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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Legislative Changes Are Needed To More Efficiently And Equitably Handle Certain Cases Under The Federal Youth Corrections Act

GAO is recommending that the Congress

--eliminate the disparity in the terms of probation that judges and magistrates are authorized to impose under the Federal Youth Corrections Act for petty offenses and misdemeanors,

--limit the sentences of incarceration that district court judges may impose on youthful offenders for petty offenses and misdemeanors to those that may be imposed on adult offenders, and

--terminate the involvement of the United States Parole Commission and the Federal Probation System in cases where youthful offenders have been sentenced to incarceration for petty offenses and misdemeanors.

These changes would (1) enable judges and magistrates to more consistently handle cases involving youthful offenders and (2) relieve the United States Parole Commission and the Federal Probation System of the responsibility for carrying out certain unproductive activities.

120775

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-133223

To the President of the Senate and the
Speaker of the House of Representatives

The General Accounting Office recently issued a report on a review of Federal parole practices. 1/ The objectives of that review were to assess how well the United States Parole Commission carried out its activities and to determine the extent of coordination between the Parole Commission and those components of the judicial and executive branches of the Federal Government which provide information to the Commission for its use in making parole release decisions.

As part of that review, we examined those provisions of the Federal Magistrates Act (18 U.S.C. §3401 et seq.) authorizing magistrates to sentence youthful offenders and exercise other powers granted to the district court under the Federal Youth Corrections Act (18 U.S.C. §5005 et seq.). 2/ Certain problems identified during that review, but not appropriate for inclusion in the report, are discussed here. Specifically, disparities exist in the terms of probation and incarceration that magistrates may impose compared to judges for similar cases involving youthful offenders convicted of petty offenses and misdemeanors and sentenced under the Federal Youth Corrections Act. Also, few, if any benefits are derived from the

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1/"Federal Parole Practices: Better Management And Legislative Changes Are Needed" (GAO/GGD-82-1, July 16, 1982).

2/The Federal Youth Corrections Act (18 U.S.C. §5005 et seq.) was enacted in 1950 and amended by the Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4201 et seq.) to provide an alternative sentencing program for Federal judges to use for youth who were under the age of 22 years and showed promise of becoming useful citizens. If an offender is under 22 at the time of conviction, the court may impose an adult sentence only if it finds that the youth will not derive benefit from treatment under the act. A law enacted in 1958 (Public Law 85-752, Aug. 25, 1958) amended the laws dealing with parole to provide that an offender who is at least 22 but not yet 26 at the time of conviction also may be sentenced under the Federal Youth Corrections Act if the court finds that there are reasonable grounds to believe that the defendant will benefit from treatment under the act.

requirements which call for parole consideration and parole supervision of youthful offenders who are sentenced to incarceration for short periods--6 months for petty offenses and 1 year for misdemeanors.

Our observations in this report are based on our earlier review of Federal parole practices. We also held discussions with magistrates, probation officers, and other officials within the Administrative Office of the United States Courts and the Parole Commission. Our work was conducted in accordance with generally accepted Government auditing standards.

BACKGROUND

The Parole Commission and Reorganization Act of 1976 established the United States Parole Commission as an independent agency in the Department of Justice with broad discretionary power. The Commission has parole jurisdiction over all eligible Federal prisoners, wherever confined, and continuing jurisdiction over those who are released on parole or as if on parole (mandatory release). [3]/

The Federal Probation System, established in 1925, consists of 94 probation offices under the overall administrative direction of the Administrative Office of the United States Courts. [4]/ The Probation Division, within the Administrative Office, is responsible for providing direction to and evaluating the operations of the Federal Probation System. The principal responsibility of the Federal Probation System is the preparation of presentence investigation reports and the supervision of probationers for Federal district courts. Although the Federal Probation System has no direct organizational affiliation with the Parole Commission, probation officers provide field supervision for offenders paroled or mandatorily released from Federal correctional institutions.

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[3]/Parole returns an institutionalized offender to the community under certain conditions before completion of his or her sentence. A prisoner denied parole will be released at expiration of the sentence less any institutional good time earned. The prisoner is released to mandatory release supervision (as if on parole) for that portion of the remaining sentence which exceeds 180 days. When a prisoner with 180 days or less remaining on the sentence is released by expiration of sentence, release is without supervison.

[4]/Probation is a court-imposed sanction which permits an offender to remain in the community under the supervision of a probation officer instead of being incarcerated.

The Federal Magistrates Act of 1968 established a new office of United States magistrate. The legislative history of the act emphasized the potential for district courts to improve the quality of justice and expedite the disposition of their caseloads through referral of appropriate judicial matters by judges to magistrates. The jurisdiction of magistrates was clarified to some extent and expanded by amendments to the act in 1976 and 1979.

The Federal Magistrates Act of 1968 did not specifically provide for magistrates to use the sentencing provisions of the Federal Youth Corrections Act. However, the 1979 amendments to the act authorized a magistrate, upon the court's specific designation and litigants' consent, to impose sentence and exercise other powers granted to the district court under the Federal Youth Corrections Act in cases involving petty offenses and misdemeanors. The amendments also placed three specific limitations on a magistrate's authority when imposing sentence under the Federal Youth Corrections Act:

--A magistrate may not place a youth on probation for a period in excess of 6 months for a petty offense or 1 year for a misdemeanor.

