

108TH CONGRESS
2D SESSION

H. R. 4547

To amend the Controlled Substances Act to protect vulnerable persons from drug trafficking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2004

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Controlled Substances Act to protect vulnerable persons from drug trafficking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defending America’s
5 Most Vulnerable: Safe Access to Drug Treatment and
6 Child Protection Act of 2004”.

1 **SEC. 2. PROTECTING CHILDREN FROM DRUG TRAF-**
2 **FICKERS.**

3 (a) DISTRIBUTION TO PERSONS UNDER 21 YEARS
4 OF AGE; FIRST OFFENSE.—Section 418(a) of the Con-
5 trolled Substances Act (21 U.S.C. 859(a)) is amended—

6 (1) by inserting “or section 406” after
7 “401(a)(1)”;

8 (2) by inserting “, or attempting or conspiring
9 to do so,” after “twenty-one years of age”;

10 (3) by striking “involving the same controlled
11 substance and schedule” and inserting “without re-
12 gard to the type of controlled substance and sched-
13 ule”; and

14 (4) by striking “not less than one year.” and
15 inserting “not less than 5 years. Except to the ex-
16 tent a greater minimum sentence is otherwise pro-
17 vided by section 401(b), a term of imprisonment
18 under this subsection in a case involving distribution
19 to a person under 18 years of age by a person 21
20 or more years of age shall be not less than 10 years.
21 Notwithstanding any other provision of law, the
22 court shall not place on probation or suspend the
23 sentence of any person sentenced under the pre-
24 ceding sentence.”.

25 (b) DISTRIBUTION TO PERSONS UNDER 21 YEARS
26 OF AGE; SECOND OR SUBSEQUENT OFFENSE.—Section

1 418(b) of the Controlled Substances Act (21 U.S.C.
2 859(b)) is amended—

3 (1) by inserting “or section 406” after
4 “401(a)(1)”;

5 (2) by inserting “, or attempting or conspiring
6 to do so,” after “twenty-one years of age”;

7 (3) by striking “involving the same controlled
8 substance and schedule” and inserting “without re-
9 gard to the type of controlled substance and sched-
10 ule”;

11 (4) by inserting “or for a felony drug offense”
12 after “May 1, 1971”; and

13 (5) by striking “not less than one year.” and
14 inserting “not less than 10 years. Except to the ex-
15 tent a greater minimum sentence is otherwise pro-
16 vided by section 401(b), a term of imprisonment
17 under this subsection in a case involving distribution
18 to person under 18 years of age by a person 21 or
19 more years of age shall be a mandatory term of life
20 imprisonment. Notwithstanding any other provision
21 of law, the court shall not place on probation or sus-
22 pend the sentence of any person sentenced under the
23 preceding sentence.”.

24 (c) DISTRIBUTION OR MANUFACTURE NEAR
25 SCHOOLS OR COLLEGES; FIRST OFFENSE.—Section

1 419(a) of the Controlled Substances Act (21 U.S.C.
2 860(a)) is amended—

3 (1) by striking “or section 416” and inserting
4 “, section 406, or section 416”;

5 (2) by inserting “, or attempting or conspiring
6 to do so,” after “manufacturing a controlled sub-
7 stance”;

8 (3) by striking “within 100 feet of”;

9 (4) by inserting “, or public library, or public
10 or private daycare facility” after “video arcade facil-
11 ity”

12 (5) by striking “not less than one year” and in-
13 serting “not less than 5 years”.

14 (d) DISTRIBUTION OR MANUFACTURE NEAR
15 SCHOOLS OR COLLEGES; SECOND OR SUBSEQUENT OF-
16 FENSE.—Section 419(b) of the Controlled Substances Act
17 (21 U.S.C. 860(b)) is amended—

18 (1) by striking “or section 416” and inserting
19 “, section 406, or section 416”;

20 (2) by inserting “, or attempting or conspiring
21 to do so,” after “manufacturing a controlled sub-
22 stance”;

23 (3) by striking “within 100 feet of”;

1 (4) by inserting “, or public library, or public
2 or private daycare facility” after “video arcade facil-
3 ity”

4 (5) by inserting “or for a felony drug offense”
5 after “subsection (a) of this section”; and

6 (6) by striking “not less than three years” each
7 place it appears and inserting “not less than 10
8 years”.

