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1 “(A) any act or activity occurring in whole
2 or in part in, or directed at, the United States,
3 and constituting an offense listed in section
4 1961(1) of this title except an act which is indict-
5 able under the Currency and Foreign Transac-
6 tions Reporting Act;

7 “(B) with respect to a financial transaction
8 occurring in whole or in part in the United States,
9 an offense against a foreign nation involving the
10 manufacture, importation, sale, or distribution of a
11 controlled substance (as such term is defined for
12 the purposes of the Controlled Substances Act);

13 “(C) any act or acts constituting a continuing
14 criminal enterprise, as that term is defined in sec-
15 tion 408 of the Controlled Substances Act (21
16 U.S.C. 848); or

17 “(D) an offense under section 152 (relating
18 to concealment of assets; false oaths and claims;
19 bribery), section 215 (relating to commissions or
20 gifts for procuring loans), sections 500 through
21 503 (relating to certain counterfeiting offenses),
22 section 511 (relating to securities of States and
23 private entities), section 545 (relating to smug-
24 gling goods into the United States), section 641
25 (relating to public money, property, or records),

1 section 656 (relating to theft, embezzlement, or
2 misapplication by bank officer or employee), sec-
3 tion 666 (relating to theft or bribery concerning
4 programs receiving Federal funds), section 793,
5 794, or 798 (relating to espionage), section 875
6 (relating to interstate communications), section
7 1201 (relating to kidnaping), section 1203 (relat-
8 ing to hostage taking), section 1344 (relating to
9 bank fraud), or section 2113 or 2114 (relating to
10 bank and postal robbery and theft) of this title,
11 section 38 of the Arms Export Control Act (22
12 U.S.C. 2778), the Export Administration Act of
13 1979 (50 U.S.C. App. 2401 et seq.), the Interna-
14 tional Emergency Economic Powers Act (50
15 U.S.C. 1702 et seq.), and the Trading with the
16 Enemy Act (50 U.S.C. App. 1 et seq.).

17 “(d) Nothing in this section shall supersede any provi-
18 sion of Federal, State, or other law imposing criminal penal-
19 ties or affording civil remedies in addition to those provided
20 for in this section.

21 “(e) Violations of this section may be investigated by
22 such components of the Department of Justice as the Attor-
23 ney General may direct, and by such components of the De-
24 partment of the Treasury as the Secretary of the Treasury
25 may direct, as appropriate.

“(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

“(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

“(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.”.

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

“1956. Laundering of monetary instruments”.

SEC. 3. (a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: “Such information may include ~~only~~ the name or names of and other identifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any constitution, law, or regulation of the United States or any State or political subdivision thereof, for such

such information is sufficient to enable the Government authority to obtain access to or copies of such information pursuant to law.

1 disclosure or for any failure to notify the customer of such
2 disclosure.”.

3 (b) Section 1113(i) of the Right to Financial Privacy Act
4 of 1978 (12 U.S.C. 3413(i)) is amended by inserting immedi-
5 ately before the period at the end thereof a comma and the
6 following: “except that a court shall have authority to order
7 a financial institution, on which a grand jury subpoena for
8 customer records has been served, ^{not +} ~~to delay~~ notifying the cus-
9 tomer of the existence of the subpoena or information that
10 has been furnished to the grand jury, under the circumstances
11 specified and pursuant to the procedures established in sec-
12 tion 1109 of the Right to Financial Privacy Act of 1978 (12
13 U.S.C. 3409)”.

14 SEC. 4. (a) Section 5318 of title 31, United States
15 Code, is amended to read as follows:

16 “§ 5318. Compliance, exemptions, and summons authority

17 “(a) The Secretary of the Treasury may (except under
18 section 5315 of this title and regulations prescribed under
19 section 5315)—

20 “(1) delegate duties and powers under this sub-
21 chapter to an appropriate supervising agency, except
22 as provided in subsection (c);

23 “(2) require a class of domestic financial institu-
24 tions to maintain appropriate procedures to ensure

1 compliance with this subchapter and regulations pre-
2 scribed under this subchapter;

3 “(3) examine any books, papers, records, or other
4 data of domestic financial institutions relevant to the
5 recordkeeping or reporting requirements of this sub-
6 chapter;

7 “(4) summon a financial institution or an officer or
8 employee of a financial institution, or a former officer
9 or employee, or any person having possession, custody,
10 or care of the reports and records required under this
11 subchapter, to appear before the Secretary of the
12 Treasury or his delegate at a time and place named in
13 the summons and to produce such books, papers,
14 records, or other data, and to give testimony, under
15 oath, as may be relevant or material to an investiga-
16 tion described in subsection (c); and

17 “(5) prescribe an appropriate exemption from a
18 requirement under this subchapter and regulations pre-
19 scribed under this subchapter. The Secretary may
20 revoke an exemption by actually or constructively noti-
21 fying the parties affected. A revocation is effective
22 during judicial review.

