

SENTENCING REFORM ACT OF 2015

DECEMBER 23, 2016.—Committed to the Committee of the Whole House of the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 3713]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3713) to reform sentencing laws, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	6
Background and Need for the Legislation	6
Hearings	8
Committee Consideration	8
Committee Votes	8
Committee Oversight Findings	8
New Budget Authority and Tax Expenditures	8
Congressional Budget Office Cost Estimate	8
Duplication of Federal Programs	18
Disclosure of Directed Rule Makings	18
Performance Goals and Objectives	18
Advisory on Earmarks	18
Section-by-Section Analysis	18
Changes in Existing Law Made by the Bill, as Reported	20

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sentencing Reform Act of 2015”.

SEC. 2. REDUCE AND RESTRICT ENHANCED SENTENCING FOR PRIOR DRUG FELONIES.

(a) CONTROLLED SUBSTANCES ACT AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102 (21 U.S.C. 802), by adding at the end the following:

“(57) The term ‘serious drug felony’ means an offense described in section 924(e)(2)(A) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months.

“(58) The term ‘serious violent felony’ means an offense—

“(A) described in section 3559(c)(2)(F) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; or

“(B) that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.”;

(2) in section 401(b)(1) (21 U.S.C. 841(b)(1))—

(A) in subparagraph (A), in the flush text following clause (viii)—

(i) by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years” and inserting the following: “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years”; and

(ii) by striking “after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release” and inserting the following: “after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years”; and

(B) in subparagraph (B), in the flush text following clause (viii), by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final” and inserting the following: “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final”; and

(3) by adding at the end of section 401(b) (21 U.S.C. 841(b)) the following:

“(8) In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of heroin also contains a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide, then a court shall, in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years, which shall not run concurrently with any term of imprisonment imposed on the person under any other provision of law.

“(9) In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide was represented to be or sold as heroin, then a court shall, in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years, which shall not run concurrently with any term of imprisonment imposed on the person under any other provision of law.”.

(b) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT AMENDMENTS.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), in the flush text following subparagraph (H), by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years” and inserting “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years”;

(2) in paragraph (2), in the flush text following subparagraph (H), by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”; and

(3) by adding at the end the following:

“(8) In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of heroin also contains a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide, then a court shall—

“(A) not impose a term of probation;

“(B) in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years; and

“(C) no term of imprisonment imposed on a person under subparagraph (B) shall run concurrently with any term of imprisonment imposed on the person under any other provision of law.

“(9) In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidiny] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidiny] propanamide was represented to be or sold as heroin, then a court shall—

“(A) not impose a term of probation;

“(B) in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years; and

“(C) no term of imprisonment imposed on a person under subparagraph (B) shall run concurrently with any term of imprisonment imposed on the person under any other provision of law.”.

(c) APPLICABILITY TO PENDING AND PAST CASES.—

(1) PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

(2) PAST CASES.—

(A) GENERAL RULE.—In the case of a defendant (other than a defendant with a prior conviction for a qualifying serious violent felony) who, before the date of enactment of this Act, was convicted of an offense for which the penalty is amended by this section and who was sentenced to a term of imprisonment for the offense, the sentencing court may, on motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, upon prior notice to the Government, reduce the term of imprisonment for the offense, after considering the factors set forth in section 3553(a) of title 18, United States Code, the nature and seriousness of the danger to any person or the community, and the post-sentencing conduct of the defendant, if such a reduction is consistent with this section and the amendments made by this section.

(B) DEFINITION.—In this paragraph the term “qualifying serious violent felony” means an offense that—

(i) is a serious violent felony as that term is defined in section 102(58) of the Controlled Substances Act; and

(ii) carries 3 or more criminal history points as determined under the United States Sentencing Guidelines.

SEC. 3. BROADENING OF EXISTING SAFETY VALVE.

(a) AMENDMENTS.—Section 3553 of title 18, United States Code, is amended—

(1) in subsection (f), by striking paragraph (1) and inserting the following:

“(1) the defendant does not have—

“(A) more than 4 criminal history points as determined under the sentencing guidelines;

“(B) a prior 3-point offense, as determined under the sentencing guidelines; or

“(C) a prior 2-point drug trafficking or violent offense, as determined under the sentencing guidelines;”; and

(2) by adding at the end the following:

“(g) INADEQUACY OF CRIMINAL HISTORY.—

“(1) IN GENERAL.—If subsection (f) does not apply to a defendant because the defendant does not meet the requirements described in subsection (f)(1) (relating to criminal history), the court may, upon prior notice to the Government, waive subsection (f)(1) if the court specifies in writing the specific reasons why reliable information indicates that excluding the defendant pursuant to subsection (f)(1) substantially overrepresents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.

“(2) PROHIBITION.—This subsection shall not apply to any defendant who has been convicted of a serious drug felony or a serious violent felony as defined in paragraphs (57) and (58), respectively, of section 102 of the Controlled Substances Act (21 U.S.C. 802).

“(h) DEFINITIONS.—As used in this section—

“(1) the term ‘drug trafficking offense’ means an offense that is punishable by imprisonment under any law of the United States, or of a State or foreign country, that prohibits or restricts the importation, manufacture, or distribution of controlled substances or the possession of controlled substances with intent to distribute; and

“(2) the term ‘violent offense’ means a ‘crime of violence’, as defined in section 16, that is punishable by imprisonment.”

(b) **APPLICABILITY.**—The amendments made by this section shall apply only to a conviction entered on or after the date of enactment of this Act.

SEC. 4. LIMITATION ON APPLICATION OF THE 10-YEAR MANDATORY MINIMUM.

(a) **AMENDMENT.**—Section 3553 of title 18, United States Code, as amended by section 3, is further amended by adding at the end the following:

“(i) **LIMITATION ON APPLICABILITY OF CERTAIN STATUTORY MINIMUMS.**—Notwithstanding any other provision of law, in the case of a conviction under section 401 or 406 of the Controlled Substances Act (21 U.S.C. 841 and 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960 and 963) for which the statutory minimum term of imprisonment is 10 years, the court may impose a sentence as if the statutory minimum term of imprisonment was 5 years, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

“(1) the defendant does not have a prior conviction for a serious drug felony or serious violent felony as defined in paragraphs (57) and (58), respectively, of section 102 of the Controlled Substances Act (21 U.S.C. 802) that was made final prior to the commission of the instant offense;

“(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense, and the offense did not result in death or serious bodily injury to any person;

“(3) the defendant did not play an enhanced role in the offense by acting as an organizer, leader, manager, or supervisor of other participants in the offense, as determined under the sentencing guidelines, or by exercising substantial authority or control over the criminal activity of a criminal organization, regardless of whether the defendant was a member of such organization;

“(4) the defendant did not act as an importer, exporter, high-level distributor or supplier, wholesaler, or manufacturer of the controlled substances involved in the offense or engage in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

“(5) the defendant did not distribute a controlled substance to or with a person under 18 years of age; and

“(6) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

“(j) **DEFINITIONS.**—As used in subsection (i) of this section—

“(1) the term ‘importer, exporter, or high-level distributor or supplier’—

“(A) means a defendant who imported, exported, or otherwise distributed or supplied large quantities of a controlled substance to other drug distributors; and

“(B) does not include a defendant whose role was limited to transporting drugs or money at the direction of others;

“(2) the term ‘manufacturer’ means a defendant who grew, produced, or manufactured a controlled substance and was the principal owner of such controlled substance; and

“(3) the term ‘wholesaler’ means a defendant who sold non-retail quantities of a controlled substance to other dealers or distributors.”

(b) **APPLICABILITY.**—The amendment made by this section shall apply only to a conviction entered on or after the date of enactment of this Act.

SEC. 5. CLARIFICATION OF SECTION 924(c) OF TITLE 18, UNITED STATES CODE.

(a) **IN GENERAL.**—Section 924(c)(1)(C) of title 18, United States Code, is amended—

(1) in the matter preceding clause (i), by striking “second or subsequent conviction under this subsection” and inserting “violation of this subsection that occurs after a prior conviction under this subsection or under State law for a crime of violence that contains as an element of the offense the carrying, brandishing, or use of a firearm has become final”; and

(2) in clause (i), by striking “not less than 25 years” and inserting “not less than 15 years”.

(b) **APPLICABILITY TO PENDING AND PAST CASES.**—

(1) **PENDING CASES.**—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of

this Act, if a sentence for the offense has not been imposed as of such date of enactment.

