car-jacked" a 61-year old man and shot him in the neck and shoulder. Under Project Triggerlock, Walker was convicted in state and federal courts of attempted murder, three counts of armed robbery and three counts of using a firearm during a crime of violence. Walker received a 72 year federal sentence, to run consecutive to his state sentence for attempted murder.

victim in the head with a handgun. Because he had numerous other prior felony convictions, including two for robbery (one using a sawed-off shotgun) and two for aggravated assault, his possession of the pistol used in the homicide violated federal law. As a result of a federal firearms prosecution in the Western District of Pennsylvania, Minefield will serve a prison sentence of 27 years *after* his state homicide sentence is completed.

- At age 17, Charles Frazier was convicted of battery and sentenced to one year probation. On his 5th day of probation, Frazier committed an armed robbery. While awaiting trial, he was charged with attempted murder and aggravated battery. Frazier was sentenced to four years for these three offenses. He served 22 months and was released. In 1986, Frazier pled guilty to voluntary manslaughter and received a 13 year sentence. He served four years and was released. Within a year, Frazier, then a reputed Chicago gang "shooter," visited Mississippi and bragged to local residents about his violent exploits. Shortly thereafter, local police, responding to a call reporting gunfire, were aggressively confronted by Frazier. He was arrested for possession of a .25 caliber semi-automatic he carried in his waistband. Frazier became a Triggerlock defendant. He was convicted at trial of violating the Armed Career Criminal Act and was sentenced to 19 years with no parole.
- David Fleming Montgomery's criminal history, dating back 30 years, includes killing a bank robbery partner whom Montgomery believed had revealed information about the robbery. Montgomery shot him in the head. Montgomery was also previously convicted of two felony thefts, grand larceny, bank robbery, and escape. While incarcerated on armed robbery charges in Tennessee, Montgomery learned that Danny Bostic had provided information to law enforcement about a racially-motivated arson committed by Montgomery. Montgomery was released on bail in Tennessee, went to Bostic's house and shot him in the face, killing him and wounding his wife.

Montgomery was arrested and pled guilty to using a fire to commit a civil rights violation and two counts of arson.

Montgomery was convicted at federal trial in Roanoke, Virginia of obstruction of justice by killing Bostic, using a firearm to commit a crime of violence and being an armed career criminal. Montgomery was sentenced to life plus thirty-five years with no possibility of parole. After learning of this Triggerlock conviction, Bostic's widow said, "No one will ever again have to go through the terror we have been through . . . Everyone's life he's touched, he's ruined."

2. *Removing Gang Offenders*

Criminal gang activity often centers on firearms and drugs, with violence a routine method for enforcing control, settling disputes, and terrorizing the public. Federal firearms statutes are proving to be a particularly valuable tool in gang prosecutions.

- In the Northern District of Illinois, 11 defendants identified as members or associates of a notorious Chicago street gang, the Vice Lords, have been convicted of federal violations. Charges against individual gang members include firearms, narcotics, money laundering, and criminal tax violations. Weapons used by the organization include revolvers, semi-automatic pistols, and sawed-off shotguns. Twenty-seven other gang members await trial.
- Dunning R. Wells, an "enforcer" for the Renegades motorcycle club in North Ft. Myers, Florida, received a sentence of 42 years on drug and firearms violations that included use of a firearm during the commission of a federal drug trafficking offense.

-
- James Thomas, a member of a street gang, was convicted in the Western District of Oklahoma and received a sentence of 24 years imprisonment for his involvement in the gang's trafficking in narcotics and use of firearms. Thomas was apprehended following a gun battle with police that erupted when officers attempted to serve a search warrant on the gang's drug distribution center.

- In the District of Arizona, Donald L. Simpson received a sentence of life imprisonment on firearms and narcotics charges. He had been involved in smuggling tons of cocaine into the United States and supporting that activity with numerous firearms and explosives. This case is of special note because Simpson had no prior convictions. It reflects the fact that federal law is designed to deal severely not only with recidivists, but also with first offenders whose conduct is particularly egregious.

“[Project Triggerlock] is going to work out real well. The enhancements make it more advantageous to prosecute federally. Section 924(c) helps our gang unit immensely.”