23 “(b) The purposes for which the Secretary of the Treas-
24 ury may take any action described in paragraph (3) of subsec-
25 tion (a) include the purpose of civil and criminal enforcement

1 of the provisions of this subchapter, section 21 of the Federal
2 Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the
3 National Housing Act (12 U.S.C. 1730d), or chapter 2 of
4 Public Law 91-508.

5 “(c) The purpose for which the Secretary of the Treas-
6 ury may take any action described in paragraph (4) of subsec-
7 tion (a) is limited to investigating violations of this subchap-
8 ter, violations of section 21 of the Federal Insurance Act (12
9 U.S.C. 1829b), violations of section 411 of the National
10 Housing Act (12 U.S.C. 1730d), or violations of chapter 2 of
11 Public Law 91-508 for the purpose solely of civil enforce-
12 ment of these provisions or any regulation issued thereunder.
13 A summons may be issued under paragraph (4) of subsection
14 (a) only by, or with the approval of, the Secretary of the
15 Treasury or a supervisory level delegate of the Secretary of
16 the Treasury.

17 “(d) A summons pursuant to this section may require
18 that books, papers, records, or other data stored or main-
19 tained at any place be produced at any designated location in
20 any State or in any territory or other place subject to the
21 jurisdiction of the United States not more than five hundred
22 miles distant from any place where the financial institution
23 operates or conducts business in the United States. Persons
24 summoned under this section shall be paid the same fees and
25 mileage for travel in the United States that are paid wit-

1 nesses in the courts of the United States. The United States
2 shall not be liable for any other expenses incurred in connec-
3 tion with the production of books, papers, records, or other
4 data pursuant to the provisions of this section.

5 “(e) Service of a summons issued under this section may
6 be by registered mail or in such other manner calculated to
7 give actual notice as the Secretary may provide by regula-
8 tion.

9 “(f) In the case of contumacy by or refusal to obey a
10 summons issued to any person under this section, the Secre-
11 tary shall refer the matter to the Attorney General. The At-
12 torney General may invoke the aid of any court of the United
13 States within the jurisdiction of which the investigation
14 which gave rise to the summons is being or has been carried
15 on or of which the person summoned is an inhabitant, or in
16 which he carries on business or may be found, to compel
17 compliance with the summons. The court may issue an order
18 requiring the person summoned to appear before the Secre-
19 tary or his delegate to produce books, papers, records, and
20 other data, to give testimony as may be necessary to explain
21 how such material was compiled and maintained, and to pay
22 the costs of the proceeding. Any failure to obey the order of
23 the court may be punished by the court as a contempt there-
24 of. All process in any such case may be served in any judicial
25 district in which such person may be found.”.

1 (b)(1) Paragraph (1) of subsection (a) of section 5321 of
2 title 31, United States Code, is amended to read as follows:

3 “(1) A domestic financial institution, and a partner, di-
4 rector, officer, or employee of a domestic financial institution,
5 willfully violating this subchapter or a regulation prescribed
6 under this subchapter (except sections 5314 and 5315 of this
7 title or a regulation prescribed under sections 5314 and
8 5315), or any person causing such a violation, is liable to the
9 United States Government for a civil penalty of not more
10 than the amount of the transaction (but not more than
11 \$1,000,000) or \$25,000, whichever is greater. For a willful
12 violation of section 5318(a)(2) of this title, or a regulation
13 prescribed under section 5318(a)(2), a separate violation
14 occurs for each day the violation continues and at such office,
15 branch, or place of business at which a violation occurs or
16 continues.”.

17 (2) Paragraph (2) of subsection (a) of section 5321 of
18 title 31, United States Code, is amended to read as follows:

19 “(2) A civil penalty under paragraph (1) is reduced by
20 an amount forfeited under section 5317(b).”.

21 (3) Subsection (a) of section 5321 of title 31, United
22 States Code, is amended by adding at the end thereof the
23 following new paragraphs:

24 “(4) A person willfully violating the provisions of section
25 5314 of this title or of a regulation prescribed under section

1 5314 is liable to the United States Government for a civil
2 penalty of not more than—

3 “(A) where the violation involves a transaction,
4 the amount of the transaction or \$25,000, whichever is
5 greater, or

6 “(B) where the violation involves the failure to
7 report the existence of an account or any required
8 identifying data pertaining to the account, the amount
9 of the account (but not more than \$250,000) or
10 \$25,000, whichever is greater.