(2) CERTAIN PAST CASES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), in the case of a defendant who, before the date of enactment of this Act, was convicted of an offense for which the penalty is amended by this section and was sentenced to a term of imprisonment for the offense, the sentencing court may, on motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, upon prior notice to the Government, reduce the term of imprisonment for the offense, after considering the factors set forth in section 3553(a) of title 18, United States Code, the nature and seriousness of the danger to any person or the community, and the post-sentencing conduct of the defendant, if such a reduction is consistent with this section and the amendments made by this section.

(B) EXCEPTION.—Subparagraph (A) does not apply in the case of an offense affected by the amendment made in subsection (a)(2) with regard to a defendant who has a prior conviction for a serious violent felony, as defined in section 102(58) of the Controlled Substances Act.

SEC. 6. AMENDMENT TO CERTAIN PENALTIES FOR CERTAIN FIREARM OFFENSES AND ARMED CAREER CRIMINAL PROVISION.

(a) AMENDMENTS.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking “not more than 10 years” and inserting “not more than 15 years”; and

(2) in subsection (e)(1), by striking “not less than fifteen years” and inserting “not less than 10 years”.

(b) APPLICABILITY TO PENDING AND PAST CASES.—

(1) PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

(2) PAST CASES.—In the case of a defendant (other than a defendant with a prior conviction for a serious violent felony, as defined in section 102(58) of the Controlled Substances Act) who, before the date of enactment of this Act, was convicted of an offense for which the penalty is amended by this section and was sentenced to a term of imprisonment for the offense, the sentencing court may, on motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, upon prior notice to the Government, reduce the term of imprisonment for the offense, after considering the factors set forth in section 3553(a) of title 18, United States Code, the nature and seriousness of the danger to any person or the community, and the post-sentencing conduct of the defendant, if such a reduction is consistent with this section and the amendments made by this section.

SEC. 7. APPLICATION OF FAIR SENTENCING ACT.

(a) DEFINITION OF COVERED OFFENSE.—In this section, the term “covered offense” means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense, may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was imposed or reduced to a sentence greater than the applicable mandatory minimum in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), or if a motion made pursuant to section 2 or 3 of the Fair Sentencing Act or under this section was denied by a court because a reduction in the defendant’s term of imprisonment would pose a danger to any person or the community or was denied by a court because of the defendant’s post-sentencing conduct. Nothing in this section shall require a court to reduce any sentence pursuant to this section.

SEC. 8. REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS.

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the United States Sentencing Commission, shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on mandatory minimum sentencing provisions under Federal law.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall include—

- (1) a compilation of all mandatory minimum sentencing provisions under Federal law;
- (2) an assessment of the effect of mandatory minimum sentencing provisions under Federal law on the goal of eliminating unwarranted sentencing disparity and other goals of sentencing;
- (3) an assessment of the impact of mandatory minimum sentencing provisions on the Federal prison population;
- (4) an assessment of the compatibility of mandatory minimum sentencing provisions under Federal law and the sentencing guidelines system established under the Sentencing Reform Act of 1984 (Public Law 98-473; 98 Stat. 1987) and the sentencing guidelines system in place after *Booker v. United States*, 543 U.S. 220 (2005);
- (5) a description of the interaction between mandatory minimum sentencing provisions under Federal law and plea agreements; and
- (6) any other information that the Attorney General, in consultation with the United States Sentencing Commission, determines would contribute to a thorough assessment of mandatory minimum sentencing provisions under Federal law.

SEC. 9. SENSE OF CONGRESS.

It is the sense of Congress that reform of the criminal justice system, in order to make it more effective, safe, humane, fiscally sustainable, and fair to victims, law enforcement, offenders, and the general public, requires the integration of a mental health component as part of a comprehensive reform strategy. This reform strategy should strive to identify those most in need of mental health services and employ best practices to provide emergency and crisis services, specialized law enforcement response training, court hearings for alternative dispositions, and appropriate community supervision support services.

Purpose and Summary

H.R. 3713, the “Sentencing Reform Act of 2015,” amends title 18, U.S. Code (the Federal Criminal Code), in several ways. First, it reforms mandatory minimum sentences for certain Federal drug offences. Second, it broadens the existing “safety valve” and creates a new, narrowly tailored safety valve for certain drug offenders. Third, it reforms sentences for certain firearms offenses. Finally, it applies the provisions of the Fair Sentencing Act of 2010¹ retroactively.

Background and Need for the Legislation

In early 2015, Chairman Goodlatte and Ranking Members Conyers created a Criminal Justice Reform Initiative at the Judiciary Committee to address the significant Congressional interest in criminal justice reform from Members who do and do not serve on the Committee. The purpose of the Initiative is to develop bipartisan legislation to address several facets of the Federal criminal justice system, including over-criminalization, sentencing reform, forensics reform, mentally ill offender reform, prison and reentry reform, protecting citizens through improved criminal procedures and policing strategies, and civil asset forfeiture reform. In addressing these issues, the Committee has relied on the work of the Over-Criminalization Task Force, which held nine hearings on a variety of criminal justice topics during the 113th Congress, as well as the information provided to the Committee by interested Members during the Committee’s formal listening session in June 2015.

The first topic the Committee addressed as part of the Initiative was sentencing reform. H.R. 3713, as reported from Committee,

¹ Pub. L. No. 111–220 (August 3, 2010).

makes several targeted, surgical changes to Federal sentencing law to: (1) reform mandatory minimum sentences for certain Federal drug offenses; (2) broaden the existing “safety valve” and create a new, narrowly tailored safety valve for certain drug offenders; (3) reform sentences for certain firearms offenses; and (4) apply the Fair Sentencing Act of 2010 retroactively.

Senate Judiciary Committee Chairman Grassley introduced a similar bill—S. 2123, the Sentencing Reform and Corrections Act—on October 1, 2015. However, H.R. 3713 differs from S. 2123 in several significant respects.

First, H.R. 3713 is purely a sentencing reform bill. It does not contain either the prison reform or the over-criminalization provisions in S. 2123.

Second, H.R. 3713 does not apply full retroactivity to the statutory changes. The bill provides for retroactive application of many of the statutory sentencing changes but, unlike the Senate bill (or the Sentencing Commission’s Amendment 782), H.R. 3713 excludes inmates who have been convicted of serious violent felonies from retroactivity. This means that those inmates will be required to serve their full term of incarceration.

Third, H.R. 3713 does not establish two new mandatory minimum sentences, but it does contain a sentencing enhancement for fentanyl. Fentanyl, a powerful narcotic pain medication 80 to 100 times more potent than morphine, has led to a rash of deaths across the country. In early 2015, the Drug Enforcement Administration issued a nationwide alert about the threat posed by fentanyl.² H.R. 3713 imposes a 5-year mandatory maximum sentencing enhancement for trafficking in heroin “cut” with fentanyl, or trafficking in fentanyl represented as heroin. The enhancement must run consecutively to the underlying sentence.

Finally, H.R. 3713 provides for retroactivity under the Fair Sentencing Act of 2010 (“FSA”). The FSA addressed the “crack/powder” disparity by raising the quantities of crack required to trigger the 5 and 10-year mandatory minimum sentences. In 2011, the Sentencing Commission promulgated an amendment that applied the FSA retroactively.³ However, the amendment did not allow for reductions below the mandatory minimum sentence. The effect of that is that offenders who received sentences just above the mandatory minimum because they had very little aggravating conduct, did not receive as much of a reduction as they could have; while offenders who received sentences well above the mandatory minimum potentially received a much larger reduction. H.R. 3713 does not provide full retroactivity for these crack offenders, but limits retroactivity to offenders who received a reduction to the mandatory minimum sentence, and offenders who did not receive a reduction because they were ineligible (because they were sentenced to the mandatory minimum and did not receive any additional time). It excludes offenders who received a reduction to a term above the mandatory minimum, and offenders whose prior motions for reduction in sentence were denied because the offender was deemed a

²“DEA Issues Nationwide Alert on Fentanyl as Threat to Health and Public Safety,” March 18, 2015, available at <https://www.dea.gov/divisions/hq/2015/hq031815.shtml>.

³See United States Sentencing Commission, “FREQUENTLY ASKED QUESTIONS: 2011 RETROACTIVE CRACK COCAINE GUIDELINE AMENDMENT,” available at <http://www.ussc.gov/policymaking/amendments/frequently-asked-questions-2011-retroactive-crack-cocaine-guideline-amendment>.

danger to public safety, or because of the offender's post-sentencing conduct.

Hearings

The Committee on the Judiciary held no hearings on H.R. 3713. However, from June 2013 to August 2014, the Committee's Over-Criminalization Task Force held multiple hearings on criminal justice issues, including a hearing on the penalties associated with a Federal criminal conviction on Friday, May 30, 2014.