--A magistrate may not sentence a youth to the custody of the Attorney General for a period in excess of 6 months for a petty offense or 1 year for a misdemeanor.

--If a youth is incarcerated, he/she must be released conditionally, under supervision, not less than 3 months before the end of the term imposed by a magistrate and must be discharged unconditionally on or before the end of such term.

These limitations have given rise to problems within the Federal criminal justice system.

SENTENCING DISPARITIES EXIST FOR YOUTHS CONVICTED OF PETTY OFFENSES AND MISDEMEANORS UNDER THE FEDERAL YOUTH CORRECTIONS ACT

The 1979 amendments to the Federal Magistrates Act created disparities in the sentences that magistrates may impose, compared to judges, under the Federal Youth Corrections Act for petty offenses and misdemeanors. These disparities exist for both probation and incarceration.

Probation

Both judges and magistrates may impose a 5-year term of probation for adults. A judge can also impose a 5-year term of probation under the Federal Youth Corrections Act, but a magistrate may impose only a 6-month or 1-year term of probation for petty offenses and misdemeanors, respectively. 5/ Thus, youthful offenders convicted of the same crime are subject to inequitable treatment. In addition to being disparate, the 6-month and 1-year periods of probation are too short in many cases for probation officers to prepare and execute a meaningful program of assistance or rehabilitation for youthful offenders. 6/

The Standing Committee on United States Magistrates of the Federal Bar Association undertook a national survey of its members on a number of questions relevant to the future use and development of the Federal Magistrate System. The committee's report, which was issued in 1981, pointed out that many magistrates had found that the probationary period they could impose on a youthful offender was too short to deal with those who had little or no education and/or job skills or were narcotics users. They also were constrained in cases in which restitution could be imposed as part of the sentence because the amount was beyond the means of the offender to repay within 6 months or 1 year. Many members of the Federal Bar Association who responded to the national survey favored an amendment that would allow a longer period of probation to be imposed where warranted. The proponents of the amendment observed that the restriction encourages a magistrate to sentence a youth as an adult in order to have meaningful probation for the time period necessary in the judgment of the individual magistrate. This means the youth will not have the conviction removed from his/her record upon completion of the sentence as would have been the case under the Federal Youth Corrections Act.

The National Council of United States Magistrates also recommended to the Judicial Conference of the United States in June 1981 that the probation limitation be eliminated. Magistrates were of the view that a 6-month or 1-year period of probation simply did not provide sufficient time in many

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5/The maximum period of probation for a petty offense, misdemeanor, or felony is 5 years under 18 U.S.C. §3651.

6/Probation officers are responsible under 18 U.S.C. §3655 for the supervision of probationers for Federal district courts.

cases for a probation officer to prepare and execute a meaningful program of assistance or rehabilitation for a youthful offender. Also, the magistrates saw no reason for placing a limit on the term of probation of a youthful offender that was considerably shorter than the maximum 5-year period applicable for an adult offender who committed a similar offense.

A December 1981 report to the Congress by the Judicial Conference of the United States discussed the probation limitation for youthful offenders sentenced by magistrates under the Federal Youth Corrections Act.[7] The report recommended that action should be taken by the Congress to repeal the provision and stated that the probationary period should be the same as for adults.

Incarceration

The maximum sentences that judges and magistrates may impose on adult offenders for petty offenses and misdemeanors are 6 months and 1 year, respectively. These are the same sentences which the 1979 amendments to the Federal Magistrates Act (18 U.S.C. §3401 et seq.) authorized magistrates to impose under the Federal Youth Corrections Act. However, the Federal Youth Corrections Act (18 U.S.C. §5010(b)) provides that a judge will impose a 6-year sentence on a youthful offender for all offenses. There is no statutory minimum period which a youthful offender receiving the 6-year sentence must be confined and the actual length of confinement is left to the discretion of the Parole Commission. The discretion is limited in that the offender statutorily is required to be released under parole supervision on or before the expiration of 4 years from the date of conviction and to be discharged unconditionally on or before the expiration of 6 years from such date.

The Judicial Conference's December 1981 report discussed these disparities in sentencing authority between judges and magistrates and recommended that they be rectified. Also, authority of the district courts to impose a 6-year sentence for petty offenses and misdemeanors under the Federal Youth Corrections Act, even though an adult offender may receive only a 6-month and 1-year sentence for those offenses, was addressed in recent decisions by two of the United States Courts of Appeals.[8] These courts stated that the Congress

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[7]"The Federal Magistrates System," Report to the Congress by the Judicial Conference of the United States, December 1981.