11 “(5) Any financial institution negligently violating any
12 provision of this subchapter or a regulation prescribed under
13 this subchapter is liable to the United States for a civil
14 penalty of not more than \$1,000.

15 “(6) A civil penalty assessed pursuant to this section is
16 in addition to any criminal penalty under section 5322 of this
17 title based on the same transaction.”.

18 (c) Subsection (b) of section 5321 of title 31, United
19 States Code, is amended to read as follows:

20 “(b) The Secretary may assess a civil penalty under this
21 section within six years from the date of the transaction in
22 which the penalty is based. The Secretary may bring a civil
23 action to recover a civil penalty under this section within two
24 years from the date of a penalty assessment or the conclusion

1 of a criminal action under section 5322 of this title based on
2 the same transaction, whichever is later.”.

3 (d) Subsection (c) of section 5321 of title 31 is amended
4 to read as follows:

5 “(c) The Secretary of the Treasury may remit any part
6 of a forfeiture under subsection 5317(b) of this title or may
7 mitigate any civil penalty under subsection (a) of this sec-
8 tion.”.

9 (e) Subsection (b) of section 5322 of title 31, United
10 States Code, is amended by striking out “pattern of illegal
11 activity involving transactions of more than \$100,000” and
12 inserting in lieu thereof “pattern of any illegal activity in-
13 volving more than \$100,000”, and by striking out “5” and
14 inserting in lieu thereof “10”.

15 (f) Section 5312(a)(3)(B) of title 31, United States Code,
16 is amended by striking the period at the end thereof and in-
17 serting in lieu thereof: “payable to a fictitious payee.”.

18 (g) Section 5312(a)(5) of title 31, United States Code, is
19 amended to read as follows:

20 “(5) ‘United States’ means the States of the
21 United States, the District of Columbia, and, when the
22 Secretary prescribes by regulation, the Commonwealth
23 of Puerto Rico, the Virgin Islands, Guam, the North-
24 ern Mariana Islands, American Samoa, the Trust Ter-
25 ritory of the Pacific Islands, any other territory or pos-

1 session of the United States, or a military or diplomatic
2 establishment.”.

3 (h) Subsection (a) of section 5313 of title 31, United
4 States Code, is amended by adding at the end thereof the
5 following: “No person shall, for the purpose of evading the
6 reporting requirements of this subsection—

7 “(1) cause or attempt to cause a domestic finan-
8 cial institution to fail to file a report required by this
9 subsection;

10 “(2) cause or attempt to cause a domestic finan-
11 cial institution to file a report required by this subsec-
12 tion that contains a material omission or misstatement
13 of fact; or

14 “(3) structure or attempt to structure or assist in
15 structuring a transaction.”.

16 SEC. 5. (a) Subsection (b) of section 1952 of title 18,
17 United States Code, is amended by striking out “or” before
18 “(2)”, and by striking out the period at the end thereof and
19 inserting in lieu thereof the following: “, or (3) any act which
20 is indictable under subchapter II of chapter 53 of title 31,
21 United States Code, or under section 1956 of this title.”.

22 (b) Subsection (l) of section 1961 of title 18, United
23 States Code, is amended by inserting “section 1956 (relating
24 to the laundering of monetary instruments),” after “sec-

tion 1955 (relating to the prohibition of illegal gambling businesses),”.

(c) Subsection (l) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting “section 1956 (laundering of monetary instruments),” after “section 1955 (prohibition of business enterprises of gambling),”.

SEC. 6. (a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows: -

“CHAPTER 46—FORFEITURE

“Sec.

“981. Civil Forfeiture.

“982. Criminal Forfeiture.

“§ 981. Civil forfeiture

“(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

“(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

“(B) Any property ~~involved in a financial transaction (as such term is defined in section 1956(c) of this title)~~ within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances

1 Act), within whose jurisdiction such offense or activity
2 would be punishable by death or imprisonment for a
3 term exceeding one year and which would be punish-
4 able by imprisonment for a term exceeding one year if
5 such act or activity had occurred within the jurisdiction
6 of the United States.

7 "(C) Any property involved in a transaction which
8 the owner of the property knows to be conducted in
9 violation of section 5313(a) or 5316 of title 31, except
10 that no property shall be seized or forfeited under this
11 subparagraph if the property is owned by a domestic
12 financial institution examined by a Federal bank super-
13 visory agency or a financial institution regulated by the
14 Securities and Exchange Commission.