Committee Consideration

On November 18, 2015, the Committee met in open session and ordered the bill H.R. 3713 favorably reported, with an amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 3713.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3713, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 2016.

Hon. BOB GOODLATTE, CHAIRMAN,
*Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3713, the "Sentencing Reform Act of 2015."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marin Burnett, who can be reached at 226–2860.

Sincerely,

KEITH HALL,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3713—Sentencing Reform Act of 2015.

As ordered reported by the House Committee on the Judiciary
on November 18, 2015.

SUMMARY

H.R. 3713 would amend Federal law to change the prison sentences associated with certain offenses. Based on information provided by the Department of Justice (DOJ) and the U.S. Sentencing Commission (USSC), CBO estimates that implementing the legislation would reduce the cost of incarcerating offenders and would lead to a reduction in discretionary costs to DOJ of \$338 million over the 2017–2021 period and \$769 million over the 2017–2026 period, assuming future appropriation actions consistent with the projected reduction in prison population.

CBO estimates that enacting H.R. 3713 would result in the release of thousands of prisoners from Federal prisons earlier than would occur under current law. CBO expects that upon release many of those individuals would receive Federal benefits from a variety of Federal programs including Medicare, Medicaid, and health insurance marketplaces; Social Security; Supplemental Security Income (SSI); and the Supplemental Nutrition Assistance Program (SNAP). As a result, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the legislation would increase direct spending by \$259 million and reduce revenues by \$8 million over the 2017–2026 period. Pay-as-you-go procedures apply to this legislation because it would affect direct spending and revenues.

CBO estimates that enacting H.R. 3713 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 3713 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of H.R. 3713 are shown in Table 1. The spending effects of this legislation fall within budget functions 550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

TABLE 1. SUMMARY OF BUDGETARY EFFECTS OF H.R. 3713

	By Fiscal Year, in Millions of Dollars											2017-	2017-	
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2021	2026		
DECREASES IN SPENDING SUBJECT TO APPROPRIATION														
Estimated Budget Authority	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769		
Estimated Outlays	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769		
INCREASES IN DIRECT SPENDING														
Estimated Outlays ^a	9	13	21	28	34	28	28	30	33	34	105	258		
On-Budget	7	11	18	25	29	25	25	26	29	29	90	224		
Off-Budget	2	2	3	3	5	3	3	4	4	5	15	34		
DECREASES IN REVENUES														
Estimated Revenues (on-budget)	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8		
INCREASE IN DEFICITS FROM CHANGES IN DIRECT SPENDING AND REVENUES														
Change in Deficits	9	13	22	29	35	29	29	31	34	35	108	266		
On-Budget	7	11	19	26	30	26	26	27	30	30	93	232		
Off-Budget	2	2	3	3	5	3	3	4	4	5	15	34		

Notes: Components may not sum to totals because of rounding.

a. Budget authority is equal to outlays.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 3713 will be enacted near the end of 2016 and that future appropriations will be reduced consistent with the anticipated reductions in prison population stemming from modified sentencing requirements specified in the bill.

The USSC guidelines differentiate the seriousness of offenses into 43 levels—the more serious the crime, the higher the offense level and the higher the potential sentence for conviction. On July 18, 2014, the USSC voted unanimously to apply Amendment 728. That amendment, sometimes referred to as “Drugs Minus Two,” adjusted sentencing guidelines to lower the sentencing levels for certain drug-related offenses. That amendment took effect on November 1, 2015, and because it was applied retroactively, it provides for the early release of thousands of inmates. The “Drugs Minus Two” amendment will affect all drug sentencing, including sentences that would be affected under H.R. 3713.

H.R. 3713 would amend current law to further reduce prison sentences for certain offenses. The legislation would change the manner in which sentences for particular crimes are calculated and determined. As a result, in qualifying cases, the sentencing court would be required to use the new guidelines provided by this legislation when calculating an appropriate sentence.

Under the bill, some provisions could be applied retroactively. The new calculations would be applied to both new cases (lowering potential initial sentences) and to old ones (recalculating sentences

in cases that would qualify for reconsideration). In cases where a provision could be applied retroactively, an inmate may petition the court for a new sentence that would follow the adjusted sentencing guidelines. The resulting sentence could make an existing inmate eligible for immediate or early release. Because the changes in sentencing calculations would result in the early release of many existing inmates and shorten sentences for those newly convicted, CBO expects that implementing the bill would reduce the number of individuals in Federal prisons relative to current law.

By reducing the population of individuals in Federal prisons, CBO expects that H.R. 3713 would reduce DOJ's discretionary costs to operate the Federal prison systems, which are subject to appropriation. We also expect the legislation would increase mandatory spending for entitlement programs. Individuals released earlier than they would be under current law could be eligible for different entitlement programs, such as Medicare, Medicaid, and Social Security, if they meet the criteria for those programs. (Generally, prisoners are not eligible for entitlement programs while they are incarcerated.)

CBO expects that under current law the number of individuals receiving sentences for offenses that would be affected by the legislation would remain at roughly the levels observed in recent years. The potential shift in the length of mandatory minimum sentences may have an affect on the behavior of prosecutors in those types of cases going forward but CBO cannot quantify those effects.

Costs and savings under the bill were calculated using "person-years," which were derived from the number of inmates estimated to be eligible for release in each year. When a person is released from prison early, the prison space that would have been occupied by that inmate (and its associated costs) would be "reduced" in that year and all other years that they otherwise would have been incarcerated. The average cost to BOP per person-year changes with inflation, but is estimated to average about \$13,000 over the 2017–2026 period. The budgetary effects of the various provisions of the bill would depend on the pace at which inmates would be released during that period.

Changes in Spending Subject to Appropriation

CBO estimates that implementing H.R. 3713 would reduce prison costs by \$338 million over the 2017–2021 period and \$769 million over the next 10 years (see Table 2). Those savings would stem primarily from reduced spending for prisoners' medical expenses and food as well as for utility expenses.

TABLE 2. CHANGES IN DISCRETIONARY SPENDING UNDER H.R. 3713

	By Fiscal Year, in Millions of Dollars											2017-	2017-	
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2021	2026		
DECREASES IN SPENDING SUBJECT TO APPROPRIATION														
Fair Sentencing Retroactivity														
Estimated Authorization Level	-25	-34	-43	-50	-57	-34	-29	-26	-23	-22	-209	-343		
Estimated Outlays	-25	-34	-43	-50	-57	-34	-29	-26	-23	-22	-209	-343		
Safety Valves														
Estimated Authorization Level	-3	-7	-16	-20	-24	-27	-30	-33	-36	-37	-70	-233		
Estimated Outlays	-3	-7	-16	-20	-24	-27	-30	-33	-36	-37	-70	-233		
Statutory Sentencing for Possession of a Firearm														
Estimated Authorization Level	-3	-5	-7	-10	-14	-14	-15	-17	-17	-18	-39	-120		
Estimated Outlays	-3	-5	-7	-10	-14	-14	-15	-17	-17	-18	-39	-120		
Mandatory Minimums for Prior Drug Offenses														
Estimated Authorization Level	-1	-2	-3	-4	-5	-6	-8	-10	-11	-13	-15	-63		
Estimated Outlays	-1	-2	-3	-4	-5	-6	-8	-10	-11	-13	-15	-63		
Mandatory Minimums for Firearms Offenses														
Estimated Authorization Level	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10		
Estimated Outlays	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10		
Total Changes														
Estimated Authorization Level	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769		
Estimated Outlays	-33	-49	-70	-85	-101	-82	-83	-87	-88	-91	-338	-769		

CBO estimates that H.R. 3713 would reduce the prison population relative to current law, which would reduce costs for operating the prison system. However, CBO does not expect there would be any savings from reductions in staffing because the Federal prison population currently exceeds its capacity. As the prison population decreases, the rate of hiring new staff for the corrections system could slow depending on DOJ's decisions about the desired ratio of inmates to staff. If DOJ elected to maintain the existing ratio of inmates to staff, then cost reductions under the bill would be greater as fewer staff would be needed to oversee a smaller prison population. If DOJ kept current staff levels constant, little or no reductions in staff costs would be realized. Based on information from DOJ, CBO expects that, because of the current level of prison overcrowding and the number of person-years saved by the legislation, DOJ would choose to maintain current staffing levels.

Fair Sentencing Act Retroactivity. The Fair Sentencing Act of 2010 (FSA) reduced the statutory penalties for offenses involving possession of crack cocaine. H.R. 3713 would make provisions of FSA (as amended by this bill) retroactive. Based on information provided by the USSC, CBO estimates that making the amended provisions of FSA retroactive would reduce the number of prisoners by about 17,000 person-years over the 2017–2021 period, which CBO estimates would reduce DOJ's costs by \$209 million over that

period. The reductions in prison costs from retroactively applying FSA would grow more slowly after 2021 as the number of affected inmates would diminish in future years. CBO estimates that implementing this provision would reduce DOJ's costs by \$343 million over the 2017–2026 period.