9 (e) EMPLOYING CHILDREN IN DISTRIBUTION NEAR
10 PROTECTED PLACES.—Section 419(c) of the Controlled
11 Substances Act (21 U.S.C. 860(c)) is amended—

12 (1) by striking “at least 21 years of age” and
13 inserting “at least 18 years of age”;

14 (2) by inserting “Except to the extent a greater
15 minimum sentence is otherwise provided for by sec-
16 tion 401(b), a person shall be sentenced under this
17 subsection to a term of imprisonment of not less
18 than 10 years” after “triple those authorized by sec-
19 tion 401.”;

20 (3) by striking “(1)” and inserting “(A)” and
21 in subparagraph (A) as so redesignated, by inserting
22 “, or attempts or conspires to do so” after “to vio-
23 late this section”;

1 (4) by striking “(2)” and inserting “(B)” and in
2 subparagraph (B) as so redesignated, by inserting “,
3 or attempts or conspires to do so” after “official”;

4 (5) by inserting “(1)” after “(c)”; and

5 (6) by adding at the end the following:

6 “(2) SECOND OR SUBSEQUENT OFFENSES.—Para-
7 graph (1) shall be applied to an offense after a single prior
8 conviction under that paragraph or for a felony drug of-
9 fense has become final by substituting ‘not less than 15
10 years’ for ‘not less than 10 years’. Penalties for third or
11 subsequent convictions are governed by section
12 401(b)(1)(A).”.

13 (f) EMPLOYMENT OR USE OF PERSONS UNDER 18
14 YEARS OLD; FIRST OFFENSE.—Section 420(a)(1) of the
15 Controlled Substances Act (21 U.S.C. 861(a)(1)) is
16 amended by inserting “, or attempts or conspires to do
17 so” after “chapter”.

18 (g) EMPLOYMENT OR USE OF PERSONS UNDER 18
19 YEARS OLD; FIRST OFFENSE.—Section 420(a)(2) of the
20 Controlled Substances Act (21 U.S.C. 861(a)(2)) is
21 amended by inserting “, or attempts or conspires to do
22 so” after “official”.

23 (h) EMPLOYMENT OR USE OF PERSONS UNDER 18
24 YEARS OLD; FIRST OFFENSE.—Section 420(a)(3) of the
25 Controlled Substances Act (21 U.S.C. 861(a)(3)) is

1 amended by inserting “, or attempts or conspires to do
2 so” after “chapter”.

3 (i) EMPLOYMENT OR USE OF PERSONS UNDER 18
4 YEARS OLD; FIRST OFFENSE.—Section 420(b) of the
5 Controlled Substances Act (21 U.S.C. 861(b)) is amended
6 by striking “not less than one year.” and inserting “not
7 less than 5 years. Except to the extent a greater minimum
8 sentence is otherwise provided by section 401(b), a term
9 of imprisonment of a person 21 or more years of age con-
10 victed under this subsection shall not be less than 10
11 years. Notwithstanding any other provision of law, the
12 court shall not place on probation or suspend the sentence
13 of any person sentenced under the preceding sentence.”.

14 (j) EMPLOYMENT OR USE OF PERSONS UNDER 18
15 YEARS OLD; SECOND OR SUBSEQUENT OFFENSE.—Sec-
16 tion 420(c) of the Controlled Substances Act (21 U.S.C.
17 861(c)) is amended—

18 (1) by inserting “for a felony drug offense”
19 after “prior conviction under subsection (a) of this
20 section”; and

21 (2) by striking “not less than one year.” and
22 inserting “not less than 10 years. Except to the ex-
23 tent a greater minimum sentence is otherwise pro-
24 vided by section 401(b), a term of imprisonment of
25 a person 21 years or more of age convicted under

1 this subsection shall be a mandatory term of life im-
2 prisonment. Notwithstanding any other provision of
3 law, the court shall not place on probation or sus-
4 pend the sentence of any person sentenced under the
5 preceding sentence.”.