[8]United States v. Amidon, 627 F.2d 1023 (9th Cir. 1980); and United States v. Hunt, 661 F.2d 72 (6th Cir. 1981).

intended the 1979 amendments to eliminate the inequities between youth and adult sentencing, and that there is no reason why a youthful defendant who happens to be sentenced by a district court judge instead of by a magistrate should be subject to the potential inequity of a sentence longer than could be imposed on an adult. Consequently, they concluded that the 6-month and 1-year limitations on sentencing youths in petty offense and misdemeanor cases applied to district judges as well as magistrates.

To ensure that youthful offenders are not treated more harshly than adults, the Congress should enact legislation consistent with the decisions of the two United States Courts of Appeals.

Probation and incarceration

In discussing matters contained in this report with officials from the Parole Commission and the Administrative Office of the United States Courts, an additional issue was brought to our attention--the need for judges and magistrates to have the authority to impose a split sentence involving both incarceration and probation on youthful offenders.

A split sentence allows a judge or magistrate more sentencing flexibility in that he/she may order that the defendant be confined in a correctional facility or a treatment institution for a period of up to 6 months followed by a period of probation of up to 5 years. Judges and magistrates may impose a split sentence under 18 U.S.C. §3651 on adults for any offense which is at least a misdemeanor for which the maximum punishment exceeds 6 months except for any offense punishable by death or life imprisonment. The Federal Youth Corrections Act does not specifically authorize magistrates and judges to impose a split sentence on youthful offenders. The only option available is either probation or incarceration. Agency officials favored amending the act to specifically authorize split sentences.

Although this matter was not covered during our review, it appears to us that the suggestion has merit. It would enable judges and magistrates to have more flexibility in sentencing youthful offenders. Under present law, if a judge or magistrate believed that a split sentence was appropriate, he/she could only impose it by treating the offender as an adult.

OFFENDERS SENTENCED TO INCARCERATION BY MAGISTRATES UNDER THE FEDERAL YOUTH CORRECTIONS ACT DO NOT WARRANT PAROLE CONSIDERATION OR PAROLE SUPERVISION

The Parole Commission makes parole release determinations and the Federal Probation System supervises youthful offenders sentenced to incarceration by magistrates under the Federal Youth Corrections Act (18 U.S.C. §5005 et seq.). However, their sentences are so short that few, if any, benefits are obtained from parole consideration or parole supervision.

Magistrates are empowered to sentence youthful offenders under 18 U.S.C. §3401 to incarceration for periods not in excess of 6 months and 1 year, respectively, for petty offenses and misdemeanors. When a magistrate imposes a Federal Youth Corrections Act sentence, it automatically constitutes a sentence not in excess of 1 year for a misdemeanor with a conditional release under parole supervision not less than 3 months before the expiration of the term imposed. The time frame for a petty offense is a sentence not in excess of 6 months with conditional release under parole supervision not less than 3 months before expiration of the term imposed. Probation officers would normally have these offenders under supervision for a very short period of time--3 months.

The Parole Commission has taken the position that there are substantial practical problems in making parole release determinations for youthful offenders sentenced by magistrates. First, these sentences are too short to permit the Commission to follow its normal hearing procedures. Second, most youthful offenders sentenced to a term of incarceration of 1 year or less will not be confined in Federal correctional institutions that are regularly visited by the Commission's hearing examiners. The Commission believes that the costs associated with making parole release determinations on youthful offenders sentenced by magistrates will outweigh any benefits. Therefore, the Commission recommended to the Department of Justice that the Magistrates Act be amended to make youthful misdemeanants and petty offenders ineligible for parole and to allow a magistrate to determine the date of release at the time of sentencing, as is the case with adult offenders sentenced under 18 U.S.C. §4205(f).

In February 1981, the Administrative Office of the United States Courts issued guidance to all judicial districts which called for the parole supervision of youthful offenders sentenced by magistrates once they were conditionally released from imprisonment. According to Federal Probation Division officials, there are few, if any, benefits associated

with the supervision of these cases because the length of time under supervision--generally 3 months--is too short to effectively work with these offenders.

The Judicial Conference's December 1981 report discussed some of the problems associated with parole consideration and parole supervision of youthful offenders sentenced under the Magistrates Act. The report stated:

> "The United States Parole Commission has proposed that the conditional release provision of the 1979 amendments be repealed. Under its regulations the Parole Commission must conduct a hearing before the release of an offender. A three-month period of incarceration is said not to provide sufficient time to process an offender into an institution, to give notice of a parole determinations proceeding, to conduct the hearing, and to release the offender. The mandatory three-month period of supervision by a parole officer following discharge, moreover, is too short to be effective. The costs of administration and paperwork in such a short-term situation are significant. Even a nine-month period is said by the Commission to be too short to warrant consideration of parole. The Commission has therefore recommended an amendment to the 1979 legislation to make misdemeanants and petty offenders ineligible for parole and to allow a magistrate to determine the date of release at the time of sentencing, as is the case with adult misdemeanants under 18 U.S.C. §4205 (f)."

Several Parole Commissioners told us that if its recommendations were implemented, the cost associated with making parole release determinations and supervising these individuals would be eliminated, although they could not estimate how much.