Safety Valves. Under current law, persons convicted of drug-trafficking offenses may receive sentences below the mandatory minimum if they have only one prior Federal sentence of less than 60 days (which would give them one criminal history point) and meet other requirements.¹ This exception to the minimum sentence is known as the “safety valve.” H.R. 3713 would expand the prison population eligible for the safety valve to include inmates with four criminal history points as long each conviction carries only one point. That expansion would allow reduced sentences to apply to persons with up to four convictions that resulted in less than 60 days of total sentence, with certain restrictions. Additionally, the bill would create a second safety valve that would allow mandatory minimum sentences of 10 years to be shortened if the defendant meets specified criteria.

Based on information provided by DOJ, CBO estimates that the expansion and creation of safety valves would reduce the number of prisoners over the 2017–2021 period by about 5,400 person-years and by 17,000 person-years over the 2017–2026 period and would reduce DOJ's costs by \$70 million over the 2017–2021 period and \$233 million over the 2017–2026 period.

Statutory Sentencing for Possession of a Firearm. H.R. 3713 would increase the maximum sentence for the unlawful possession of a firearm by a convicted felon, and certain other offenders, from 10 years to 15 years. Simultaneously it would reduce the enhanced mandatory minimum for armed career criminals from 15 years to 10 years. Prospectively, based on information from the USSC, CBO does not anticipate there would be any savings to the prison system from that provision over the 2017–2021 period. However, this provision could be applied retroactively, pending approval by a court.

Based on information provided by the USSC on court approved reductions in sentences, CBO estimates that the retroactive effects of the provision would result in savings of 3,100 person-years over the 2017–2021 period. CBO estimates that implementing this provision would reduce costs by \$39 million over the 2017–2021 period and \$120 million over the 2017–2026 period.

Mandatory Minimums for Prior Drug Offenses. H.R. 3713 would reduce mandatory minimum sentences for prior drug felons. The “three-strikes” penalty would be reduced from life imprisonment to 25 years and 20-year minimum sentences would be reduced to 15 years.² This section would also establish a mandatory prison term for a defendant who commits a drug offense involving a detectable amount of heroin containing fentanyl.

Under current law a mandatory minimum sentence can apply to any repeat drug offense, whether the felony is serious or minor.

¹ Criminal history points are a tool used to determine the length of a defendant's prison sentence. Under the U.S. Federal Sentencing Guidelines, the permissible length for a defendant's prison sentence depends on the defendant's prior criminal history combined with the seriousness of the current offense.

² The “three strikes” penalty significantly increases the prison sentence of persons who have two or more prior convictions and in some cases carries a mandatory life sentence.

The bill would change the criteria for the application of a mandatory minimum sentence to include only serious drug felonies and serious violent felonies.³ Those felonies are Federal or State-level crimes for which the maximum sentence is 10 years or more. Including convictions for possession of heroin containing fentanyl and prior State-level crimes along with Federal, among those that may result in a mandatory minimum sentence for qualifying drug offenders would increase the number of person-years served and mitigates savings under this provision of the legislation. CBO decreased person-year savings by 25 percent to reflect an increase in prison sentences because of this provision.

According to information from the USSC, savings for newly sentenced inmates under the lowered mandatory minimum would begin 15 years after sentencing, thus CBO estimates no savings over the next 10 years.

This provision may be used to retroactively reduce sentences. Based on information provided by the USSC, CBO estimates that such reductions would result in a decrease of 1,100 person-years over the 2017–2021 period, reducing costs by \$15 million over the 2017–2021 period and \$63 million over the 2017–2026 period.

Mandatory Minimums for Firearms Offenses. The bill would limit mandatory minimum sentences for offenses involving the use of a firearm in the commission of a drug-related or violent crime to offenders who have previously been convicted and have served a sentence for such an offense. The bill also would reduce that mandatory minimum from 25 years to 15 years. However, the bill would expand the list of offenses that may lead to a mandatory minimum sentence to include similar prior State-level convictions in which the offender carried, brandished, or used a firearm. This provision may be applied retroactively, but only after a court considers sentencing factors, including any danger the inmate may pose to society should they be released and whether or not they have engaged in misconduct during their time in prison.

Based on information provided by the USSC, CBO estimates that the retroactive effects of this provision would result in a decrease of 350 person-years over the 2017–2021 period. The inclusion of similar State-level convictions among those that may result in a mandatory minimum sentence would increase the number of person-years served thereby partially offsetting those estimated reductions. CBO estimates that implementing this provision would reduce costs by \$5 million over the 2017–2021 period and \$10 million over the 2017–2026 period.

Other Costs. H.R. 3713 would impose costs on the Judiciary. As inmates were released from prison earlier than they would be under current law, a greater number of probation officers would be required to supervise them, thereby increasing costs. The bill also would increase the workload of judges and court officers as new requests for changes in sentencing are considered by the court and inmates are processed for earlier release. According to information from the Administrative Office of the United States Courts, the bill

³A serious drug felony is a Federal offense involving a controlled substance for which the maximum term of imprisonment is ten years or more, as defined in titles 18, 21, and 46 of the U.S. Code. A serious violent felony is a Federal offense consisting of murder, manslaughter, sexual abuse, use of a firearm, or other severe offense for which the maximum term of imprisonment is 10 years or more, as defined in section 3559 of title 18 of the U.S. Code.

would increase costs to the Judiciary by less than \$500,000 a year over the 2017–2021 period.

Changes in Direct Spending and Revenues

Under current law prisoners are generally ineligible to receive benefits from certain Federal programs, including Medicare, Medicaid, and health insurance marketplaces; Social Security; SSI; and SNAP. By accelerating the release of prisoners, CBO estimates that the bill would increase the number of people receiving benefits from those programs, resulting in an increase in direct spending totaling \$258 million over the 2017–2026 period (see Table 3).

Medicaid. Based on research regarding the post-incarceration income of felons, CBO estimates that about half of the prisoners released under this bill would have incomes below 138 percent of the Federal poverty line, the upper income eligibility threshold for adults made newly eligible for Medicaid under the Affordable Care Act (ACA). Of those who would qualify for Medicaid, about half would be eligible under pre-ACA eligibility categories and qualify for the standard Federal Medicaid matching rates (which average 57 percent nationally), and the other half would be eligible for the new eligibility category under the ACA and qualify for Federal matching rates that begin at 100 percent in 2016 and phasedown to 90 percent by 2020. CBO also expects that health care costs for former prisoners would be about 25 percent higher than for the average Medicaid beneficiary stemming from mental healthcare needs and substance abuse issues. CBO estimates that Medicaid spending for those former prisoners would total \$80 million over the 2017–2026 period.

TABLE 3. CHANGES IN DIRECT SPENDING UNDER H.R. 3713

	By Fiscal Year, in Millions of Dollars										2017-	2017-
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2021	2026
INCREASES IN DIRECT SPENDING^a												
Medicaid	3	4	6	8	10	8	9	10	11	11	31	80
Exchange Subsidies	1	3	4	6	7	6	6	6	7	7	21	53
Social Security (off-budget)	2	2	3	3	5	3	3	4	4	5	15	34
Medicare	1	1	2	3	3	3	3	3	3	3	10	25
Supplemental Security Income	2	2	4	5	6	5	4	4	5	5	19	42
Supplemental Nutrition Assistance Program	0	1	2	3	3	3	3	3	3	3	9	24
Total Changes in Outlays	9	13	21	28	34	28	28	30	33	34	105	258
On-budget	7	11	18	25	29	25	25	26	29	29	90	224
Off-budget	2	2	3	3	5	3	3	4	4	5	15	34
DECREASES IN REVENUES												
Estimated Revenues	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8

Notes: Components may not sum to totals because of rounding.

a. Budget authority is equal to outlays for all programs.

Health Insurance Marketplaces. Based on research on the age, employment status, and post-incarceration income of felons, CBO and JCT estimate that about one-quarter of the prisoners released under the bill would obtain subsidized insurance through a health insurance marketplace. Accordingly, CBO and JCT estimate that the bill would increase premium assistance tax credits and cost-sharing subsidies provided through health insurance marketplaces by \$62 million over the 2017–2026 period. That increase in subsidies reflects a \$53 million increase in outlays and a \$8 million decrease in revenues.⁴

Social Security and Medicare. Based on administrative data from the Social Security Administration, CBO estimates that about 4 percent of prisoners would receive Social Security benefits if they were not incarcerated. CBO applied that share to the estimated reduction in prisoners and estimates that enacting H.R. 3713 would increase Social Security spending by \$34 million over the 2017–2026 period (that spending would be classified as off-budget). Most prisoners who would gain eligibility for Social Security under this proposal also would gain eligibility for Medicare benefits, at an estimated cost of \$25 million over the 2017–2026 period.