- Sgt. Bill Agnew,
Omaha, Nebraska,
Police Department Gang Unit

3. Removing Drug Dealers

Drug dealing and the violence associated with it pose a major problem to many communities in this country. The stringent sentencing provisions of federal firearms and narcotics statutes provide a valuable tool for the long-term incapacitation of major drug dealers.

- In the Northern District of Florida, Michael Prikakis was sentenced to 46 years on cocaine charges and three counts of using firearms during federal drug trafficking offenses. He carried a machine gun and a 9 mm semi-automatic pistol in the course of his drug trafficking.

4. Gun Running

A significant number of Triggerlock cases involve seizures of large quantities of firearms. Some of these cases involve gun running, including the use of “straw purchasers” to buy quantities of weapons for resale on the street to drug dealers or other violent criminals. Other cases involve the use of firearms to establish “fortresses” to protect unlawful businesses, usually major narcotics operations.

For example, at the time Gardner Earnest Flockhart was arrested on cocaine trafficking charges, he was found to be in possession of 125 firearms, including shotguns, rifles, pistols, and machine guns. The weapons were seized, and after a trial in the Central District of California, Flockhart received a sentence of 17 years imprisonment. A search warrant in the Western District of Texas on the premises of drug dealer David Gregory Surasky yielded, in addition to drugs and cash, 29 long guns, 39 handguns, and three machine guns. The weapons were seized and Surasky has been sentenced to 15 years imprisonment.

"[Triggerlock] has proven to be one of the most effective tools law enforcement has at its disposal for the removal of guns from the city streets."

- Leroy Martin, Superintendent,
Chicago, Illinois,
Police Department

5. Influencing Future Behavior

It is, of course, too soon to assess either the deterrent effect or the overall crime reduction achieved by Project Triggerlock. It is clear, however, that an increase in incapacitation can only increase the level of deterrence and reduce the level of criminal activity.

"[I] believe that the Triggerlock program will, over time, have a dramatic impact on crime in this and other districts."

- John H. Harrell,
Chief of Police,
Andalusia, Alabama

Many criminals have ceased to fear the impact of the criminal justice system. Experience has taught them that even if apprehended, they will be back on the streets the same day as a result of insufficiently tough bail laws; if convicted, they will be able to avoid incarceration through lax sentencing provisions; and if incarcerated, they will soon gain release through parole or other early release procedures.

This frequent lack of concern by criminals about the ramifications of arrest and prosecution is concisely reflected in a recent statement made to an

"[A]s these laws become known to the drug dealers and career criminals, we will find fewer of them with weapons in their possession during drug deals, which, in turn, will make dealing with them safer for us."

- Lt. L. H. Brown, Assistant Commander,
Narcotics and Intelligence Bureau,
Montgomery, Alabama, Police Department

undercover police officer in the Northern District of Georgia. Ricky Junior Smith told the officer that he was not worried about being "set-up" because he "never does time" and "never will."

Project Triggerlock is designed to end this perception by putting violent criminals behind bars for long periods of time. The program permits the law enforcement system to have the last word in cases of offenders such as Ricky Junior Smith. He was recently apprehended and convicted as an armed career criminal; Smith was sentenced to a 15 year mandatory period of incarceration.

"The Armed Career Criminal statute and Project Triggerlock have added an unprecedented dimension to enforcement operations in Pennsylvania. In some cases, drug dealers have literally been disarmed 'before the fact.' As word spreads that the Federal Government is prosecuting armed drug traffickers who are, upon conviction, receiving penalties of mandatory minimum five-year consecutive sentences, some drug violators are avoiding the possession or use of guns."

- Colonel Glenn A. Walp,
Commissioner,
Pennsylvania State Police

Role of Federal, State, and Local Law Enforcement Agencies

A. State and Local Agencies

The goal of Triggerlock is to focus investigation and prosecution resources on the worst offenders to maximize law enforcement efforts. Some cases are referred to the states for prosecution and some to the federal system for prosecution. Federal law is particularly suited to prosecuting the worst felons, drug dealers and other violent criminals who use firearms.