CONCLUSIONS

The Federal Magistrates Act limits the term of probation that a magistrate may impose on an offender sentenced under the Federal Youth Corrections Act to a period that is too short to be meaningful. We see no reason for limiting the term of probation imposed by a magistrate for youthful offenders to a period shorter than the maximum period that can be imposed by a judge and believe that it should be changed. Also, the Federal Youth Corrections Act should be amended to limit the period of incarceration which a judge can sentence a youthful offender for a misdemeanor or a petty offense to 1 year and 6 months, respectively. This would ensure that

youths would not be treated more harshly than adult offenders and would eliminate the disparity in the periods of incarceration that judges and magistrates are authorized to impose on youths. In addition, the suggestion that the Federal Youth Corrections Act be amended to authorize magistrates and judges to impose split sentences appears to us to have merit. The change would enable the district court more flexibility in dealing with youthful offenders.

The provisions of the Federal Magistrates Act which require parole consideration and parole supervision of youthful offenders sentenced to incarceration for petty offenses and misdemeanors should be eliminated. Their sentences are so short that these activities are not cost-effective to the Parole Commission or the Federal Probation System and are of little help to offenders.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend the Federal Magistrates Act (18 U.S.C. §3401 *et seq.*) to:

--Remove the restriction on the term of probation that a magistrate may impose under the Federal Youth Corrections Act--6 months for a petty offense and 1 year for a misdemeanor--to allow a magistrate to impose the same maximum period of probation that a judge can impose--5 years.

--Eliminate the requirements that for youthful offenders sentenced to incarceration under the Magistrates Act (1) the Parole Commission make parole release determinations and (2) the Federal Probation System supervise them.

We also recommend that the Congress amend the Federal Youth Corrections Act to (1) limit the period of incarceration which a judge can sentence a youthful offender for a petty offense or misdemeanor to 6 months and 1 year, respectively, and (2) authorize judges and magistrates to impose split sentences on youthful offenders.

AGENCY COMMENTS AND OUR EVALUATION

Comments on a draft of this report were received from the Parole Commission, the Chairman, Committee on the Administration of the Federal Magistrates System, Judicial Conference of the United States, and the Administrative Office of the United States Courts. (See apps. IV through VI.)

Parole Commission

The Commission, by letter dated December 29, 1982, concurred with all of the findings and recommendations contained in this report.

Chairman, Committee on the Administration of the Federal Magistrates System, Judicial Conference of the United States

The Chairman commented on a draft of this report by letter dated January 12, 1983. The Chairman concurred with our recommendations to (1) eliminate the disparity in the terms of probation that judges and magistrates are authorized to impose under the Federal Youth Corrections Act for petty offenses and misdemeanors; (2) limit the period which a judge can sentence a youthful offender to the custody of the Attorney General for a petty offense or a misdemeanor to that which may be imposed on adult offenders; and (3) authorize judges and magistrates to impose split sentences on youthful offenders convicted of misdemeanors and felonies.

The Chairman expressed some concern about our recommendation to terminate the involvement of the Parole Commission and the Federal Probation System in cases where youthful offenders have been sentenced to incarceration for petty offenses and misdemeanors. He stated that the recommendation raises a question as to whether the Federal Youth Corrections Act should continue to apply to misdemeanor and petty offense cases and pointed out that our proposal for the automatic issuance of certificates setting aside convictions appears to eliminate all discretion on the part of either the Parole Commission or the sentencing court. We agree with the Chairman's concern over the automatic setting aside of the convictions and have revised our proposed legislation to provide the court with the authority to not issue a certificate setting aside the conviction of a youthful offender for good cause. We believe that, as an alternative to having a probation officer regularly supervise these cases, the court could request a probation officer to check the offender's criminal record near the end of the sentence. The court could then make a determination on setting aside the conviction.

Administrative Office of the United States Courts

The Administrative Office commented on a draft of this report by letter dated January 14, 1983. 9/ The Office concurred with our recommendations to (1) allow a magistrate to impose the same maximum period of probation that a judge can impose--5 years, and (2) amend the Federal Youth Corrections Act to limit the period to which a judge can sentence a youthful offender to the custody of the Attorney General for a petty offense or misdemeanor to that which may be imposed on adult offenders.

The Administrative Office advised us that our proposed legislation would not eliminate disparity with respect to youths convicted of felonies which might carry a shorter maximum penalty as adult offenses than the 6-year sentence under 18 U.S.C. §5010(b) of the Federal Youth Corrections Act. While it may be that the disparity noted by the Administrative Office can occur, it is not clear the extent to which existing laws provide for sentences of less than 6 years for conviction of a felony. Further, it should be noted that youthful offenders sentenced under 18 U.S.C. §5010(b) must be released under parole supervision after serving no more than 4 years for conviction of a felony. Consequently, this disparity is not as apparent as those involving petty offenses and misdemeanors where, as a matter of law, adults cannot receive sentences exceeding 6 months and 1 year respectively, but youthful offenders sentenced by a judge receive a 6-year sentence. Since we did not examine this issue during our review and it is not clear whether such a disparity frequently occurs, if at all, we have not modified our recommendations to address this matter. However, should it be shown that the disparity noted by the Administrative Office, in fact, does exist, and legislation encompassing our recommendations is introduced which also addresses this disparity, we would support it.