6 (k) PROVIDING OR DISTRIBUTING A CONTROLLED
7 SUBSTANCE TO AN UNDERAGE PERSON.—Section 420(d)
8 of the Controlled Substances Act (21 U.S.C. 861(d)) is
9 amended by striking “subject to a term of imprisonment
10 for not more than 5 years” and inserting “sentenced to
11 a term of imprisonment of not less than 5 years”.

12 (l) SENTENCING GUIDELINES.—

13 (1) Not more than 90 days after the date of the
14 enactment of this Act, the Sentencing Commission
15 shall amend the sentencing guidelines, policy state-
16 ments, and official commentary issued under section
17 994 of title 28, United States Code, so as to ensure
18 that the sentence of any person who has been con-
19 victed of a felony violation of title II of the Con-
20 trolled Substances Act, or a felony violation of the
21 Controlled Substances Import and Export Act, is
22 calculated in accordance with the following require-
23 ments if any part of the offense or relevant conduct
24 involved manufacturing, transporting, possessing,
25 storing, using, or trafficking in a controlled sub-

1 stance or a chemical or material used or intended to
2 be used in the manufacture of any controlled sub-
3 stance in or near the presence of a person under the
4 age of 18, or in a location in which a person under
5 the age of 18 resides for any period of time, or if
6 any of the offense or relevant conduct involved con-
7 duct constituting an offense under section 417(b),
8 418, 419, 419a, or 420 of the Controlled Substances
9 Act (whether or not charged):

10 (A) Section 5C1.2 of the guidelines shall
11 not apply.

12 (B) Increase the base offense level by 2
13 levels.

14 (C) If the defendant was the parent or
15 guardian or person otherwise responsible for the
16 care or supervision of the person under the age
17 of 18 increase the base offense level by 4 levels.

18 (2) Section 3553(f) of title 18, United States
19 Code, is amended—

20 (A) in paragraph (4), by striking “and” at
21 the end;

22 (B) by redesignating paragraph (5) as
23 paragraph (6); and

24 (C) by inserting after paragraph (4) the
25 following new paragraph:

1 “(5) no part of the offense or relevant conduct
2 involved manufacturing, transporting, possessing,
3 storing, using, or trafficking a controlled substance
4 or a chemical or material used or intended to be
5 used in the manufacture of any controlled substance
6 in or near the presence of a person under the age
7 of 18; or in a location in which a person under the
8 age of 18 resides for any period of time; or if any
9 of the offense or relevant conduct involved conduct
10 constituting an offense under section 417(b), 418,
11 419, 419a or 420 of the Controlled Substances Act
12 (whether or not charged); and”.

13 **SEC. 3. FAIRNESS IN SENTENCING: ASSURING TRAF-**
14 **FICKERS IN LARGE QUANTITIES OF DRUGS**
15 **RECEIVE APPROPRIATE SENTENCES AND DE-**
16 **NYING DOUBLE SENTENCING BENEFITS.**

17 (a) IN GENERAL.—The Guidelines Manual promul-
18 gated by the Sentencing Commission pursuant to section
19 994(a) of title 28, United States Code, as in effect on May
20 1, 2004, is amended—

21 (1) in section 2D1.1(a)(3) by striking “, except
22 that if the defendant receives an adjustment under
23 section 3B1.2 (Mitigating Role), the base offense
24 level under this subsection shall not be more than
25 level 30.” and inserting “below.”;

1 (2) in the Application Notes in the Commentary
2 to section 3B1.2 by striking Application Note 6 in
3 its entirety;

4 (3) in section 2D1.1(b) by striking subsection
5 (6) in its entirety; and

6 (4) in Application Notes in the Commentary to
7 section 2D1.1 by striking Application Note 21 in its
8 entirety.

9 (b) LIMITATIONS ON COMMISSION.—

10 (1) FUTURE AMENDMENTS.—On and after the
11 date of the enactment of this Act no amendment
12 promulgated by the Sentencing Commission shall
13 alter or repeal the effect of the amendments made
14 by this section.