Supplemental Security Income. Using data from the Social Security Administration on SSI beneficiaries whose benefits were suspended while they were incarcerated, CBO estimates that 10 percent of prisoners released under the bill would receive SSI benefits, at an estimated cost of \$42 million over the 2017–2026 period.

Supplemental Nutrition Assistance Program. Based on research on the post-incarceration income of felons, CBO estimates that almost one-quarter of the prisoners released under the bill would receive SNAP benefits, at an estimated cost of \$24 million over the 2017–2026 period. This estimate accounts for the fact that most States have taken the option under current law to modify or opt out of the ban on drug felons from receiving SNAP benefits.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

⁴The subsidies for health insurance premiums are structured as refundable tax credits; following the usual procedures for such credits, CBO and JCT classify the portions that exceed taxpayers' income tax liabilities as outlays, and the portions that reduce tax payments as reductions in revenues. Cost-sharing subsidies are all classified as outlays.

CBO Estimate of Pay-As-You-Go Effects for H.R. 3713, as ordered reported by the Senate Committee on the Judiciary on October 26, 2015

	By Fiscal Year, in Millions of Dollars											2016-	2016-
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2021	2026
NET INCREASE IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	7	11	19	26	30	26	26	27	30	30	93	232
Memorandum:													
Changes in Outlays	0	7	11	18	25	29	25	25	26	29	29	90	224
Changes in Revenues	0	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-3	-8

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS:

CBO estimates that enacting H.R. 3713 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3713 contains no intergovernmental mandates as defined in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3713 contains no private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On May 17, 2016, CBO transmitted a cost estimate for S. 2123, the "Sentencing Reform and Corrections Act of 2015," as reported by the Senate Committee on the Judiciary on October 26, 2015. H.R. 3713 is similar to title 1 of S. 2123; however, H.R. 3713 would create new mandatory minimum sentences for possession of certain narcotics while S. 2123 would create new mandatory minimum sentences for different crimes. H.R. 3713 also does not include changes to programs that aim to reduce recidivism that are in the Senate bill. Differences in the estimated budgetary effects of the two bills reflect those differences in legislative language.

ESTIMATE PREPARED BY:

Federal Costs: Marin Burnett (DOJ), Emily Stern (SSI), Kathleen FitzGerald (SNAP), Robert Stewart (Medicaid), Katharine Fritzsche (health insurance marketplaces), and Noah Meyerson (Social Security and Medicare)

Revenues: Staff of the Joint Committee on Taxation

Impact on State, Local, and Tribal Governments: Leo Lex

Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis

Duplication of Federal Programs

No provision of H.R. 3713 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 3713 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3713, the Sentencing Reform Act of 2015, reforms mandatory minimum sentences for certain Federal drug offences; broadens the existing “safety valve” and creates a new, narrowly tailored safety valve for certain drug offenders; reforms sentences for certain firearms offenses; and applies the provisions of the Fair Sentencing Act of 2010 retroactively.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3713 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title. This section cites the short title of the bill as the “Sentencing Reform Act of 2015.”

Section 2. Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies. This section provides that an offender with prior conviction(s) for a “serious violent felony”⁴ or a “serious drug felony”⁵ may receive an enhanced sentence under 21 U.S.C. § 841 (the Controlled Substances Act) or 21 U.S.C. § 960 (the Controlled Substances Import and Export Act). It reduces the three-strike mandatory life sentence to 25 years and the two-strike sentence from 20 to 15 years. It includes a mandatory, consecutive, 5-year maximum sentencing enhancement for trafficking in heroin “cut” with fentanyl, or fentanyl sold as heroin. It applies the sentencing reductions retroactively, except for offenders who have prior serious violent felony convictions that resulted in a prison sentence of greater than 13 months.

Section 3. Broadening of Existing Safety Valve. This section expands the number of criminal history points that will allow an offender to be covered by the existing drug “safety valve”⁶ from one

⁴ 18 U.S.C. § 3559(c)(2)(F).

⁵ 18 U.S.C. § 924(e)(2)(A).

⁶ 18 U.S.C. § 3559(f).

point to four points. This expansion will apply to many offenders with prior misdemeanor convictions, but the legislation excludes offenders with prior 3-point felony convictions, or prior 2-point violent or drug trafficking convictions. For offenders with more than four points, this section allows courts to waive the criminal history requirement in the safety valve if the court finds, in writing, that the seriousness of the defendant's criminal history is substantially overrepresented, or that the defendant is unlikely to commit further crimes. However, any defendant who has been convicted of a serious drug felony or a serious violent felony is excluded from this "overrepresentation" provision. This section applies only prospectively.

Section 4. Limitation on Application of the 10-Year Mandatory Minimum. This section creates a second safety valve that will allow judges to sentence certain offenders below the 10-year mandatory minimum. In cases involving a 10-year mandatory minimum sentence, if the defendant meets the following criteria, the court may impose a sentence as if the statutory minimum term of imprisonment was 5 years:

- The defendant does not have a prior conviction for a serious drug felony or serious violent felony (as defined in the legislation);
- The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense, and the offense did not result in death or serious bodily injury to any person;
- The defendant did not play an enhanced role in the offense by acting as an organizer, leader, manager, or supervisor of other participants in the offense, as determined under the sentencing guidelines, or by exercising substantial authority or control over the criminal activity of a criminal organization, regardless of whether the defendant was a member of such organization;
- The defendant did not act as an importer, exporter, high-level distributor or supplier, wholesaler, or manufacturer of the controlled substances involved in the offense or engage in a continuing criminal enterprise;⁷
- The defendant did not distribute a controlled substance to or with a person under 18 years of age; and
- Not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

This section only applies prospectively.

⁷ 21 U.S.C. § 848.

Section 5. Clarification of Section 924(c) of Title 18, United States Code. This section expands the enhanced penalties for violent firearms offenders to those with prior firearm convictions. It also revises section 924(c) of title 18 to address inappropriate “stacking” of Federal firearms charges. As the law currently reads, defendants who are convicted of a first offense under that section receive a mandatory, consecutive, minimum penalty of 5 years. For each “second or subsequent offense,” the penalty jumps to 25 years. In some cases, courts have interpreted “second or subsequent” to include multiple charges in the same indictment. In “stacking” charges this way, some defendants have received inappropriately lengthy sentences. This section clarifies that an enhancement under 924(c) can only apply after a defendant has had an intervening conviction under 924(c) or under State law for the same conduct. This section also reduces the enhanced penalty from 25 to 15 years. This “stacking” fix applies retroactively, though the sentence reduction does not.

Section 6. Amendment to Certain Penalties for Certain Firearm Offenses and Armed Career Criminal Provision. This section raises the statutory maximum for unlawful possession of firearms to 15 years, but lowers the enhanced mandatory minimum sentences for repeat offenders to 10 years. This change is intended to fix a loophole in the Federal firearm sentencing statutes.

Section 7. Application of Fair Sentencing Act. This section permits certain offenders sentenced for crack offenses prior to the Fair Sentencing Act of 2010 (FSA) to have their sentences retroactively reduced. As noted above, it provides FSA retroactivity for offenders who have never received a reduction, who only received a reduction to the mandatory minimum, or for those who were ineligible because they were sentenced at the mandatory minimum.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

* * * * *

DEFINITIONS

SEC. 102. As used in this title:

(1) The term “addict” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term “administer” refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term “agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier’s or warehouseman’s business.

(4) The term “Drug Enforcement Administration” means the Drug Enforcement Administration in the Department of Justice.

(5) The term “control” means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

(6) The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

(7) The term “counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms “deliver” or “delivery” mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9) The term “depressant or stimulant substance” means—

(A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and admin-

istering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term “dispenser” means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term “distributor” means a person who so delivers a controlled substance or a listed chemical.

(12) The term “drug” has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

(13) The term “felony” means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term “isomer” means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term “isomer” means any optical, positional, or geometric isomer. As used in schedule II(a)(4), the term “isomer” means any optical or geometric isomer.

(15) The term “manufacture” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term “manufacturer” means a person who manufactures a drug or other substance.

(16) The term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term “narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

(18) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(19) The term "opium poppy" means the plant of the species *Papaver somniferum* L., except the seed thereof.