Pursuant to the Triggerlock Task Force concept, if a defendant is arrested while in possession of a firearm -- or if he is known to have been involved in a crime utilizing a firearm -- the arresting agency should evaluate his potential as a Triggerlock target. This involves, among other things, a check of the defendant's criminal history to determine whether he has a prior felony conviction. For example, Melvin Arthur had been convicted of two shootings and two stabbings, but had served only four years for these four crimes. When he was found with a .32 caliber pistol, his case was referred to the United States Attorney in the Eastern District of Wisconsin. District Court Judge J. P. Stadtmueller called the case a "bellwether" of the type of case warranting federal involvement and sentenced Arthur to over 17 years.

As the Triggerlock program progresses, a growing number of state and local law enforcement organizations are screening their arrests for potential Triggerlock referrals. The involvement

of local law enforcement agencies in Triggerlock will likely continue to increase as word spreads of the benefits the program can provide to local communities. State and local law enforcement officials who have actively participated in Triggerlock are carrying the message to their colleagues through their praise for the program.

"Over the past three years they [federal law enforcement] have seemed to be more willing to cooperate with the little people like us. Several years ago it was kind of unheard of for us to even think about going to federal court. Now they are constantly offering to help."

- Sgt. Daniel Hawley,
Gaston County, North Carolina
Police Department

B. Federal Law Enforcement Agencies

1. Bureau of Alcohol, Tobacco and Firearms

ATF has traditionally played the lead role in investigating federal firearms violations. In 1986, the agency instituted in a number of jurisdictions a program called "Achilles." That program was designed to identify potential targets for federal firearms prosecution. It served as an important precursor to Project Triggerlock. Triggerlock builds on and expands the ideas of Achilles and applies them nationwide. Since 1990, ATF has implemented 20 Achilles task forces located in cities with high violent crime rates. These task forces are

made up of ATF agents and state and local law enforcement officers. Each task force works only in a specific portion of the city, generally limited to one or two police precincts, targeting armed career criminals, armed drug traffickers, and violent gangs. Under Project Triggerlock, ATF is a key agency developing federal firearms cases. Further, ATF provides critical assistance to other agencies with the firearms aspects of their cases.

In August 1991, ATF launched "Operation Achilles Heel," a national roundup of firearms violators. This Triggerlock roundup included gang members, armed career criminals, armed narcotics traffickers, and a violator of the gun-free school zone statute. A total of 504 defendants were arrested in 83 federal judicial districts during the two day operation. Over 50% of those defendants had prior felony convictions and over 25% were gang members or associates.

2. Federal Bureau of Investigation

The FBI is supporting Project Triggerlock with a comprehensive violent crime initiative named "Safe Streets." The Safe Streets initiative coordinates a variety of existing FBI programs to attack street violence, gang violence, and drug-related violence. As with Triggerlock, the Safe Streets strategy utilizes a task force concept. It therefore integrates well with Triggerlock.

The FBI currently has 48 Safe Streets Task Forces in place, 40 of which were initiated in 1992, and more are in the planning stage. As part of these operations, the FBI and its associated state and local law enforcement agencies remain vigilant for potential candidates for Triggerlock prosecution.

Another aspect of the FBI's Safe Streets programs which interrelates closely with Project Triggerlock is its fugitive apprehension program.

ATF - Operation Achilles Heel Top 10 Offenders

Offender	District	Number of Prior Felony Convictions	Charges	Sentence (Yrs.)
A	Puerto Rico	37	18 U.S.C. §§924(e)	Pending
B	E.D. Tennessee	25	18 U.S.C. §§924(c), 922(a)(6)	16 Yrs./8 Mos.
C	E.D. Tennessee	21	18 U.S.C. §924(e), 21 U.S.C. §841(a)(1)	27 Yrs./6 Mos.
D	E.D. North Carolina	19	18 U.S.C. §§922(g)(1), 922(j), 924(e)	19 Yrs./7 Mos.
E	E.D. North Carolina	18	18 U.S.C. §924(c)	10 Yrs.
F	W.D. Tennessee	18	18 U.S.C. §§922(g)(1), 924(e)	Pending
G	North Dakota	16	18 U.S.C. §§922(g)(1), 924(e)	15 Yrs.
H	W.D. Pennsylvania	19	18 U.S.C. §924(e)	15 Yrs.
I	S.D. Florida	12	18 U.S.C. §§922(g), 924(e)	25 Yrs.
J	N.D. Ohio	12	18 U.S.C. §922(g)(1)	5 Yrs.