15 (2) AMENDMENTS AS OF ENACTMENT.—Upon
16 the enactment of this Act, any amendment to the
17 Guidelines Manual promulgated by the Sentencing
18 Commission before such enactment shall have no
19 further force or effect to the extent that amend-
20 ment—

21 (A) is to section 2D1.11 or to a provision
22 of the Guidelines Manual that is amended by
23 subsection (a); and

24 (B) takes effect after May 1, 2004 but be-
25 fore the date of the enactment of this Act.

1 **SEC. 4. PROTECTING PERSONS IN DRUG TREATMENT.**

2 (a) IN GENERAL.—The Controlled Substances Act is
3 amended by inserting after section 419 (21 U.S.C. 860)-
4 -- the following:

5 “PROTECTION OF PERSONS IN DRUG TREATMENT

6 “SEC. 419a. (a) Any person who violates section
7 401(a)(1), section 406, or section 416 by distributing, pos-
8 sessing with intent to distribute, or manufacturing a con-
9 trolled substance in or on, or within 1,000 feet of, the real
10 property comprising a drug treatment facility, or attempt-
11 ing or conspiring to do so, shall, except to the extent a
12 greater minimum sentence is provided, be imprisoned for
13 not less than 5 nor more than life.

14 “(b) Whoever intentionally offers, solicits, entices,
15 persuades, encourages, induces, or coerces a person en-
16 rolled in a drug treatment program or facility, who is
17 under a court order to do so, or who has previously been
18 enrolled in a drug treatment program or facility, to pur-
19 chase, receive, or possess a controlled substance, attempts
20 or conspires to do so, except to the extent that a greater
21 minimum sentence is provided for, shall be sentenced to
22 a term of imprisonment which may not be less than 5
23 years or more than life and if death or serious bodily in-
24 jury resulted from the use of such substance shall not be
25 less than 10 or more than life, a fine not to exceed the
26 greater of that authorized in accordance with the provi-

1 sions of title 18, or \$4,000,000 if the defendant is an indi-
2 vidual or \$10,000,000 if the defendant is other than an
3 individual, or both. If any person commits such a violation
4 after a prior conviction under this subsection or after a
5 prior conviction for any felony drug offense has become
6 final, such person shall be sentenced to not less than 10
7 years and if death or serious bodily injury resulted from
8 the use of such substance shall be sentenced to life. Pen-
9 alties for third or subsequent convictions shall be governed
10 by section 841(a)(1)(A) of this title.

11 “(c) As used in this section—

12 “(1) the term ‘drug treatment facility’ in-
13 cludes—

14 “(A) any location at which a practitioner is
15 authorized to dispense narcotic drugs to individ-
16 uals for maintenance treatment or detoxifica-
17 tion treatment under section 303(g) of the Con-
18 trolled Substances Act (21 U.S.C. 823(g));

19 “(B) any location at which an individual or
20 entity (other than a general medical care facil-
21 ity) provides drug abuse diagnosis, treatment or
22 referral for treatment; and

23 “(C) an identified unit within a general
24 medical facility which provides drug abuse diag-
25 nosis, treatment, or referral for treatment; and

1 “(2) the term ‘drug treatment program’ in-
2 cludes—

3 “(A) a practitioner or entity who dispenses
4 narcotic drugs to individuals for maintenance
5 treatment or detoxification treatment under sec-
6 tion 303(g) of the Controlled Substances Act
7 (21 U.S.C. 823(g);

8 “(B) an individual or entity which provides
9 drug abuse diagnosis, treatment or referral for
10 treatment;

11 “(C) medical personnel or other staff in a
12 general medical care facility whose primary
13 function is the provision of drug abuse diag-
14 nosis, treatment or referral for treatment; and

15 “(D) a practitioner or entity who is au-
16 thorized by the Substance Abuse and Mental
17 Health Services Administration to dispense
18 opioid agonist treatment medication to individ-
19 uals for maintenance treatment or detoxifica-
20 tion treatment.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 of the Comprehensive Drug Abuse Prevention and Control
23 Act of 1970 is amended by inserting after the item relat-
24 ing to section 419 the following new item:

“419a. Protection of persons in drug treatment.”.

