

ELIMINATING A QUANTIFIABLY UNJUST APPLICATION OF
 THE LAW ACT OF 2021

SEPTEMBER 27, 2021.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1693]

The Committee on the Judiciary, to whom was referred the bill
 (H.R. 1693) to eliminate the disparity in sentencing for cocaine of-
 fenses, and for other purposes, having considered the same, reports
 favorably thereon with an amendment and recommends that the
 bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause and insert the
 following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Eliminating a Quantifiably Unjust Application of
 the Law Act of 2021” or the “EQUAL Act of 2021”.

SEC. 2. ELIMINATION OF INCREASED PENALTIES FOR COCAINE OFFENSES WHERE THE COCAINE INVOLVED IS COCAINE BASE.

(a) CONTROLLED SUBSTANCES ACT.—The following provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) are repealed:

- (1) Clause (iii) of section 401(b)(1)(A) (21 U.S.C. 841(b)(1)(A)).
- (2) Clause (iii) of section 401(b)(1)(B) (21 U.S.C. 841(b)(1)(B)).

(b) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—The following provisions of the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) are repealed:

- (1) Subparagraph (C) of section 1010(b)(1) (21 U.S.C. 960(b)(1)).
- (2) Subparagraph (C) of section 1010(b)(2) (21 U.S.C. 960(b)(2)).

(c) APPLICABILITY TO PENDING AND PAST CASES.—

(1) PENDING CASES.—This section, and the amendments made by this section, shall apply to any sentence imposed after the date of enactment of this Act, regardless of when the offense was committed.

(2) PAST CASES.—

(A) IN GENERAL.—In the case of a defendant who, on or before the date of enactment of this Act, was sentenced for a Federal offense described in subparagraph (B), the sentencing court may, on motion of the defendant, the Bureau of Prisons, the attorney for the Government, or on its own motion, impose a reduced sentence after considering the factors set forth in section 3553(a) of title 18, United States Code.

(B) FEDERAL OFFENSE DESCRIBED.—A Federal offense described in this subparagraph is an offense that involves cocaine base that is an offense under one of the following:

- (i) Section 401 of the Controlled Substances Act (21 U.S.C. 841).
- (ii) Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960).
- (iii) Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)).
- (iv) Any other Federal criminal offense, the conduct or penalties for which were established by reference to a provision described in clause (i), (ii), or (iii).

(C) DEFENDANT NOT REQUIRED TO BE PRESENT.—Notwithstanding Rule 43 of the Federal Rules of Criminal Procedure, the defendant is not required to be present at any hearing on whether to impose a reduced sentence pursuant to this paragraph.

(D) NO REDUCTION FOR PREVIOUSLY REDUCED SENTENCES.—A court may not consider a motion made under this paragraph to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with this Act.

(E) NO REQUIREMENT TO REDUCE SENTENCE.—Nothing in this paragraph may be construed to require a court to reduce a sentence pursuant to this paragraph.

Purpose and Summary

H.R. 1693, the “Eliminating a Quantifiably Unjust Application of the Law Act of 2021” or the “EQUAL Act of 2021,” would amend current law to eliminate the sentencing disparity between crack cocaine and powder cocaine offenses. The bill applies to pending and past cases, allowing individuals who were convicted or sentenced for a federal offense involving crack cocaine to petition for a sentence reduction.

Background and Need for the Legislation

The Anti-Drug Abuse Act of 1986, Pub. L. No. 99–570, 100 Stat. 3207, established mandatory minimum penalties for cocaine offenses based on the type and quantity of cocaine involved in the offense. The statute, however, penalized crack cocaine offenses more severely, resulting in a 100-to-1 sentencing disparity between powder cocaine and crack cocaine offenses.¹ For example, distributing

¹*Dorsey v. United States*, 567 U.S. 260, 266 (2012).

five grams or more of crack cocaine carried a five-year mandatory minimum sentence, the same penalty for distributing 500 grams of powder cocaine. Distributing 50 grams or more of crack cocaine carried a 10-year mandatory minimum sentence, the same penalty for distributing 5,000 grams or more of powder cocaine.