The Bureau's jurisdiction under the federal Unlawful Flight to Avoid Prosecution statute places it in a position to arrest a large number of interstate fugitives who have fled state prosecution. Any such fugitive arrested in possession of a firearm is a potential Triggerlock target. Further, in some cases the criminal violation from which the individual fled may itself provide a basis for a Triggerlock prosecution.

The FBI has historically incorporated firearms violations into its sophisticated organized crime investigations. The unique experience gained during these traditional organized crime investigations has translated effectively into investigations of criminal street gangs, including armed street gang members. The Bureau has reallocated its resources to meet the rise in street gang violence and criminal activity.

3. *U.S. Marshals Service*

Like the FBI, the U.S. Marshals Service is significantly involved in the apprehension of fugitives. In an effort to enhance its contribution to the federal attack on violent crime, the Marshals Service recently initiated Operation Gunsmoke, a program designed to increase its level of fugitive apprehensions.

More than 70 local, state, and federal law enforcement agencies joined the U.S. Marshals in cities across the country including ATF, FBI and DEA. During the 68 days of the Operation, over 3,300 fugitives were apprehended and detained awaiting trial in federal and state court. Three hundred and sixty-five defendants were armed at the time of capture. These armed fugitives had

an average of four prior convictions for violent offenses. Triggerlock cases are pending against the worst of these fugitives.

4. Drug Enforcement Administration

The Drug Enforcement Administration develops Triggerlock prosecutions as a byproduct of its drug trafficking investigations. In view of the documented frequency with which narcotics traffickers utilize

firearms, DEA is in a position to identify a significant number of potential Triggerlock targets.

Additionally, DEA has engaged in local task force projects which focus on the violent activity of narcotics traffickers. For instance, prior to the initiation of Project Triggerlock, DEA joined with state and local law enforcement organizations in Philadelphia to undertake a Violent Traffickers Project (VTP). That program focuses on highly-organized drug gangs. Since the inception of Project Triggerlock, VTP has referred numerous firearms violations for Triggerlock prosecution.

Future Directions

Project Triggerlock has already demonstrated the effectiveness of the federal-state-local partnership in combating violent crime. The challenge now is to augment its achievements. Several areas are readily apparent.

First, current federal firearms laws must be strengthened with two provisions modeled after the 15 year mandatory minimum sentence in the Armed Career Criminal Act. One would mandate a five-year minimum prison sentence for a one-time violent felon who possesses a firearm. The other would mandate a ten-year mandatory minimum sentence for felons with two violent felony convictions who are in possession of a firearm. Possession of a firearm by a felon is already illegal, but the penalty typically imposed is less than these proposed mandatory minimums.

Second, legal loopholes that stymie some Triggerlock prosecutions under the Armed Career Criminal Act and the felon in possession statute must be closed. Under current federal and state laws, prosecutors and federal courts are barred in some cases from fully considering the prior criminal records of armed felons for these core Triggerlock statutes. As a result, some armed felons with three or more serious felony convictions cannot be prosecuted as armed career criminals. The Department of Justice will continue to ask Congress to close these loopholes so that all armed felons with long criminal records can be sentenced under the Act's 15 year mandatory minimum for possessing firearms.

Third, the Justice Department will also expand our own efforts under Project Triggerlock. Building on the successes of Operation Gunsmoke and the Safe Streets initiative, we will step up efforts to apprehend armed fugitives. Federal law covers both

fugitives from the federal criminal justice system and also those who flee state systems and cross state lines. Section 922(g)(2), which provides a penalty of up to ten years imprisonment for fugitives in possession, is being applied to these fugitives who are armed. These efforts must continue, as there are thousands of fugitives -- many of whom are armed and pose a serious threat to public safety. Likewise, section 922(g)(5) applies to illegal aliens who possess firearms. The Immigration and Naturalization Service will assist in identifying suitable cases for prosecution.

Fourth, continuing the federal commitment to prisons, prosecutors, and investigators is critical to make and keep our communities safer. Project Triggerlock is by design a joint effort, requiring the support of state and local law enforcement officers and prosecutors, federal agents, and U.S. Attorneys. Increased cooperation and added resources on all levels of law enforcement can only strengthen the fight against violent crime.