1 **SEC. 5. CONFORMING GUIDELINE SENTENCING TO CON-**
2 **SPIRACY LAW.**

3 Not more than 90 days after the date of the enact-
4 ment of this Act, the Sentencing Commission shall amend
5 the sentencing guidelines, policy statements, and official
6 commentary issued under section 994 of title 29, United
7 States Code, so as to ensure that the relevant conduct
8 under section 1B1.2 of any person who has been convicted
9 of a felony violation of title II of the Controlled Substances
10 Act, or a felony violation of the Controlled Substances Im-
11 port and Export Act, includes the conduct of members of
12 the conspiracy before the defendant joined the conspiracy
13 that was known to the defendant before joining the con-
14 spiracy, and includes the conduct of members of the con-
15 spiracy during the defendant's participation in the con-
16 spiracy that was known to the defendant or was reason-
17 ably foreseeable (whether or not a conspiracy was charged).

18 **SEC. 6. ASSURING LIMITATION ON APPLICABILITY OF**
19 **STATUTORY MINIMUMS TO PERSONS WHO**
20 **HAVE DONE EVERYTHING THEY CAN TO AS-**
21 **SIST THE GOVERNMENT.**

22 Section 3553(f) of title 18, United States Code, is
23 amended—

24 (1) so that paragraph (6), as so redesignated by
25 section 2 of this Act, reads as follows:

1 “(6) the Government certifies that the defend-
2 ant has entered a timely plea of guilty to the most
3 serious readily provable offense and has otherwise
4 done everything possible to assist substantially in
5 the investigation and prosecution of another person
6 as set forth in subsection (e), but was unable to so
7 assist because the defendant did not have sufficient
8 information, or had information already known to,
9 or not useful to the Government, but a defendant
10 who at any time provided the Government or the
11 court with false, misleading, or incomplete informa-
12 tion, otherwise obstructed the administration of jus-
13 tice, or delayed affirmative efforts to assist substan-
14 tially beyond a time when such efforts could have
15 reasonably been useful to the Government shall not
16 be sentenced under this subsection.”; and

17 (2) by striking “court shall impose a sentence”
18 and inserting “court shall be authorized to impose a
19 sentence”.

20 **SEC. 7. ASSURING SENTENCING ENHANCEMENT FOR REL-**
21 **EVANT CONDUCT.**

22 Not more than 90 days after the date of the enact-
23 ment of this act, the Sentencing Commission shall amend
24 the sentencing guidelines, policy statements, and official

1 commentary issued under section 994 of title 29, United
2 States Code so as to ensure—

3 (1) that the commentary to section 2D1.2 in-
4 cludes application of the section to violations of sec-
5 tion 401 or 406 of the Controlled Substances Act
6 (21 U.S.C. 841 or 846);

7 (2) that the enhancements under Guideline sec-
8 tion 2D1.2 and any guideline provision promulgated
9 pursuant to any provision of this Act, are applicable
10 without regard to whether the defendant has been
11 convicted of a statutory violation of drug trafficking
12 in a protected location or involving an underage or
13 pregnant individual (including an attempt or con-
14 spiracy to commit such a violation) and without re-
15 gard to whether the defendant stipulated to such a
16 statutory violation of such an offense;

17 (3) that conduct constituting an offense under
18 section 409, 417, 418, 419, 419a or 420 of the Con-
19 trolled Substances Act (21 U.S.C. 849, 858, 859,
20 860, 860a, or 861) (without regard to conviction)
21 shall be treated as relevant conduct under section
22 1B1.3 for persons convicted under section 401 or
23 406 of that Act (21 U.S.C. 841 or 846); and

24 (4) that section 2D1.2(a)(1) provides for a 4
25 rather than a 2 level increase; that section

1 2D1.2(a)(2) provides for a 2, rather than 1, level in-
2 crease; that section 2D1.2(a)(3) provides for a level
3 28, rather than level 26; and that section
4 2D1.2(a)(4) provides for a level 18, rather than level
5 13.