The United States Sentencing Commission (Commission) incorporated the 1986 Drug Act's mandatory minimums into the first version of the United States Sentencing Guidelines.² It also "set offense levels for small drug amounts that did not trigger the 1986 Drug Act's mandatory minimums so that the resulting Guidelines sentences would remain proportionate to the sentences for amounts that did trigger these minimums."³ In the following decades, the Commission and many individuals in the law enforcement community "strongly criticized" the 100-to-1 ratio.⁴

In February 1995, the Commission issued a report in which it unanimously recommended changes to the crack cocaine and powder cocaine sentencing scheme, including revisiting the 100-to-1 ratio.⁵ The Commission stated that it could not support the existing sentencing scheme and identified the following concerns: the "inescapable" racial disparities in powder cocaine versus crack cocaine sentencing; quantifying the harm between two forms of the same drug solely based on automatic ratios and mandatory minimums; and the substantial difference in the ratio between the punishment of the street dealer of crack cocaine versus "the powder cocaine supplier who may have sold the powder cocaine from which multiple street dealers made crack."⁶

On May 1, 1995, the Commission submitted to Congress an amendment to the Sentencing Guidelines that would have equalized the guideline penalties for powder cocaine and crack cocaine based on drug quantity.⁷ Congress passed legislation, however, disapproving the amendment.⁸

In 1997, the Commission issued another report to Congress reiterating its core finding that the 100-to-1 ratio was unjustified and setting forth a range of alternatives for revisions to the penalty scheme for cocaine offenses.⁹ Congress did not act on the recommendations.

In 2002, the Commission issued an updated report that found the current penalties: (1) exaggerated the relative harmfulness of crack cocaine; (2) swept too broadly and applied most often to lower level offenders; (3) overstated the seriousness of most crack cocaine offenses and failed to provide adequate proportionality; and (4) mostly impacted minorities.¹⁰ The report noted, as particularly relevant, that "there is no legislative history that explains Congress's rationale for selecting the 100-to-1 drug quantity ratio for powder cocaine

²*Id.* at 267.

³*Id.* at 268.

⁴*Id.*

⁵U.S. SENT'G. COMM'N., *Cocaine and Federal Sentencing Policy* (Feb. 1995), <https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/199502-rtc-cocaine-sentencing-policy/EXECSUM.pdf>.

⁶*Id.* at xii–xiv.

⁷U.S. SENT'G. COMM'N., *Cocaine and Federal Sentencing Policy* (May 2002) at 12, https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_and_Federal_Sentencing_Policy.pdf.

⁸*Id.*

⁹*Id.* at 13.

¹⁰*Id.* at v–viii, 93–102.

and crack offenses.”¹¹ The Commission again recommended a reduction of the ratio and that Congress should work with the Commission to revise federal cocaine sentencing policy.¹²

In May 2007, the Commission issued another report to Congress, citing the rise of litigation involving the 100-to-1 ratio.¹³ The Commission again unanimously and strongly urged Congress to act on its recommendations regarding a reduction of the 100-to-1 ratio.¹⁴ It also promulgated an amendment to the Sentencing Guidelines that modified the drug quantity thresholds for crack cocaine offenses as a partial remedy to the “urgent and compelling” problems associated with the ratio.¹⁵ The Commission, however, stated that “[a]ny comprehensive solution requires appropriate legislative action by Congress.”

Congress addressed the disparity, in part, by passing the Fair Sentencing Act of 2010, which reduced the drug quantity ratio from 100-to-1 to 18-to-1, and the First Step Act of 2018, which made the changes retroactive. Despite these reforms, some sentencing disparity between crack cocaine and powder cocaine remains. Thousands of inmates are still serving sentences based on this sentencing disparity.

The EQUAL Act would eliminate the crack cocaine and powder cocaine sentencing disparity altogether. It would also allow individuals convicted or sentenced for a federal offense involving crack cocaine to petition for a sentence reduction under the new law.