(20) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(21) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(22) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(23) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(24) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health, Education, and Welfare.

(25) The term "serious bodily injury" means bodily injury which involves—

(A) a substantial risk of death;

(B) protracted and obvious disfigurement; or

(C) protracted loss or impairment of the function of a bodily member, or organ, or mental faculty.

(26) The term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(27) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(28) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(29) The term "maintenance treatment" means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(30) The term “detoxification treatment” means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(31) The term “Convention on Psychotropic Substances” means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term “Single Convention on Narcotic Drugs” means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(32)(A) Except as provided in subparagraph (C), the term “controlled substance analogue” means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.

(C) Such term does not include—

(i) a controlled substance;

(ii) any substance for which there is an approved new drug application;

(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(33) The term “listed chemical” means any list I chemical or any list II chemical.

(34) The term “list I chemical” means a chemical specified by regulation to the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is important to the manufacture of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

(A) Anthranilic acid, its esters, and its salts.

(B) Benzyl cyanide.

(C) Ephedrine, its salts, optical isomers, and salts of optical isomers.

(D) Ergonovine and its salts.

(E) Ergotamine and its salts.

(F) N-Acetylanthranilic acid, its esters, and its salts.

(G) Norpseudoephedrine, its salts, optical isomers, and salts of

(H) Phenylacetic acid, its esters, and its salts.

(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

(J) Piperidine and its salts.

(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(L) 3,4-Methylenedioxyphenyl-2-propanone.

(M) Methylamine.

(N) Ethylamine.

(O) Propionic anhydride.

(P) Isosafrole.

(Q) Safrole.

(R) Piperonal.

(S) N-Methylephedrine.

(T) N-methylpseudoephedrine.

(U) Hydriodic acid.

(V) Benzaldehyde.

(W) Nitroethane.

(X) Gamma butyrolactone.

(Y) Any salt, optical isomer, or salt of an optical isomer of the chemicals listed in subparagraphs (M) through (U) of this paragraph.

(35) The term "list II chemical" means a chemical (other than a list I chemical) specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

(A) Acetic anhydride.

(B) Acetone.

(C) Benzyl chloride.

(D) Ethyl ether.

(F) Potassium permanaganate.

(G) 2-Butanone (or Methyl Ethyl Ketone).

(H) Toluene.

(I) Iodine.

(J) Hydrochloric gas.

(36) The term "regular customer" means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

(37) The term "regular importer" means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.

(38) The term "regulated person" means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or

trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(39) The term “regulated transaction” means—

(A) a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

(i) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(ii) a delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this clause does not relieve a distributor, importer, or exporter from compliance with section 310;

(iii) any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

(I) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;

(v) any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under section 310(b)(3); or

(vi) any transaction in a chemical mixture which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered; and

(B) a distribution, importation, or exportation of a tableting machine or encapsulating machine.

(40) The term “chemical mixture” means a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a list I chemical or a list II chemical with another chemical that is present solely as an impurity.

(41)(A) The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes—

- (i) androstenediol—
 - (I) $3\beta,17\beta$ -dihydroxy- 5α -androstane; and
 - (II) $3\alpha,17\beta$ -dihydroxy- 5α -androstane;
- (ii) androstenedione (5α -androst-3,17-dione);
- (iii) androstenediol—
 - (I) 1-androstenediol ($3\beta,17\beta$ -dihydroxy- 5α -androst-1-ene);
 - (II) 1-androstenediol ($3\alpha,17\beta$ -dihydroxy- 5α -androst-1-ene);
 - (III) 4-androstenediol ($3\beta,17\beta$ -dihydroxy-androst-4-ene);
 and
 - (IV) 5-androstenediol ($3\beta,17\beta$ -dihydroxy-androst-5-ene);
- (iv) androstenedione—
 - (I) 1-androstenedione ([5α]-androst-1-en-3,17-dione);
 - (II) 4-androstenedione (androst-4-en-3,17-dione); and
 - (III) 5-androstenedione (androst-5-en-3,17-dione);
- (v) bolasterone ($7\alpha,17\alpha$ -dimethyl- 17β -hydroxyandrost-4-en-3-one);
- (vi) boldenone (17β -hydroxyandrost-1,4,-diene-3-one);
- (vii) calusterone ($7\beta,17\alpha$ -dimethyl- 17β -hydroxyandrost-4-en-3-one);
- (viii) clostebol (4-chloro- 17β -hydroxyandrost-4-en-3-one);
- (ix) dehydrochloromethyltestosterone (4-chloro- 17β -hydroxy- 17α -methyl-androst-1,4-dien-3-one);
- (x) Δ 1-dihydrotestosterone (a.k.a. “1-testosterone”) (17β -hydroxy- 5α -androst-1-en-3-one);
- (xi) 4-dihydrotestosterone (17β -hydroxy-androstan-3-one);
- (xii) drostanolone (17β -hydroxy- 2α -methyl- 5α -androstan-3-one);
- (xiii) ethylestrenol (17α -ethyl- 17β -hydroxyestr-4-ene);
- (xiv) fluoxymesterone (9 -fluoro- 17α -methyl- $11\beta,17\beta$ -dihydroxyandrost-4-en-3-one);
- (xv) formebolone (2 -formyl- 17α -methyl- $11\alpha,17\beta$ -dihydroxyandrost-1,4-dien-3-one);
- (xvi) furazabol (17α -methyl- 17β -hydroxyandrostano[$2,3$ -c]-furazan);
- (xvii) 13β -ethyl- 17β -hydroxygon-4-en-3-one;
- (xviii) 4-hydroxytestosterone ($4,17\beta$ -dihydroxy-androst-4-en-3-one);
- (xix) 4-hydroxy-19-nortestosterone ($4,17\beta$ -dihydroxy-estr-4-en-3-one);
- (xx) mestanolone (17α -methyl- 17β -hydroxy- 5α -androstan-3-one);
- (xxi) mesterolone (1α -methyl- 17β -hydroxy-[5α]-androstan-3-one);
- (xxii) methandienone (17α -methyl- 17β -hydroxyandrost-1,4-dien-3-one);

- (xxiii) methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene);
- (xxiv) methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one);
- (xxv) 17 α -methyl-3 β , 17 β -dihydroxy-5 α -androstane;
- (xxvi) 17 α -methyl-3 α ,17 β -dihydroxy-5 α -androstane;
- (xxvii) 17 α -methyl-3 β ,17 β -dihydroxyandrost-4-ene.
- (xxviii) 17 α -methyl-4-hydroxynandrolone (17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one);
- (xxix) methyldienolone (17 α -methyl-17 β -hydroxyestra-4,9(10)-dien-3-one);
- (xxx) methyltrienolone (17 α -methyl-17 β -hydroxyestra-4,9,11-trien-3-one);
- (xxxi) methyltestosterone (17 α -methyl-17 β -hydroxyandrost-4-en-3-one);
- (xxxii) mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one);
- (xxxiii) 17 α -methyl- Δ 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (a.k.a. "17- α -methyl-1-testosterone");
- (xxxiv) nandrolone (17 β -hydroxyestr-4-en-3-one);
- (xxxv) norandrostenediol—
 - (I) 19-nor-4-androstenediol (3 β , 17 β -dihydroxyestr-4-ene);
 - (II) 19-nor-4-androstenediol (3 α , 17 β -dihydroxyestr-4-ene);
 - (III) 19-nor-5-androstenediol (3 β , 17 β -dihydroxyestr-5-ene); and
 - (IV) 19-nor-5-androstenediol (3 α , 17 β -dihydroxyestr-5-ene);
- (xxxvi) norandrostenedione—
 - (I) 19-nor-4-androstenedione (estr-4-en-3,17-dione); and
 - (II) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (xxxvii) norbolethone (13 β ,17 α -diethyl-17 β -hydroxygon-4-en-3-one);
- (xxxviii) norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one);
- (xxxix) norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one);
- (xl) normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one);
- (xli) oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α]-androstan-3-one);
- (xlii) oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one);
- (xliii) oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androstan-3-one);
- (xliv) stanozolol (17 α -methyl-17 β -hydroxy-[5 α]-androst-2-eno[3,2-*c*]-pyrazole);
- (xlv) stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one);
- (xlvi) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (xlvii) testosterone (17 β -hydroxyandrost-4-en-3-one);
- (xlviii) tetrahydrogestrinone (13 β ,17 α -diethyl-17 β -hydroxygon-4,9,11-trien-3-one);
- (xlix) trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one);