6 **SEC. 8. ASSURING PROGRESSIVE ENHANCEMENTS FOR**
7 **PERSONS POSSESSING OR USING FIREARMS.**

8 Not more than 90 days after the date of the enact-
9 ment of this Act, the Sentencing Commission shall amend
10 the sentencing guidelines, policy statements, and official
11 commentary issued under section 994 of title 29, United
12 States Code, so as to ensure—

13 (1) that the specific offender characteristics
14 under section 2D1.1(b) provide for increases to the
15 base offense level of—

16 (A) 8 levels if a firearm was possessed in
17 or near the presence of a person under the age
18 of 18, or in a location in which a person under
19 the age of 18 resides for any period of time;

20 (B) 6 levels if the defendant discharged a
21 firearm or 8 or more firearms were possessed or
22 a firearm described in section 921(a)(23) of
23 title 18, United States Code, was possessed, or
24 a firearm equipped with a device described in
25 section 921(a)(24) of title 18, United States

1 Code, was possessed, or a device described in
2 section 921(a)(4) of title 18, United States
3 Code, was possessed;

4 (C) 4 levels if the defendant brandished or
5 otherwise used a dangerous weapon (including a
6 firearm) or possessed a firearm described in
7 section 921(a), (6), (8), or (30) of title 18
8 United States Code, or section 5845(a) of title
9 26, United States Code or 6 or more firearms
10 were possessed;

11 (D) 3 levels if 2 or more firearms were
12 possessed; and

13 (E) 2 levels if a dangerous weapon (includ-
14 ing a firearm) was possessed;

15 (2) that the specific offender characteristics
16 under section 2D1.1 provide for an increase to the
17 base offense level of—

18 (A) 6 levels if the offense involved perma-
19 nent or life-threatening bodily injury;

20 (B) 4 levels if the offense involved serious
21 bodily injury; and

22 (C) 2 levels if the offense involved bodily
23 injury;

1 (3) that the cumulative adjustments under
2 paragraphs (1) and (2) shall not shall not exceed 10
3 levels; and

4 (4) that the specific characteristics under sec-
5 tion 2D1.1 provide for an increase to the base of-
6 fense level of 2 levels if the defendant committed any
7 part of the instant offense after sustaining a felony
8 conviction for a controlled substance offense.

9 **SEC. 9. ASSURING JUDICIAL AUTHORITY CONSISTENT**
10 **WITH LAW IN SENTENCINGS.**

11 Rule 11(c)(3) of the Federal Rules of Criminal Proce-
12 dure is amended by striking subparagraphs (A) through
13 (B) and inserting the following:

14 “(A) To the extent the plea agreement is
15 of the type specified in Rule 11(c)(1)(A), the
16 court may accept the agreement, reject it, or
17 defer a decision until the court has reviewed the
18 presentence report. The court may accept the
19 agreement, whether before or after review of
20 the presentence report, only if the court deter-
21 mines, for reasons stated on the record with
22 specificity, that the charge or charges to which
23 the defendant is pleading adequately reflect the
24 seriousness of the actual offense behavior and
25 that accepting the agreement is consistent with

1 the statutory purposes of sentencing and the
2 sentencing guidelines and will permit a sentence
3 within the applicable guideline range, or that
4 the Attorney General has certified that the plea
5 agreement is in the national security interest of
6 the United States.

7 “(B) To the extent the plea agreement is
8 of the type specified in Rule 11(c)(1)(B), the
9 court must advise the defendant that the de-
10 fendant has no right to withdraw the plea if the
11 court does not follow the recommendation or re-
12 quest. The court may only follow the rec-
13 ommendation or request if the recommended or
14 requested sentence is within the applicable
15 guideline range or departs from the applicable
16 guideline range for lawful and justifiable rea-
17 sons, or that the Attorney General has certified
18 that the recommended or requested sentence is
19 in the national security interest of the United
20 States.