Also, the Administrative Office partially concurred with our recommendation to terminate the involvement of the Parole Commission and the Federal Probation System in cases where youthful offenders have been sentenced to incarceration by magistrates. The Administrative Office concurred with our recommendation that the Parole Commission be relieved

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9/The comments from the Administrative Office of the United States Courts were coordinated with the Chairman, Committee on the Administration of the Probation System, Judicial Conference of the United States.

of the responsibility for making parole release determinations; however, it favored the continued supervision of these cases by probation officers. It proposed an alternative approach whereby judges and magistrates could impose court ordered parole supervision under provisions similar to 18 U.S.C. §4205(f).

Although we agree with the purpose of the Administrative Office's alternative, namely, to relieve the Parole Commission of making release determinations for certain youthful offenders and to provide a meaningful experience for the offender while under supervision, we continue to believe that our recommendation is preferable. We note that while 18 U.S.C. §4205(f) applies to misdemeanors, it does not apply to petty offenses. Further, the period of supervision under an arrangement similar to section 4205(f) would be no more than 8 months because the offender would be required to serve one-third of the 12-month sentence. We question whether periods of supervision of 8 months or less constitute a meaningful experience for an offender under supervision. We do not believe that merely extending the period of supervision from the present 3 months to periods not exceeding 8 months adequately addresses this matter.

The Administrative Office did not take a position on our recommendation that the Federal Youth Corrections Act be amended to authorize judges and magistrates to impose split sentences on youthful offenders. It stated that this matter should receive further study. Also, the Administrative Office questioned whether a youthful offender should automatically receive a set aside of his/her conviction in view of the fact that such relief is discretionary for an offender on probation. As we stated previously, we have revised our recommendation by providing the court with the authority to determine not to issue a certificate setting aside a conviction for good cause.

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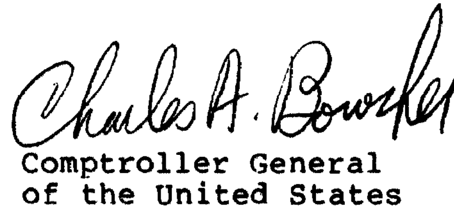
We are sending copies of this report to the Attorney General; the Director, Administrative Office of the United States Courts; the Chairman, United States Parole Commission; and the Chairmen, Committee on Administration of the Probation System and Committee on Administration of the Federal Magistrates System, Judicial Conference of the United States; the Chief Justice of the United States; and the chief judge of each Federal district court.

Proposed amendments to the Federal Magistrates Act and the Federal Youth Corrections Act are included in appendix I. Appendix II contains a summary description of the changes and effects which would result from enactment of the proposed legislation. Appendix III shows how the United States Code would read if the proposed legislation was enacted.



Comptroller General
of the United States

PROPOSED STATUTORY AMENDMENT

Based on our recommendations to the Congress, the proposed legislation would read:

AN ACT

To provide for the more effective treatment of youth offenders under the Federal Youth Corrections Act.

Be it enacted by the Senate and House of Representatives of the United States of America assembled,

Section 1. Section 3401(g) of title 18, United States Code, is amended--

(a) by striking out paragraph (2); and

(b) by redesignating paragraph (3) as paragraph (2) and inserting in lieu thereof the following:

"the magistrate may suspend the imposition of sentence and place the youth offender on probation for a period not to exceed 5 years."

Section 2. Section 5010 of title 18, United States Code, is amended--

(a) by inserting "for a period exceeding one year" after "by imprisonment" in subsection (b);

(b) by inserting "convicted of an offense punishable by imprisonment for a period exceeding one year" after "offender" and before "may" in subsection (c);

(c) by adding at the end of subsection (d) the following sentence: "If a youth offender is convicted of an offense, the maximum punishment for which is more than 6 months, the court may impose a sentence in excess of 6 months and provide that the youth offender be committed to the custody of the Attorney General for treatment and supervision pursuant to this chapter for a period not exceeding 6 months and that the execution of the remainder of the sentence be suspended and the youth offender be placed on probation for any period not to exceed 5 years."; and

(d) by adding at the end thereof the following new subsection:

"(f) If the court shall find that a person convicted of a petty offense or a misdemeanor is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter provided that the period of custody not exceed 6 months for a petty offense or 1 year for a misdemeanor."

Section 3. Section 5021 of title 18, United States Code, is amended--

(a) by inserting "sentenced under section 5010(b) or 5010(c) of this chapter" after "committed youth offender" in subsection (a); and

(b) by adding at the end thereof the following new subsection:

"(c) Where a youth offender has been committed under section 5010(f) of this chapter, and completed his term of treatment and supervision, the court shall automatically issue to the youth offender a certificate setting aside the conviction; unless the court determines for good cause why such certificate should not be issued."