- (l) 5 α -Androstan-3,6,17-trione;
- (li) 6-bromo-androstan-3,17-dione;
- (lii) 6-bromo-androsta-1,4-diene-3,17-dione;
- (liii) 4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (liv) 4-chloro-17 α -methyl-androst-4-ene-3 β ,17 β -diol;
- (lv) 4-chloro-17 α -methyl-17 β -hydroxy-androst-4-en-3-one;
- (lvi) 4-chloro-17 α -methyl-17 β -hydroxy-androst-4-ene-3,11-dione;
- (lvii) 4-chloro-17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (lviii) 2 α ,17 α -dimethyl-17 β -hydroxy-5 α -androstan-3-one;
- (lix) 2 α ,17 α -dimethyl-17 β -hydroxy-5 β -androstan-3-one;
- (lx) 2 α ,3 α -epithio-17 α -methyl-5 α -androstan-17 β -ol;
- (lxi) [3,2-c]-furazan-5 α -androstan-17 β -ol;
- (lxii) 3 β -hydroxy-estra-4,9,11-trien-17-one;
- (lxiii) 17 α -methyl-androst-2-ene-3,17 β -diol;
- (lxiv) 17 α -methyl-androsta-1,4-diene-3,17 β -diol;
- (lxv) Estra-4,9,11-triene-3,17-dione;
- (lxvi) 18 α -Homo-3-hydroxy-estra-2,5(10)-dien-17-one;
- (lxvii) 6 α -Methyl-androst-4-ene-3,17-dione;
- (lxviii) 17 α -Methyl-androstan-3-hydroxyimine-17 β -ol;
- (lxix) 17 α -Methyl-5 α -androstan-17 β -ol;
- (lxx) 17 β -Hydroxy-androstano[2,3-d]isoxazole;
- (lxxi) 17 β -Hydroxy-androstano[3,2-c]isoxazole;
- (lxxii) 4-Hydroxy-androst-4-ene-3,17-dione[3,2-c]pyrazole-5 α -androstan-17 β -ol;
- (lxxiii) [3,2-c]pyrazole-androst-4-en-17 β -ol;
- (lxxiv) [3,2-c]pyrazole-5 α -androstan-17 β -ol; and
- (lxxv) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201.

(B)(i) Except as provided in clause (ii), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

(ii) If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of subparagraph (A).

(C)(i) Subject to clause (ii), a drug or hormonal substance (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that is not listed in subparagraph (A) and is derived from, or has a chemical structure substantially similar to, 1 or more anabolic steroids listed in subparagraph (A) shall be considered to be an anabolic steroid for purposes of this Act if—

(I) the drug or substance has been created or manufactured with the intent of producing a drug or other substance that either—

- (aa) promotes muscle growth; or
- (bb) otherwise causes a pharmacological effect similar to that of testosterone; or

- (II) the drug or substance has been, or is intended to be, marketed or otherwise promoted in any manner suggesting that consuming it will promote muscle growth or any other pharmacological effect similar to that of testosterone.
- (ii) A substance shall not be considered to be a drug or hormonal substance for purposes of this subparagraph if it—
- (I) is—
- (aa) an herb or other botanical;
- (bb) a concentrate, metabolite, or extract of, or a constituent isolated directly from, an herb or other botanical;
- or
- (cc) a combination of 2 or more substances described in item (aa) or (bb);
- (II) is a dietary ingredient for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); and
- (III) is not anabolic or androgenic.
- (iii) In accordance with section 515(a), any person claiming the benefit of an exemption or exception under clause (ii) shall bear the burden of going forward with the evidence with respect to such exemption or exception.
- (42) The term “international transaction” means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.
- (43) The terms “broker” and “trader” mean a person that assists in arranging an international transaction in a listed chemical by—
- (A) negotiating contracts;
- (B) serving as an agent or intermediary; or
- (C) bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.
- (44) The term “felony drug offense” means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.
- (45)(A) The term “scheduled listed chemical product” means, subject to subparagraph (B), a product that—
- (i) contains ephedrine, pseudoephedrine, or phenylpropanolamine; and
- (ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.
- Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.
- (B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) added to any of the schedules under section 202(c). In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.
- (46) The term “regulated seller” means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

(47) The term “mobile retail vendor” means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(48) The term “at retail”, with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

(49)(A) The term “retail distributor” means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to ephedrine, pseudoephedrine, or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

(B) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i) A grocery store is an entity within SIC code 5411.

(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

(iii) A drug store is an entity within SIC code 5912.

(50) The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(51) The term “deliver, distribute, or dispense by means of the Internet” refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(52) The term “online pharmacy”—

(A) means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet; and

(B) does not include—

(i) manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 who do not dispense controlled substances to an unregistered individual or entity;

(ii) nonpharmacy practitioners who are registered under section 303(f) and whose activities are authorized by that registration;

(iii) any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f);

(iv) a health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility

is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act;

(v) any agent or employee of any hospital or facility referred to in clause (iii) or (iv), provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in clause (iv), only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such clause;

(vi) mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(vii) a person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(viii) a pharmacy registered under section 303(f) whose dispensing of controlled substances via the Internet consists solely of—

(I) refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (55); or

(II) filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (56); or

(ix) any other persons for whom the Attorney General and the Secretary have jointly, by regulation, found it to be consistent with effective controls against diversion and otherwise consistent with the public health and safety to exempt from the definition of an “online pharmacy”.

(53) The term “homepage” means the opening or main page or screen of the website of an online pharmacy that is viewable on the Internet.

(54) The term “practice of telemedicine” means, for purposes of this title, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act, which practice—

(A) is being conducted—

(i) while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f); and

(ii) by a practitioner—

(I) acting in the usual course of professional practice;

(II) acting in accordance with applicable State law; and

(III) registered under section 303(f) in the State in which the patient is located, unless the practitioner—

(aa) is exempted from such registration in all States under section 302(d); or

(bb) is—

- (AA) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
 - (BB) registered under section 303(f) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);
- (B) is being conducted while the patient is being treated by, and in the physical presence of, a practitioner—
- (i) acting in the usual course of professional practice;
 - (ii) acting in accordance with applicable State law; and
 - (iii) registered under section 303(f) in the State in which the patient is located, unless the practitioner—
 - (I) is exempted from such registration in all States under section 302(d); or
 - (II) is—
 - (aa) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and
 - (bb) registered under section 303(f) in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);
- (C) is being conducted by a practitioner—
- (i) who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act;
 - (ii) acting within the scope of the employment, contract, or compact described in clause (i); and
 - (iii) who is designated as an Internet Eligible Controlled Substances Provider by the Secretary under section 311(g)(2);
- (D)(i) is being conducted during a public health emergency declared by the Secretary under section 319 of the Public Health Service Act; and
- (ii) involves patients located in such areas, and such controlled substances, as the Secretary, with the concurrence of the Attorney General, designates, provided that such designation shall not be subject to the procedures prescribed by subchapter II of chapter 5 of title 5, United States Code;
- (E) is being conducted by a practitioner who has obtained from the Attorney General a special registration under section 311(h);
- (F) is being conducted—
- (i) in a medical emergency situation—
 - (I) that prevents the patient from being in the physical presence of a practitioner registered under section 303(f) who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(II) that prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(III) during which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(IV) that requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) by a practitioner that—

(I) is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(II) is registered under section 303(f) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f); and

(III) issues a controlled substance prescription in this emergency context that is limited to a maximum of a 5-day supply which may not be extended or re-filled; or

(G) is being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.

(55) The term “refilling prescriptions for controlled substances in schedule III, IV, or V”—

(A) means the dispensing of a controlled substance in schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309, as appropriate; and

(B) does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(56) The term “filling new prescriptions for controlled substances in schedule III, IV, or V” means filling a prescription for an individual for a controlled substance in schedule III, IV, or V, if—

(A) the pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 (in this paragraph referred to as the “original prescription”);

(B) the pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in subparagraph (A); and

(C) the practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

(57) *The term “serious drug felony” means an offense described in section 924(e)(2)(A) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months.*

(58) *The term “serious violent felony” means an offense—*

(A) described in section 3559(c)(2)(F) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; or

(B) that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.

* * * * *

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 409, 418, 419, or 420 any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. **¶**If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years **¶***If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 **¶**after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release **¶**after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.*

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. **¶If any person commits such a violation after a prior conviction for a felony drug offense has become final** *If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final*, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprison-

ment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United State Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall,

in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice the authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than 1 year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of im-

prisonment of not more than 4 years, a fine not to exceed the provisions of title 18, United States Code, or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 and section 3607 of title 18, United States Code.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18, United States Code;

(C) \$500,000 if the defendant is an individual; or

(D) \$1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources,

or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) PENALTIES FOR DISTRIBUTION.—

(A) IN GENERAL.—Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B) DEFINITION.—For purposes of this paragraph, the term “without that individual's knowledge” means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(8) *In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of heroin also contains a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide, then a court shall, in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years, which shall not run concur-*

rently with any term of imprisonment imposed on the person under any other provision of law.

