

not exceed the normal prescription amount, or where there is a single illegal sale of a quantity worth less than \$100 in the absence of aggravating circumstances where there is not "possession with intent to distribute" the drugs.

E. Hallucinogens. This group of drugs includes, among others, LSD, PCP and peyote. Seven Districts report a blanket declination policy concerning this group when the quantity seized is under a certain set amount. E.g., one District declines cases involving less than two ounces of PCP; one declines prosecution in cases involving less than \$75 worth of LSD or \$100 worth of PCP; one declines cases involving less than 10 dosage units of LSD, less than one pound of peyote or less than one-half pound of any other hallucinogen; two decline cases involving less than 100 dosage units of any hallucinogens; and two decline cases involving less than 500 dosage units.

F. Other Dangerous Drugs. Eleven Districts report a blanket declination policy concerning certain amounts of a variety of other dangerous drugs. One District declines cases involving less than 100 milliliters of hashish oil; one declines cases involving less than two ounces of methamphetamine or 250 dosage units of any other dangerous drugs; two decline any case involving less than 100 dosage units of any dangerous drugs; one declines prosecution of any cases involving less than five ounces of hashish oil or less than 1,000 dosage units of any other dangerous drugs; one declines prosecution in cases involving less than one liter of hashish oil or less than 1.1 pounds (500 grams) of any morphine based drugs; one declines cases involving less than two ounces of any dangerous drug; one declines cases involving less than 10,000 dosage units; two decline cases involving less than 25,000 dosage units and one declines cases involving less than 100,000 dosage units.

G. Other Bases for Automatic Declination. Thirteen Districts decline cases if the offender is not a dealer, distributor or part of a conspiracy and is unable to provide information leading to the arrest and conviction of dealers or distributors (Class I or Class II violators). Four Districts decline cases involving possession of a small amount of drugs for personal use. Two Districts typically decline cases involving a single sale of drugs absent aggravating circumstances. Finally, one District declines cases which do not fall within the guidelines issued by the Drug Enforcement Administration and do not involve any aggravating circumstances which would otherwise warrant attention.

GAO Labels War on Drugs Ineffective

A draft report prepared by the General Accounting Office raises serious questions about the effectiveness of President Reagan's highly publicized war on drugs. The report claims that there is a lack of coordination among the traditionally antagonistic agencies involved in enforcing drug laws, a failure to prosecute cases, inaccurate counting of arrests and seizures and no substantial longterm effect on drug availability.

According to the GAO, since the Administration began its assault on the drug trade over one year ago, prices for major drugs have actually dropped, indicating wider availability of drugs in spite of the Administration's efforts. For example, the price of marijuana has dropped from its recent high of \$1.38 per gram in 1980 to \$1.32 in 1982. The price of

by law enforcement agencies. Problems included double counting by different agencies. For example the largest cocaine seizure in history, involving 3,245 pounds, made in March 1982 at Miami International Airport, was counted by both DEA and Customs.

The report said that 85 percent of the people arrested by the Coast Guard and Customs between 1977 and June 1982 were not prosecuted in federal courts, and no data was maintained to find out what happened to them. Presumably a significant percentage of these cases were prosecuted in state courts.

The draft GAO report also noted the lack of coordination by the agencies involved, which include DEA; FBI; Customs; the Bureau of Alcohol, Tobacco and Firearms; and the Coast Guard. This may have been caused by longstanding animosity among law enforcement agencies, such as DEA and FBI, which have been forced to "work together" since January of 1982. In addition, agencies like the Coast Guard and the Customs Service, which intercept drug shipments but are not allowed to take part in drug investigations, are in competition with law enforcement agencies.

Associate Attorney General Rudolph W. Giuliani criticized the "premature" leak of the draft report because it contains "any number of mistakes" which could have been corrected in the final report.

Senator Joseph Biden (D.-Del.) gave a copy of the draft report to President Reagan and released it to the press on January 7, 1983 in an attempt to persuade President Reagan to sign the omnibus crime bill. The bill contained a provision, proposed by Biden and Sen. Dennis DeConcini (D.-Ariz.) to establish a Cabinet-level drug czar to coordinate federal drug enforcement. On January 14, President Reagan vetoed the measure anyway. See 1 DRUG L. REP. at 9-10 (Jan.-Feb. 1983).

The Justice Department was provided with a copy of the draft report on December 15. The report has been distributed to agencies for their comments. A final report should be released this summer.

New Parole Guidelines Take Effect—NORML Sues

On January 31, 1983 revised parole guidelines took effect. The guidelines nearly double the minimum time required in prison for those convicted of many serious offenses and increase sentences for some drug offenses. The Reagan Administration is continuing to ask Congress to pass legislation that would eliminate parole over a seven-year period and replace it with mandatory sentences. A similar proposal did not get out of the House Judiciary Committee last year, but passed the Senate.