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 amends 18 U.S.C. 3401(g) which authorizes a magistrate, in a case involving a youth offender in which the youth has consented to trial before a magistrate, to impose sentence and exercise the other powers granted to the district court under the Federal Youth Corrections Act, 18 U.S.C. 5005-5026. The magistrate's jurisdiction is limited by section 3401(g) to cases involving persons accused of committing misdemeanors. Subsection 3401(g) provides for three differences in the way youth offenders sentenced by magistrates are treated in comparison to those sentenced by district courts.

Subsection 3401(g)(1) provides that magistrates may sentence youth offenders to the custody of the Attorney General for a period not in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense. This differs from the authority given to the district courts under 18 U.S.C. 5010(c) to sentence youth offenders to the custody of the Attorney General for 6 years for the conviction of similar offenses. This difference in treatment is addressed in section 2 of the proposed legislation.

Section 1(a) of the proposed legislation would eliminate subsection 3401(g)(2), which provides that youth offenders shall be released conditionally under supervision no later than 3 months before the expiration of the term imposed by the magistrates, and shall be discharged unconditionally on or before the expiration of the maximum sentence imposed. GAO has identified a number of practical problems that result from the application of subsection 3401(g)(2) to the short sentences that may be imposed by magistrates on youth offenders convicted of misdemeanors and petty offenses. Eliminating the requirements of subsection 3401(g)(2) would relieve the Parole Commission and the Federal Probation System from being required to take parole and probation actions which result in few, if any, benefits.

Section 1(b) of the proposed legislation would substantially amend subsection 3401(g)(3) and redesignate it as subsection 3401(g)(2). The new subsection 3401(g)(2) would authorize magistrates to suspend the imposition of sentence and place the youth offender on probation for a period not to exceed 5 years. Present law limits the period of probation to 1 year for a misdemeanor and 6 months for a petty offense. The new subsection 3401(g)(2) not only would make the period of probation which magistrates would be authorized to impose consistent with that of district court judges, but also would provide for a more meaningful period of probation for youth offenders.

Section 2

Section 2 amends 18 U.S.C. 5010 which provides for the imposition of sentences by the district court on youth offenders. Except as limited by 18 U.S.C. 3401(g), magistrates may exercise the authority granted to the district courts by section 5010.

Subsection 5010(b) provides that the district court may, in lieu of imposing the penalty of imprisonment otherwise authorized by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision until discharged by the Parole Commission. The period of commitment is 6 years. Subsection 5010(c) authorizes the court to sentence the youth offender to the custody of the Attorney General for an additional period under certain circumstances. Sections 2(a) and (b) of the proposed legislation amend subsections 5010(b) and (c) by limiting these provisions to cases involving offenses punishable by imprisonment for a period exceeding 1 year. In conjunction with these amendments, section 2(d) of the proposed legislation adds a new paragraph (f) to section 5010 which provides that a youth offender convicted of a misdemeanor or petty offense may be sentenced to the custody of the Attorney General for a period not exceeding 1 year or 6 months, respectively. These amendments would eliminate two disparities. First, they would ensure that a youth offender does not receive a 6-year indeterminate sentence, which exceeds that which may be imposed on an adult offender, by being sentenced under subsections 5010(b) and (c) for conviction of a misdemeanor. Second, they would make the authority of district court judges to sentence youth offenders convicted of a misdemeanor consistent with that of magistrates. These amendments would be consistent with recent rulings by two courts of appeals.

Section 2(c) of the proposed legislation is a technical amendment. Under present law, courts and magistrates may impose under 18 U.S.C. 3651 a split sentence involving incarceration and probation. Such a sentence may be imposed only on adults who have been convicted of an offense which is at least a misdemeanor punishable by imprisonment for a period exceeding 6 months. A split sentence allows judges and magistrates more sentencing flexibility in that they may order a defendant to be confined in a correctional facility or treatment institution for a period not exceeding 6 months followed by a period of probation not exceeding 5 years. Section 2(c) would amend 18 U.S.C 5010(d) and would expand the authority of courts and magistrates to impose alternative sentences to those presently contained in section 5010 by authorizing split sentences for youth offenders. It is not intended to be a limitation on the authority contained in section 5010(d) to "sentence the youth offender under any other applicable penalty provisions."

Section 3

Section 3 contains two technical amendments to 18 U.S.C. 5021. Section 5021 provides for the issuance of a certificate to the youth offender setting aside his conviction.

Section 5021(a) presently provides that a certificate shall issue upon the unconditional discharge by the Parole Commission of a committed youth offender. Subsections 1(a), 2(a), and 2(b) of the proposed legislation result in the elimination of parole determinations and discharge actions by the Commission for youth offenders committed to the custody of the Attorney General for a period not exceeding 1 year. Section 3(a) of the proposed legislation amends section 5021(a) to make clear that issuing a certificate to a committed youth offender upon the unconditional discharge by the Commission applies only if the period of commitment was in excess of 1 year.