Hearings

The Committee held a hearing relating to this legislation, entitled, “Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform,” on June 17, 2021.

Committee Consideration

On July 21, 2021, the Committee met in open session and ordered the bill, H.R. 1693, favorably reported, as amended, by a rollcall vote of 36 to 5, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee’s consideration of H.R. 1693:

1. An amendment by Mr. Fitzgerald, to clarify that the Act shall not apply to an offense involving fentanyl or a fentanyl analogue, was defeated by a rollcall vote of 23 to 17. The vote was as follows:

¹¹*Id.* at 7.

¹²*Id.* at viii–ix, 103–04.

¹³U.S. SENT’G. COMM’N., *Cocaine and Federal Sentencing Policy* (May 2007) at 1–2, https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

¹⁴*Id.* at 8–9.

¹⁵*Id.* at 9–10.

Roll Call No. 1

Date: 7/21/21

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 2 (to) to HR 1693 offered by Rep. Fitzgerald

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)			
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	17	23	

2. A motion to report H.R. 1693, as amended, favorably was agreed to by a rollcall vote of 36-5. The vote was as follows:

Roll Call No. 2Date: 7/21/21

COMMITTEE ON THE JUDICIARY

House of Representatives

117th CongressFinal Passage on: HR 1693

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	36	5	

Committee Oversight Findings

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

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with respect to requirements of clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House Rule XIII, no provision of H.R. 1693 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 1693 would eliminate the sentencing disparity between crack cocaine and powder cocaine offenses and equalize the treatment of powder cocaine and crack cocaine offenses. It would also apply retroactively, allowing defendants who were previously convicted or sentenced for a federal offense involving crack cocaine to petition for a sentence reduction.

Advisory on Earmarks

In accordance with clause 9 of House Rule XXI, H.R. 1693 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

Section-by-Section Analysis

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

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Eliminating a Quantifiably Unjust Application of the Law Act of 2021” or the “EQUAL Act of 2021.”

Sec. 2. Elimination of Increased Penalties for Cocaine Offenses Where the Cocaine Involved is Cocaine Base. Section 2 repeals provisions of the Controlled Substances Act (21 U.S.C. 801 et seq.) and Controlled Substances Import and Export Act (21 U.S.C. 801 et seq.). The section also includes retroactivity provisions for pending and past cases, states that defendants are not required to be present at resentencing hearings, limits successive motions, and provides courts with discretion in deciding motions for sentencing relief.

Section 2(a)(1) repeals Clause (iii) of 21 U.S.C. 841(b)(1)(A), the mandatory minimum penalty provision for any person who knowingly or intentionally: (1) manufactures, distributes, or dispenses, or possesses with the intent to manufacture, distribute, or dispense 280 grams or more of a mixture or substance which contains cocaine base; or (2) creates, distributes, or dispenses, or possesses with intent to distribute or dispense, a counterfeit substance involving 280 grams or more of a mixture or substance which contains cocaine base.

Section 2(a)(2) repeals Clause (iii) of 21 U.S.C. 841(b)(1)(B), the mandatory minimum penalty provision for any person who knowingly or intentionally (1) manufactures, distributes, or dispenses, or possesses with the intent to manufacture, distribute, or dispense 28 grams or more of a mixture or substance which contains cocaine base; or (2) creates, distributes, or dispenses, or possesses with intent to distribute or dispense, a counterfeit substance involving 28 grams or more of a mixture or substance which contains cocaine base.

Section 2(b)(1) repeals Subparagraph (C) of 21 U.S.C. 960(b)(1), the mandatory minimum penalty provision for any person who: (1) knowingly or intentionally imports or exports a controlled substance; (2) knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance; or (3) manufactures, possesses with intent to distribute, or distributes a controlled substance involving 280 grams or more of a mixture or substance which contains cocaine base.

Section 2(b)(2) repeals Subparagraph (C) of 21 U.S.C. 960(b)(2), the mandatory minimum penalty provision for any person who: (1) knowingly or intentionally imports or exports a controlled substance; (2) knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance; or (3) manufactures, possesses with intent to distribute, or distributes a controlled substance involving 28 grams or more of a mixture or substance which contains cocaine base.

