

2000—Subsec. (c). Pub. L. 106-310 added subsec. (c).

**§ 857. Repealed. Pub. L. 101-647, title XXIV, § 2401(d), Nov. 29, 1990, 104 Stat. 4859**

Section, Pub. L. 99-570, title I, §1822, Oct. 27, 1986, 100 Stat. 3207-51; Pub. L. 100-690, title VI, §6485, Nov. 18, 1988, 102 Stat. 4384; Pub. L. 101-647, title XXIV, §2401(b), Nov. 29, 1990, 104 Stat. 4859, related to interstate and foreign sale and transportation of drug paraphernalia.

Subsec. (a), which related to unlawful acts, was repealed.

Subsecs. (b) to (f) were redesignated as subsecs. (b) to (f) of section 422 of the Controlled Substances Act by section 2401(b) of Pub. L. 101-647 and transferred to section 863(b) to (f) of this title.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Pub. L. 99-570, title I, §1823, Oct. 27, 1986, 100 Stat. 3207-52, which provided that subtitle O (§§1821-1823) of title I of Pub. L. 99-570, enacting this section and provisions set out as a note under section 801 of this title, was to become effective 90 days after Oct. 27, 1986, was repealed by Pub. L. 101-647, title XXIV, §2401(d), Nov. 29, 1990, 104 Stat. 4859.

**§ 858. Endangering human life while illegally manufacturing controlled substance**

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with title 18 or imprisoned not more than 10 years, or both.

(Pub. L. 91-513, title II, §417, as added Pub. L. 100-690, title VI, §6301(a), Nov. 18, 1988, 102 Stat. 4370.)

**§ 859. Distribution to persons under age twenty-one**

**(a) First offense**

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title, and (2) at least twice any term of supervised release authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

**(b) Second offense**

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) has become final, is subject to (1)

three times the maximum punishment authorized by section 841(b) of this title, and (2) at least three times any term of supervised release authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

(Pub. L. 91-513, title II, §418, formerly §405, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 98-473, title II, §224(b), 503(b)(3), Oct. 12, 1984, 98 Stat. 2030, 2070; Pub. L. 99-570, title I, §§1004(a), 1005(b)(1), 1105(a), (b), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11; Pub. L. 100-690, title VI, §§6452(b), 6455, 6456, Nov. 18, 1988, 102 Stat. 4371, 4372; renumbered §418 and amended Pub. L. 101-647, title X, §§1002(a), 1003(a), title XXXV, §3599L, Nov. 29, 1990, 104 Stat. 4827, 4828, 4932.)

**Editorial Notes**

**CODIFICATION**

Section was classified to section 845 of this title prior to renumbering by Pub. L. 101-647.

**AMENDMENTS**

1990—Subsec. (a). Pub. L. 101-647, §1003(a)(1), substituted “subject to (1) twice the maximum punishment authorized by section 841(b) of this title” for “punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title”.

Pub. L. 101-647, §1002(a)(2)(A), substituted “section 860” for “section 845a”.

Subsec. (b). Pub. L. 101-647, §3599L, substituted “has become final” for “have become final”.

Pub. L. 101-647, §1003(a)(2), substituted “subject to (1) three times the maximum punishment authorized by section 841(b) of this title” for “punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title”.

Pub. L. 101-647, §1002(a)(2)(B), substituted “section 860” for “section 845a”.

1988—Subsec. (a). Pub. L. 100-690, §6455, inserted at end “The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.”

Subsec. (b). Pub. L. 100-690, §6452(b), struck out “or subsequent” after “Second” in heading, and in text struck out “or convictions” after “a prior conviction”, and inserted at end “Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.”

Pub. L. 100-690, §6456, struck out “The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.”

1986—Subsec. (a). Pub. L. 99-570, §1105(a), inserted “Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year.”

Pub. L. 99-570, §1004(a), substituted “term of supervised release” for “special parole term”.

Subsec. (b). Pub. L. 99-570, §1105(b), inserted “Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.”

Pub. L. 99-570, §1004(a), substituted “term of supervised release” for “special parole term”.

1984—Subsecs. (a), (b). Pub. L. 98-473, §503(b)(3), substituted “Except as provided in section 845a of this title, any” for “Any”.

Pub. L. 98-473, §224(b), which directed amendment of this section effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99-570, §1005(b)(1).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

##### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### § 860. Distribution or manufacturing in or near schools and colleges

##### (a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

##### (b) Second offenders

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section

841(b) of this title for a first offense, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

##### (c) Employing children to distribute drugs near schools or playgrounds

Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally—

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 841 of this title.

##### (d) Suspension of sentence; probation; parole

In the case of any mandatory minimum sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

##### (e) Definitions

For the purposes of this section—

(1) The term “playground” means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

(2) The term “youth center” means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term “video arcade facility” means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term “swimming pool” includes any parking lot appurtenant thereto.

(Pub. L. 91-513, title II, §419, formerly §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069; amended Pub. L. 99-570, title I, §§1004(a), 1104, 1105(c), 1841(b), 1866(b), (c), Oct.