Section 3(b) addresses cases involving youth offenders sentenced to the custody of the Attorney General for conviction of a misdemeanor. Section 3(b) amends section 5021 by adding a new subsection (c) which provides that for youth offenders sentenced under new 18 U.S.C. 5010(f) (youth offenders sentenced to the custody of the Attorney General for a period not exceeding 1 year), the court shall automatically issue certificate upon completion of the term of treatment and supervision, unless the court determines for good cause why such certificate should not be issued.

CHANGES IN EXISTING LAW

Changes in existing law made by the act are shown as follows (existing law proposed to be omitted is enclosed in brackets; new matter is underlined):

TITLE 18. UNITED STATES CODE CRIMES AND CRIMINAL PROCEDURE

Part II - CRIMINAL PROCEDURE

* * * *

Chapter 219 - Trial By United States Magistrates

§ 3401. Misdemeanors; application of probation laws

* * * *

(g) The magistrate may, in a case involving offender in which consent to trial before a magistrate has been filed under subsection (b) of this section, impose sentence and exercise the other powers granted to the district court under chapter 4216 of this title, except that--

(1) the magistrate may not sentence the youth offender to the custody of the Attorney General pursuant to such chapter for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense;

[(2) such youth offender shall be released conditionally under supervision no later than 3 months before the expiration of the term imposed by the magistrate, and shall be discharged unconditionally on or before the expiration of the maximum sentence imposed;] and

[(3)] <u>(2)</u> [the magistrate may not suspend the imposition of sentence and place the youth offender on probation for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense.] <u>the magistrate may suspend the imposition of sentence and place the youth offender on probation for a period not to exceed 5 years.</u>

* * * *

Chapter 402 - Federal Youth Corrections Act

* * * *

§ 5010. Sentence

* * * *

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment for a period exceeding one year under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender convicted of an offense punishable by imprisonment for a period exceeding one year may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the commission as provided in section 5017(d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision. If a youth offender is convicted of an offense, the maximum punishment for which is more than 6 months, the court may impose a sentence in excess of 6 months and provide that the youth offender be committed to the custody of the Attorney General for treatment and supervision pursuant to this chapter for a period not exceeding 6 months and that the execution of the remainder of the sentence be suspended and the youth offender be placed on probation for any period not to exceed 5 years;

* * * *

(f) If the court shall find that a person convicted of a petty offense or a misdemeanor is a youth offender, and the offense is punishable by imprisonment under the applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter provided that the period of custody not exceed 6 months for a petty offense or 1 year for a misdemeanor.

* * * *

§ 5021. Certificate setting aside conviction

(a) Upon the unconditional discharge by the Commission of a committed youth offender sentenced under section 5010(b) or 5010(c) of this chapter before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect.

* * * *

(c) Where a youth offender has been committed under section 5010(f) of this chapter, and completed his term of treatment and supervision, the court shall automatically issue to the youth offender a certificate setting aside the conviction, unless the court determines for good cause why such certificate should not be issued.

APPENDIX IV

U.S. Department of Justice

United States Parole Commission

Office of the Chairman

5550 Friendship Blvd.
Chevy Chase, Maryland 20815

December 29, 1982

Mr. William J. Anderson, Director
General Government Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Anderson:

On behalf of the U.S. Parole Commission, it is my pleasure to respond to the draft report "Legislative Changes are Needed to More Efficiently Handle Certain Cases Under the Federal Youth Corrections Act". The Commission concurs with the findings and recommendations of this draft report.

Sincerely,

Benjamin F. Baer
Chairman

PBH/dv

United States Court of Appeals
Ninth Circuit
The Pioneer Courthouse
Portland, Oregon 97204

Chambers of
Otto R. Skopil, Jr.
United States Circuit Judge

January 12, 1983

Honorable William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Re: Comments on Proposed GAO Report

Dear Mr. Anderson:

Thank you for allowing me the opportunity to review the proposed report by the General Accounting Office entitled "Legislative Changes are Needed to More Efficiently Handle Certain Cases Under the Federal Youth Corrections Act."

I concur with the basic recommendation of the report that the disparity in the sentence which may be imposed in the same type of case by a magistrate or by a judge should be eliminated. Further, it makes sense that the available sentence for a Youth Offender not be substantially more severe than that sentence which might be imposed on an adult convicted of the same offense. I also agree that both judges and magistrates ought to be authorized to impose split sentences on Youth Offenders.

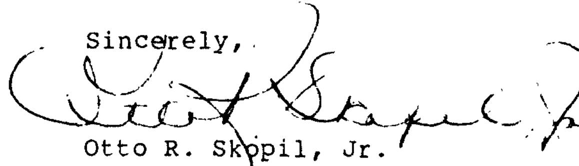
The report's recommendations and the accompanying proposed legislation raise a question, however, as to whether the Youth Corrections Act should continue to apply to misdemeanor and petty offense cases. In particular, the proposal for the automatic issuance of certificates setting aside petty and misdemeanor convictions appears to eliminate all discretion on the part of either the Parole Commission or the sentencing court concerning the issuance of such certificates in these types of cases. This discretion is one of the central principles underlying the Youth Corrections Act. Although the proposal would promote need for greater administrative efficiency in probation and parole practice, the automatic issuance of the certificate interferes with achieving the overall rehabilitative purposes of the Youth Corrections Act.