The revised guidelines continue to base parole decisions on two primary factors: the severity of the offense and the likelihood of future criminal acts.

heroin has fallen from \$2.25 a milligram in 1979 to \$1.66 in June 1982.

Research for the report ended last spring. More recent reports, from drug culture sources and *High Times* magazine—the only up-to-date source of illicit drug pricing—dispute the GAO figures. The amount of Colombian grown marijuana available in the United States reportedly is at its lowest in years. Pound prices for "Colombian" in the United States, which were at \$450 in late 1982, have increased to \$650 as of February 1983. At the same time, beach prices for marijuana in Colombia have dropped significantly, indicating smugglers are waiting for enforcement efforts to diminish and are developing alternative smuggling routes. Media attention to the Florida task force may be having more of a deterrent effect than the task force itself, since there has been no significant increase in seizures.

While availability of Colombian grown marijuana has decreased, domestic marijuana has made up the difference. In 1982 America produced its largest marijuana crop. The shortage of "Colombian" has made customers of many people who would not otherwise have been introduced to the higher priced "domestic." The introduction of new consumers to American marijuana will continue the boom in domestic marijuana cultivation in 1983.

While imported marijuana availability is dropping, drug culture sources assert that the availability of cocaine is widening. Entrepreneurs are covering their marijuana losses with the smaller, more easily smuggled cocaine. The standard \$125 per gram price has dropped to \$100 at the same time that purity is increasing.

The report also estimated the cost of the Florida task force to be \$66 million, excluding the cost of the military. This is far higher than the Administration's estimates of \$8 to \$10 million. If the GAO is accurate, the \$185 million budgeted for 12 regional task forces modeled after the Florida effort, which began operations in January, will be far short of adequate financing.

The money spent by the federal government to intercept drugs has tripled from 1977 to 1981 according to GAO, but the amount of drugs seized still remains a small percentage of drugs smuggled into the United States. The GAO estimates expenditures will have to be quadrupled just to intercept 75 percent of the marijuana entering the country from the Caribbean.

According to the draft GAO report, DEA figures show that only 5 percent of the defendants arrested by the task force are considered major violators. In addition the GAO found it impossible to accurately estimate the drugs seized due to inadequate counting

21

See 28 C.F.R. §§ 2.1-2.60. The old guidelines contained seven levels of seriousness to classify crimes. The new guidelines establish an eighth level for serious crimes.

Crimes placed in the eighth level of severity are punished more severely. For those with a low risk of returning to crime, the minimum sentence has been raised from 4.3 years to 8.3 years. The only drug offense included in this category is sale of three or more kilograms of 100 percent pure heroin, or an equivalent amount, by an individual with a proprietary or managerial role.

The parole guidelines increase penalties for sale of large amounts of marijuana. Under the old guidelines the largest category of marijuana sales was 2,000 pounds. Under the revised guidelines, for individuals convicted of selling 20,000 pounds or more of marijuana with a managerial role (considered the least likely to return to crime), the minimum sentence has increased to 40 months from 24 months. For those with a high risk of returning to crime, the minimum was boosted to 78 months from 60 months.

Placed in the same category of severity with large scale marijuana offenses is sale of one kilo or more of heroin. This used to be placed in Category 5, but has been moved to Category 6. Depending on an individual's salient factor score, sentences for this offense can range from a low of 40 to 52 months, to a high of 78 to 100 months.

One area of drug offenses that received positive reforms was hashish and hash oil. Under the old guidelines the proportion of hash to marijuana was 10-to-1 and hash oil was 100-to-1. Under the new guidelines these ratios have changed to 10-to-3 and 100-to-3 respectively. This can result in hashish violations being placed in a lower category resulting in shorter actual time served.

These were the only changes in the guidelines concerning drug offenses. Even cocaine offenses, which have been getting a good deal of negative attention, remained the same. Under the guidelines they continue to be treated harshly with sale of over one kilogram of 100 percent pure cocaine, or an equivalent amount, with a proprietary or managerial role, placed in Category Six punishable by a minimum of 40 months in jail.

On January 28, NORML and two co-plaintiffs filed suit in U.S. District Court for the District of Columbia to enjoin the implementation of the guidelines. The co-plaintiffs were individuals, Frank Greentree and Leslie Zacharias, who would be adversely affected by the change in guidelines.

The suit alleges that the U.S. Parole Commission violated the Administrative Procedure Act in that the proposed rule, when published in the *Federal Register*