Finally, but most importantly, the states need to enhance their commitment to fight violent crime through legislative changes. The hard work of local law enforcement officials will not be fully effective until state legislators act to give them the proper tools to combat crime. This means implementation of bail reform, tightening up of the parole system, longer and mandatory prison terms for violent offenders and increased prison capacity. Where federal court decrees cap state prison space needlessly and worsen the "revolving door" problem, the Department of Justice has recently adopted a flexible approach to modifying such decrees.

There is no greater responsibility of government than the protection of its citizens. The growing federal response to violent crime demonstrates our commitment to fulfilling this responsibility. With the states as full partners, we can succeed in building an even better, safer America.

Appendix

Table 1 - Cumulative Monthly Total of Defendants Charged
May 1, 1991 - April 30, 1992

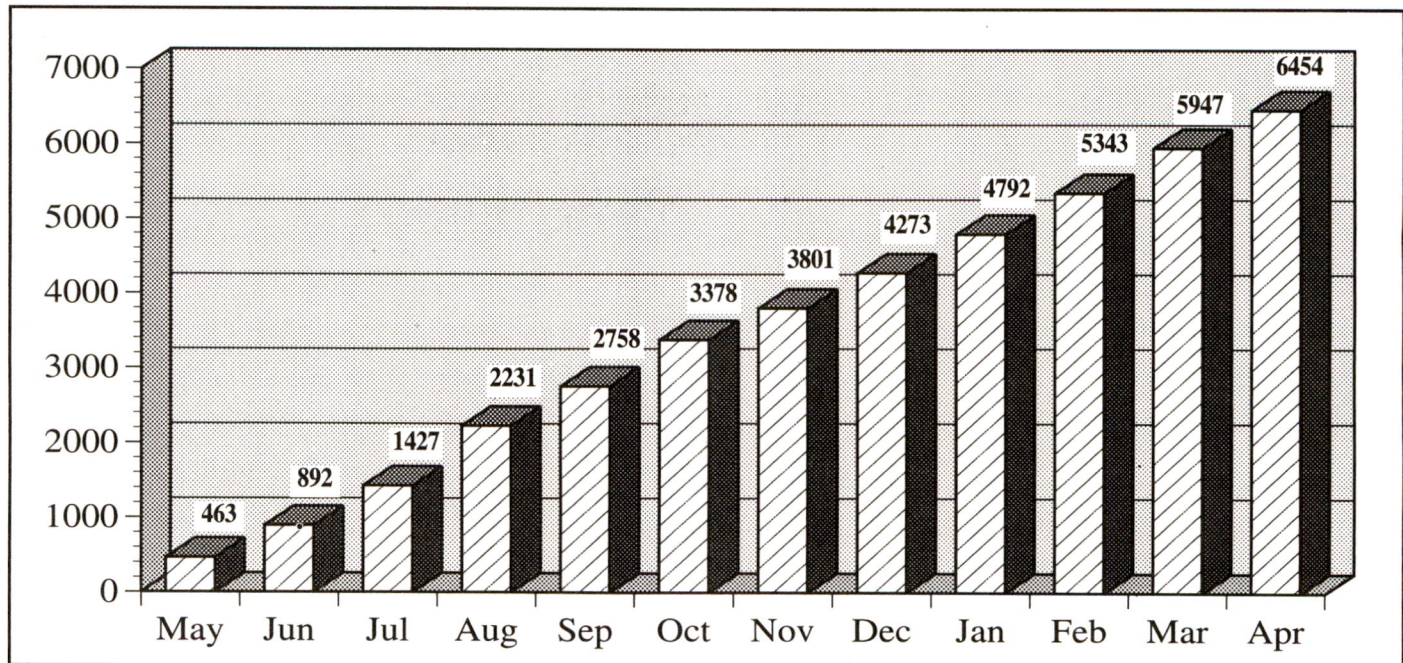


Table 2 - Prosecution Under Project Triggerlock

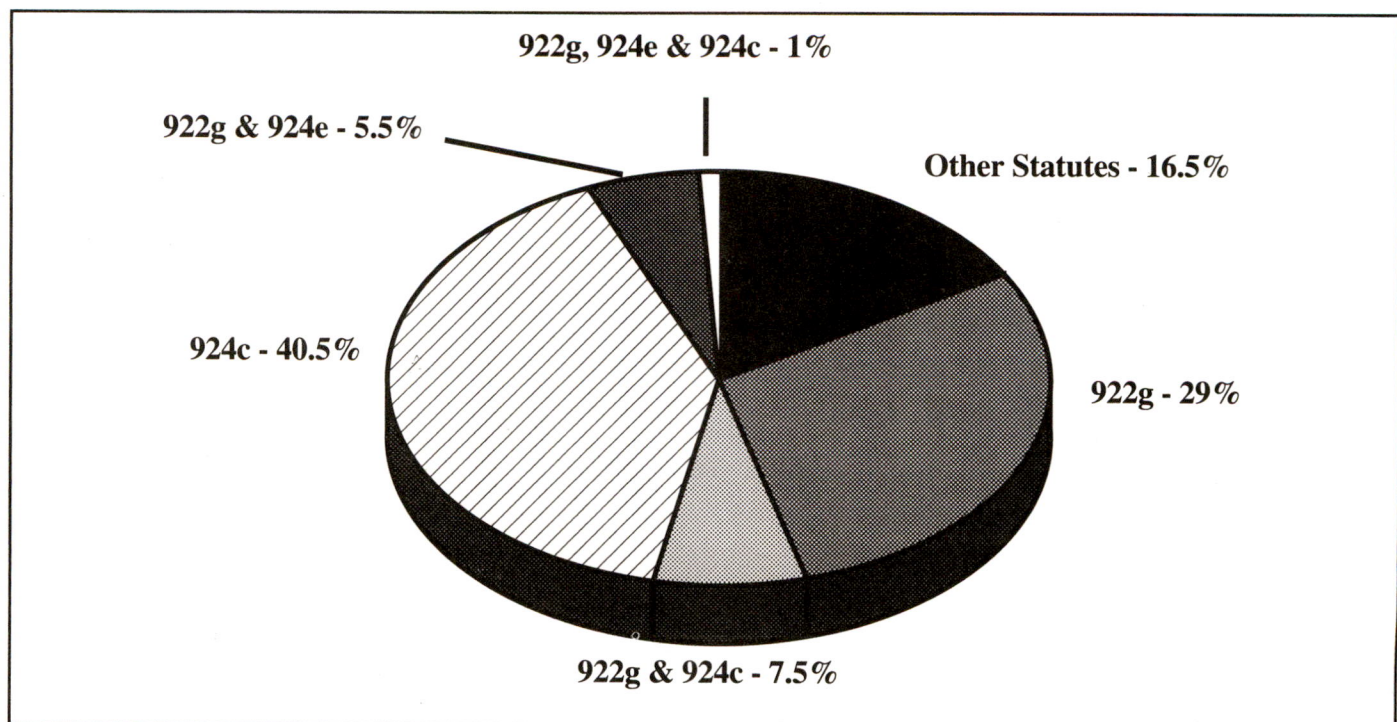


Table 3 - Triggerlock Prosecutions by District

April 10, 1991 - April 30, 1992*

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Alabama, M	31	38	4	1	0	0	74
Alabama, N	14	34	7	0	1	9	65
Alabama, S	33	20	1	1	2	6	63
Alaska	8	6	4	1	0	0	19
Arizona	51	73	9	0	0	51	184
Arkansas, E	14	38	2	1	0	8	63
Arkansas, W	4	6	1	0	0	1	12
California, E	16	16	6	7	0	4	49
California, N	23	11	8	3	0	5	50
California, C	44	101	16	2	0	31	194
California, S	16	37	5	10	3	11	82
Colorado	18	18	2	0	0	14	52
Connecticut	32	4	1	5	0	9	51
Delaware	14	2	1	1	0	1	19
District of Columbia	24	87	26	0	0	27	164
Florida, M	26	40	9	13	2	11	101
Florida, N	23	28	6	9	1	6	73
Florida, S	28	10	7	24	2	14	85
Georgia, M	22	24	0	22	1	6	75
Georgia, N	19	46	5	6	2	16	94
Georgia, S	8	34	6	0	2	4	54
Guam	9	0	0	1	0	1	11
Hawaii	14	5	0	3	0	5	27
Idaho	1	22	2	1	1	3	30
Illinois, C	31	19	5	11	0	5	71

* Project Triggerlock began on April 10, 1991.