I would like the General Accounting Office to have the benefit of the views of the entire Judicial Conference Committee on the Administration of the Federal Magistrates System concerning both the proposed report and the broader question of the scope of the applicability of the Youth Corrections Act. The Committee will next meet on January 20

and 21, and I plan to present this matter to the members at that time. Accordingly, I ask that the Committee be permitted to file further comments on the proposed report after its meeting.*

In view of my personal interest in this subject, I appreciate the opportunity to submit my thoughts concerning the proposed report on the Youth Corrections Act.

Sincerely,



Otto R. Skopil, Jr.

cc: Members of Committee on the Administration of the Federal Magistrates System

Duane Lee, Chief of the Magistrates Division of the Administrative Office of the United States Courts

*GAO note: To ensure the timeliness and relevance of our information, we elected to finalize the report without waiting for additional comments.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E FOLEY
DIRECTOR

JOSEPH F SPANIOL, JR.
DEPUTY DIRECTOR

January 14, 1983

Mr. William H. Anderson
Director
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for your letter of December 16, 1982, forwarding copies of the proposed report, "Legislative Changes are Needed to More Efficiently Handle Certain Cases Under the Federal Youth Corrections Act."

The report finds that there is a disparity in the terms of probation and sentences of incarceration that judges and magistrates are authorized to impose under the Federal Youth Corrections Act for petty offenses and misdemeanors. I concur with the overall recommendation of the report that these disparities should be eliminated.

In the report, you recommend that the Congress amend the Federal Magistrates Act to remove the restriction on the term of probation that a magistrate may impose under the Federal Youth Corrections Act--6 months for a petty offense and 1 year for a misdemeanor--to allow a magistrate to impose the same maximum period of probation that a judge can impose--5 years. I concur with this recommendation. The report also recommends that Congress amend the Federal Youth Corrections Act to limit the period to which a judge can sentence a youthful offender to the custody of the Attorney General for a petty offense or misdemeanor to 6 months and 1 year respectively. As you note, two circuits have already ruled that the district courts have such a limit on their sentencing authority, but a statutory provision would make it uniform across the country. This would ensure that youths convicted of such offenses are not treated more harshly than adult offenders and I concur with the recommendation. This does not, however, eliminate a similar disparity with respect to youths convicted of felonies which carry a shorter maximum penalty as adult offenses than the 6-year Youth Corrections Act term. This is a more common occurrence and should also be addressed.

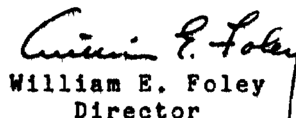
The report further recommends that Congress eliminate the requirements that when a youthful offender is sentenced to incarceration under the Magistrates Act (1) the youth offender be released at least 3 months prior to expiration of sentence; (2) the Parole Commission make parole release determinations; and (3) the Federal Probation System supervise the releasee. I concur with this recommendation in part and disagree in part. It appears advisable that the Parole Commission be relieved of the release determination. The first two requirements might well be met by the judicial officer imposing sentence under provisions similar to 18 U.S.C. 4205(f) as envisioned in the report on pages 7 and 8. Under this provision, known as court ordered parole, there would still be the possibility for supervision by the Federal Probation System, during a period sufficiently long for a meaningful experience for the offender. This supervision would provide an informed basis for the Parole Commission to determine whether or not to set aside the conviction. This would eliminate the present 3-month release provision of Section 3401(g)(2) and the need for an automatic "setting aside of the conviction" as envisioned in your report (Appendix I, page 2). An automatic set aside provision for parole cases would be inconsistent with probation cases. There is no valid reason why an offender who is committed to prison should automatically receive a setting aside when such relief is only discretionary for the person who is granted probation. Under your proposal automatic setting aside might place the court in a most incongruous position of issuing a setting aside of the conviction for an offender who has been arrested and convicted of a new offense following his release from custody and prior to the date of setting aside.

Finally, the report recommends that Congress amend the Federal Youth Corrections Act to authorize judges and magistrates to impose split sentences on youthful offenders. Whether this is a good idea is an open qustion that should receive further study. Adoption of an amended section 4205 (court ordered parole) as set forth above would remove some of the need for a split sentence provision.

As I have indicated, there is no sound basis for a distinction between the sentencing authority of a district judge and a magistrate in misdemeanor and petty offense cases. The principal benefit the Youth Corrections Act offers in such cases is that of setting aside of the conviction. We believe that benefit should be preserved, whatever action you recommend to the Congress.

I note that copies of this proposed report were sent to the chairmen of the Committee on the Administration of the Probation System and the Committee on the Administration of the Federal Magistrates System of the Judicial Conference. The chairman of the Magistrates Committee is responding to your draft by separate correspondence. The chairman of the Probation Committee joins with me fully on this response. Both committees will meet within the next 3 weeks and will consider the draft report. I appreciate the opportunity you have given us to comment.

Sincerely,



William E. Foley
Director

cc: Judge Gerald B. Tjoflat
Michael J. Murphy, GAO

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