21 “(C) To the extent the plea agreement is
22 of the type specified in Rule 11(c)(1)(C), the
23 court may reject the agreement or defer a deci-
24 sion until the court has reviewed the
25 presentence report. The court may only accept

1 the agreed sentence, and must so advise the de-
2 fendant, if the agreed sentence is within the ap-
3 plicable guideline range or departs from the ap-
4 plicable guideline range for lawful and justifi-
5 able reasons, or that the Attorney General has
6 certified that the agreed sentence is in the na-
7 tional security interest of the United States.”.

8 **SEC. 10. MANDATORY DETENTION OF PERSONS CONVICTED**
9 **OF SERIOUS DRUG TRAFFICKING OFFENSES**
10 **AND CRIMES OF VIOLENCE.**

11 Section 3145(c) of title 18 United States Code, is
12 amended—

13 (1) by inserting “prior to sentencing” after
14 “may be ordered released”; and

15 (2) by striking “the judicial officer, if it is
16 clearly shown that there are exceptional reasons why
17 such person’s detention would not be appropriate.”
18 and inserting “the judicial officer if, the Government
19 certifies that the defendant is engaged in ongoing
20 active cooperation with the Government in con-
21 templation of the defendant providing substantial as-
22 sistance to the Government in the investigation and
23 prosecution of another person pursuant to section
24 3553(e) of this title, section 994(n) of title 28, or
25 United States Sentencing Guidelines section 5K1.1,

1 and that defendant’s release on appropriate condi-
2 tions pending sentencing is essential to permit such
3 assistance. The judicial officer shall order the de-
4 fendant detained immediately upon cessation of ac-
5 tive cooperation, or upon being sentenced, whichever
6 first occurs. Availability to be interviewed or to tes-
7 tify before a grand jury or a judicial proceeding is
8 not grounds for release.”.

9 **SEC. 11. PROTECTING HUMAN LIFE AND ASSURING CHILD**
10 **SAFETY.**

11 Section 417 of the Controlled Substances Act (21
12 U.S.C. 858) is amended—

13 (1) by inserting “(a)” before “Whoever”;

14 (2) by inserting “possessing, storing, or” before
15 “transporting”;

16 (3) by inserting “or intended to be used in the
17 manufacture of a controlled substance,”;

18 (4) by striking “not more than 10 years” and
19 inserting “not less than 3 years nor more than life”;
20 and

21 (5) by inserting at the end the following:

22 “(b) Whoever violates subsection (a) by creating a
23 substantial risk of harm to a person under the age of 18,
24 shall be fined in accordance with title 18, United States

1 Code, or imprisoned not less than 5 years, nor more than
2 life, or both.”.

3 **SEC. 12. LIFE IMPRISONMENT WITHOUT RELEASE FOR**
4 **DRUG FELONS AND VIOLENT CRIMINALS**
5 **CONVICTED A THIRD TIME.**

6 Section 401(b) of the Controlled Substances Act (21
7 U.S.C. 841(b)) is amended—

8 (1) by inserting “860a,” after “Except as pro-
9 vided in section 859, 860,”; and

10 (2) by striking “If any person commits a viola-
11 tion of this subparagraph or of section 418, 419, or
12 420 after two or more prior convictions for a felony
13 drug offense have become final, such person shall be
14 sentenced to a mandatory term of life imprisonment
15 without release and fined in accordance with the
16 preceding sentence.” and inserting “If any person
17 commits a violation of this subparagraph or of sec-
18 tion 418, 419, 419a, or 420 (21 U.S.C. 859, 860,
19 860a, or 861) or a crime of violence after 2 or more
20 prior convictions for a felony drug offense or crime
21 of violence or for any combination thereof have be-
22 come final, such person shall be sentenced to not
23 less than a mandatory term of life imprisonment
24 without release and fined in accordance with the
25 preceding sentence. For purposes of this subpara-

1 graph, the term ‘crime of violence’ means an offense
2 that is a felony punishable by a maximum term of
3 imprisonment of 10 years or more and has as an ele-
4 ment the use, attempted use, or threatened use of
5 physical force against the person or property of an-
6 other, or by its nature involves a substantial risk
7 that physical force against the person or property of
8 another may be used in the course of committing the
9 offense.”.

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