Section 2(c)(1) states that the section, and amendments made by the section, applies to any sentence imposed after the date of enactment of this Act, regardless of when the offense was committed.

Section 2(c)(2)(A) states that a sentencing court may, on the motion of the defendant, the Bureau of Prisons, the attorney for the Government, or on its own motion, impose a reduced sentence for any defendant who, on or before the date of enactment of this Act, was sentenced for a Federal offense described in subparagraph (B). The court may impose a reduced sentence after considering 18 U.S.C. § 3553(a), which provides a range of factors courts must consider in imposing sentence. These factors include: the circumstances of the offense; the defendant's history, characteristics, and need for educational or vocational training, medical care, or other correctional treatment; the seriousness of the offense and the need to promote respect for the law, afford adequate deterrence, and protect the public; and the need to avoid unwarranted sentence disparities among defendants with similar records and who were found guilty of similar conduct.

Section 2(c)(2)(B) states that a federal offense described in this subparagraph is an offense that involves cocaine base that is an offense under one of the following:

- (i) Section 401 of the Controlled Substances Act (21 U.S.C. 841).
- (ii) Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960).
- (iii) Section 404(a) of the Controlled Substances Act (21 U.S.C. § 844(a)).
- (iv) Any other Federal criminal offense, the conduct of penalties for which were established by reference to a provision described in clause (i), (ii), or (iii).

Section 2(c)(2)(C) states that, notwithstanding rule 43 of the Federal Rules of Criminal Procedure, the defendant is not required to be present at any hearing on whether to impose a reduced sentence pursuant to this paragraph.

Section 2(c)(2)(D) states that a court may not consider a motion made under this paragraph to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with this Act.

Section 2(c)(2)(E) states that nothing in this paragraph may be construed to require a court to reduce a sentence pursuant to this paragraph.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of House Rule XIII, changes in existing law made by the bill, H.R. 1693, as reported, are shown as follows:

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 and existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

TITLE II—CONTROL AND ENFORCEMENT

* * * * *

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 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 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;

(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 serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of im-

prisonment 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 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.

(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 Hillary 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,

tion, 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 imprisonment 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 indi-

vidual 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.

(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 reg-

ulations 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).

* * * * *

CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

* * * * *

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

* * * * *

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 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 marijuana; 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 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 Hillory 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 marihuana except in the case of 100 or more marihuana 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).

(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.

* * * * *

Committee Correspondence

September 20, 2021

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

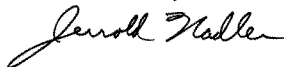
Dear Chairman Pallone:

I am writing to you concerning H.R. 1693, the "Eliminating a Quantifiably Unjust Application of the Law Act" or the "EQUAL Act".

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Energy and Commerce. I acknowledge that your Committee will not formally consider H.R. 1693 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 1693 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Jerrold Nadler
Chairman

- c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian
The Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and Commerce

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

CATHY McMORRIS RODGERS, WASHINGTON
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

September 20, 2021

The Honorable Jerrold Nadler
Chairman
Committee on Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler:

I write concerning H.R. 1693, the "Eliminating a Quantifiably Unjust Application of the Law Act" or the "EQUAL Act," which was additionally referred to the Committee on Energy and Commerce.

In recognition of the desire to expedite consideration of H.R.1693, the Committee agrees to waive formal consideration of the bill as to provisions that fall within the Rule X jurisdiction of the Committee. The Committee takes this action with the mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. I also request that you support my request to name members of the Committee to any conference committee to consider such provisions.

Finally, I would appreciate the inclusion of this letter into the *Congressional Record* during floor consideration of the measure.

Sincerely,



Frank Pallone, Jr.
Chairman

cc: The Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and
Commerce
The Honorable Jim Jordan, Ranking Member, Committee on Judiciary
The Honorable Jason Smith, Parliamentarian

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