(9) In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of *N*-phenyl-*N*-[1-(2-phenylethyl)-4-piperidinyl]propanamide or any analogue of *N*-phenyl-*N*-[1-(2-phenylethyl)-4-piperidinyl]propanamide was represented to be or sold as heroin, then a court shall, in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years, which shall not run concurrently with any term of imprisonment imposed on the person under any other provision of law.

(c) Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

(2) possesses or distributes, a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the record-keeping or reporting requirements of section 310, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3) For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) applies, be fined

under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) INTERNET SALES OF DATE RAPE DRUGS.—

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser; shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, United States Code, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii) A person or entity providing documentation that establishes the name, address, and business of the

person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) OFFENSES INVOLVING DISPENSING OF CONTROLLED SUBSTANCES BY MEANS OF THE INTERNET.—

(1) IN GENERAL.—It shall be unlawful for any person to knowingly or intentionally—

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B) aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by this title.

(2) EXAMPLES.—Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(f) (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e);

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections 303(f) or 309(e);

(D) offering to fill a prescription for a controlled substance based solely on a consumer’s completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311.

(3) INAPPLICABILITY.—

(A) This subsection does not apply to—

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to—

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined

in section 231 of the Communications Act of 1934); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) KNOWING OR INTENTIONAL VIOLATION.—Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

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CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

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**TITLE III—IMPORTATION AND EXPORTATION;
AMENDMENTS AND REPEALS OF REVENUE LAWS**

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PART A—IMPORTATION AND EXPORTATION

* * * * *

PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 305, 1002, 1003, or 1007, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures, possesses with intent to distribute, or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b)(1) In the case of a violation of subsection (a) of this section involving—

(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

- (iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- (iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);
- (C) 280 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;
- (D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);
- (E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);
- (F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or
- (H) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. **¶**If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years **¶***If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years* and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(2) In the case of a violation of subsection (a) of this section involving—

(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(B) 500 grams or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 28 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or

(H) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a [felony drug offense] *serious drug felony* or *serious violent felony* has become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of

imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or flunitrazepam, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results.

(4) In the case of a violation under subsection (a) with respect to less than 50 kilograms of marijuana except in the case of 100 or more marijuana plants regardless of weight, less than 10 kilograms of hashish, or less than one kilogram of hashish oil, the person committing such violation shall be sentenced in accordance with section 401(b)(1)(D).

(5) In the case of a violation of subsection (a) involving a controlled substance in schedule III, such person shall be sentenced in accordance with section 401(b)(1).

(6) In the case of a violation of subsection (a) involving a controlled substance in schedule IV, such person shall be sentenced in accordance with section 401(b)(2).

(7) In the case of a violation of subsection (a) involving a controlled substance in schedule V, such person shall be sentenced in accordance with section 401(b)(3).

(8) *In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of heroin also contains a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide, then a court shall—*

(A) not impose a term of probation;

(B) in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years; and

(C) no term of imprisonment imposed on a person under subparagraph (B) shall run concurrently with any term of imprisonment imposed on the person under any other provision of law.

(9) *In the case of a violation of subsection (a), if the mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or any analogue of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide was represented to be or sold as heroin, then a court shall—*

(A) not impose a term of probation;

(B) in addition to the term of punishment for the violation of this section, impose a term of imprisonment not to exceed 5 years; and

(C) no term of imprisonment imposed on a person under subparagraph (B) shall run concurrently with any term of imprisonment imposed on the person under any other provision of law.

(c) A special parole term imposed under this section or section 1012 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 1012 is in addition to, and not in lieu of, any other parole provided for by law.

(d) A person who knowingly or intentionally—

(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or title II;

(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this title or title II;

(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported;

(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation qualifies for a waiver of the 15-day notification requirement granted pursuant to paragraph (2) or (3) of section 1018(f) by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported;

(6) imports a listed chemical in violation of section 1002, imports or exports such a chemical in violation of section 1007 or 1018, or transfers such a chemical in violation of section 1018(d); or

(7) manufactures, possesses with intent to distribute, or distributes a listed chemical in violation of section 959 of this title.

shall be fined in accordance with title 18, imprisoned not more than 20 years in the case of a violation of paragraph (1) or (3) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (3) involving a list I chemical, or both.

* * * * *

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 44—FIREARMS

* * * * *

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter, shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned **[not more than 10 years]** *not more than 15 years*, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922, shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semi-automatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a [second or subsequent conviction under this subsection] *violation of this subsection that occurs after a prior conviction under this subsection or under State law for a crime of violence that contains as an element of the offense the carrying, brandishing, or use of a firearm has become final*, the person shall—

(i) be sentenced to a term of imprisonment of [not less than 25 years] *not less than 15 years*; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term “drug trafficking crime” means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term “crime of violence” means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: Provided, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a

reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned [not less than fifteen years] *not less than 10 years*, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title

46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under para-

graph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

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PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 227—SENTENCES

SUBCHAPTER A—GENERAL PROVISIONS

* * * * *

§ 3553. Imposition of a sentence

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing

Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) CHILD CRIMES AND SEXUAL OFFENSES.—

(A) SENTENCING.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sen-

tencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and

to the Sentencing Commission, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

【(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;】

(1) *the defendant does not have—*

(A) *more than 4 criminal history points as determined under the sentencing guidelines;*

(B) *a prior 3-point offense, as determined under the sentencing guidelines; or*

(C) *a prior 2-point drug trafficking or violent offense, as determined under the sentencing guidelines;*

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

(g) *INADEQUACY OF CRIMINAL HISTORY.*—

(1) *IN GENERAL.*—*If subsection (f) does not apply to a defendant because the defendant does not meet the requirements described in subsection (f)(1) (relating to criminal history), the court may, upon prior notice to the Government, waive subsection (f)(1) if the court specifies in writing the specific reasons why reliable information indicates that excluding the defendant pursuant to subsection (f)(1) substantially overrepresents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.*

(2) *PROHIBITION.*—*This subsection shall not apply to any defendant who has been convicted of a serious drug felony or a serious violent felony as defined in paragraphs (57) and (58), respectively, of section 102 of the Controlled Substances Act (21 U.S.C. 802).*

(h) *DEFINITIONS.*—*As used in this section—*

(1) *the term “drug trafficking offense” means an offense that is punishable by imprisonment under any law of the United States, or of a State or foreign country, that prohibits or restricts the importation, manufacture, or distribution of controlled substances or the possession of controlled substances with intent to distribute; and*

(2) *the term “violent offense” means a “crime of violence”, as defined in section 16, that is punishable by imprisonment.*

(i) *LIMITATION ON APPLICABILITY OF CERTAIN STATUTORY MINIMUMS.*—*Notwithstanding any other provision of law, in the case of a conviction under section 401 or 406 of the Controlled Substances Act (21 U.S.C. 841 and 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960 and 963) for which the statutory minimum term of imprisonment is 10 years, the court may impose a sentence as if the statutory minimum term of imprisonment was 5 years, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—*

(1) *the defendant does not have a prior conviction for a serious drug felony or serious violent felony as defined in paragraphs (57) and (58), respectively, of section 102 of the Controlled Substances Act (21 U.S.C. 802) that was made final prior to the commission of the instant offense;*

(2) *the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or in-*

duce another participant to do so) in connection with the offense, and the offense did not result in death or serious bodily injury to any person;

(3) the defendant did not play an enhanced role in the offense by acting as an organizer, leader, manager, or supervisor of other participants in the offense, as determined under the sentencing guidelines, or by exercising substantial authority or control over the criminal activity of a criminal organization, regardless of whether the defendant was a member of such organization;

(4) the defendant did not act as an importer, exporter, high-level distributor or supplier, wholesaler, or manufacturer of the controlled substances involved in the offense or engage in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(5) the defendant did not distribute a controlled substance to or with a person under 18 years of age; and

(6) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

(j) DEFINITIONS.—As used in subsection (i) of this section—

(1) the term “importer, exporter, or high-level distributor or supplier”—

(A) means a defendant who imported, exported, or otherwise distributed or supplied large quantities of a controlled substance to other drug distributors; and

(B) does not include a defendant whose role was limited to transporting drugs or money at the direction of others;

(2) the term “manufacturer” means a defendant who grew, produced, or manufactured a controlled substance and was the principal owner of such controlled substance; and

(3) the term “wholesaler” means a defendant who sold non-retail quantities of a controlled substance to other dealers or distributors.

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