Table 3 - Triggerlock Prosecutions

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Illinois, N	39	55	9	2	0	20	125
Illinois, S	19	22	4	3	0	5	53
Indiana, N	12	9	0	2	0	11	34
Indiana, S	13	23	4	4	0	0	44
Iowa, N	10	3	1	1	0	2	17
Iowa, S	4	5	0	1	0	1	11
Kansas	20	20	3	0	1	14	58
Kentucky, E	19	36	9	4	0	10	78
Kentucky, W	19	14	12	1	2	22	70
Louisiana, E.	11	23	8	3	0	8	53
Louisiana, M	4	0	0	0	0	2	6
Louisiana, W	7	23	8	3	0	6	47
Maine	15	4	2	6	1	20	48
Maryland	35	27	10	1	0	16	89
Massachusetts	32	7	4	14	2	9	70
Michigan, E	56	50	25	7	0	37	175
Michigan, W	3	15	2	0	0	0	20
Minnesota	11	20	1	5	0	6	43
Mississippi, N	10	14	10	0	0	12	46
Mississippi, S	19	32	8	2	0	3	64
Missouri, E	32	16	9	4	0	6	67
Missouri, W	10	25	6	6	1	5	53
Montana	18	4	2	0	0	3	27
Nebraska	7	8	2	1	1	2	21
Nevada	19	54	0	3	0	11	87

Table 3 - Triggerlock Prosecutions

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
New Hampshire	10	0	0	2	3	6	21
New Jersey	19	31	0	1	1	13	65
New Mexico	35	42	7	5	0	7	96
New York, E	16	21	3	2	0	14	56
New York, N	7	13	0	0	0	8	28
New York, S	16	81	14	2	1	34	148
New York, W	6	19	0	0	0	5	30
North Carolina, E	16	33	4	10	1	5	69
North Carolina, M	8	87	15	0	1	10	121
North Carolina, W	29	139	17	5	2	6	198
North Dakota	12	1	2	2	0	2	19
Ohio, N	34	42	5	7	0	6	94
Ohio, S	15	30	3	2	0	17	67
Oklahoma, E	7	9	5	0	0	2	23
Oklahoma, N	30	15	2	1	0	9	57
Oklahoma, W	25	11	5	7	1	13	62
Oregon	27	15	4	10	0	30	86
Pennsylvania, E	54	60	18	4	0	14	150
Pennsylvania, M	10	14	6	7	0	7	44
Pennsylvania, W	13	14	1	3	1	5	37
Puerto Rico	8	66	1	2	0	9	86
Rhode Island	12	8	3	1	0	11	35
South Carolina	30	49	6	1	1	13	100
South Dakota	15	9	2	0	0	10	36
Tennessee, E	33	29	25	8	0	14	109

Table 3 - Triggerlock Prosecutions

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Tennessee, M	11	21	2	2	0	7	43
Tennessee, W	33	83	10	10	0	7	143
Texas, E	16	44	9	7	2	4	82
Texas, N	66	89	22	15	2	16	210
Texas, S	50	72	15	8	2	47	194
Texas, W	124	84	5	12	0	46	271
Utah	15	19	1	1	0	20	56
Vermont	10	1	0	6	0	2	20
Virgin Islands	4	8	0	1	0	6	19
Virginia, E	44	49	7	2	0	127	229
Virginia, W	32	20	8	2	0	24	86
Washington, E	45	73	6	11	1	20	156
Washington, W	13	35	2	5	0	5	60
W. Virginia, N	19	4	0	1	0	7	31
W. Virginia, S	17	20	1	4	0	13	55
Wisconsin, E	13	22	3	4	0	3	45
Wisconsin, W	2	4	2	0	0	1	9
Wyoming	7	13	0	3	0	7	30
North Mariana Island	1	0	0	0	0	0	1
Grand Total	1978	2727	514	371	44	1111	6745