15 "(2) No property shall be forfeited under this section to
16 the extent of the interest of an owner by reason of any act or
17 omission established by that owner to have been committed
18 without the knowledge of that owner.

19 "(b) Any property subject to forfeiture to the United
20 States under subsection (a)(1)(A) or (a)(1)(B) of this section
21 may be seized by the Attorney General, and any property
22 subject to forfeiture under subsection (a)(1)(C) of this section
23 may be seized by the Secretary of the Treasury, in each case
24 upon process issued pursuant to the Supplemental Rules for
25 certain Admiralty and Maritime Claims by any district court

1 of the United States having jurisdiction over the property,
2 except that seizure without such process may be made
3 when—

4 “(1) the seizure is pursuant to a lawful arrest or
5 search; or

6 “(2) the Attorney General or the Secretary of the
7 Treasury, as the case may be, has obtained a warrant
8 for such seizure pursuant to the Federal Rules of
9 Criminal Procedure, in which event proceedings under
10 subsection (d) of this section shall be instituted
11 promptly.

12 “(c) Property taken or detained under this section shall
13 not be repleviable, but shall be deemed to be in the custody of
14 the Attorney General or the Secretary of the Treasury, as
15 the case may be, subject only to the orders and decrees of the
16 court or the official having jurisdiction thereof. Whenever
17 property is seized under this subsection, the Attorney Gener-
18 al or the Secretary of the Treasury, as the case may be,
19 may—

20 “(1) place the property under seal;

21 “(2) remove the property to a place designated by
22 him; or

23 “(3) require that the General Services Adminis-
24 tration take custody of the property and remove it, if

1 practicable, to an appropriate location for disposition in
2 accordance with law.

3 “(d) For purposes of this section, the provisions of the
4 customs laws relating to the seizure, summary and judicial
5 forfeiture, condemnation of property for violation of the cus-
6 toms laws, the disposition of such property or the proceeds
7 from the sale of this section, the remission or mitigation of
8 such forfeitures, and the compromise of claims (19 U.S.C.
9 1602 et seq.), insofar as they are applicable and not incon-
10 sistent with the provisions of this section or of title 31, shall
11 apply to seizures and forfeitures incurred, or alleged to have
12 been incurred, under this section, except that such duties as
13 are imposed upon the customs officer or any other person
14 with respect to the seizure and forfeiture of property under
15 the customs laws shall be performed with respect to seizures
16 and forfeitures of property under this section by such officers,
17 agents, or other persons as may be authorized or designated
18 for that purpose by the Attorney General or the Secretary of
19 the Treasury, as the case may be.

20 “(e) Notwithstanding any other provision of the law, the
21 Attorney General or the Secretary of the Treasury, as the
22 case may be, is authorized to retain property forfeited pursu-
23 ant to this section, or to transfer such property on such terms
24 and conditions as he may determine to—

25 “(1) any other Federal agency; or

1 “(2) any State or local law enforcement agency
2 which participated directly in any of the acts which led
3 to the seizure or forfeiture of the property.

4 The Attorney General or the Secretary of the Treasury, as
5 the case may be, shall ensure the equitable transfer pursuant
6 to paragraph (2) of any forfeited property to the appropriate
7 State or local law enforcement agency so as to reflect gener-
8 ally the contribution of any such agency participating directly
9 in any of the acts which led to the seizure or forfeiture of
10 such property. A decision by the Attorney General or the
11 Secretary of the Treasury pursuant to paragraph (2) shall not
12 be subject to review. The United States shall not be liable in
13 any action arising out of the use of any property the custody
14 of which was transferred pursuant to this section to any non-
15 Federal agency. The Attorney General or the Secretary of
16 the Treasury may order the discontinuance of any forfeiture
17 proceedings under this section in favor of the institution of
18 forfeiture proceedings by State or local authorities under an
19 appropriate State or local statute. After the filing of a com-
20 plaint for forfeiture under this section, the Attorney General
21 may seek dismissal of the complaint in favor of forfeiture pro-
22 ceedings under State or local law. Whenever forfeiture pro-
23 ceedings are discontinued by the United States in favor of
24 State or local proceedings, the United States may transfer
25 custody and possession of the seized property to the appropri-

1 ate State or local official immediately upon the initiation of
2 the proper actions by such officials. Whenever forfeiture pro-
3 ceedings are discontinued by the United States in favor of
4 State or local proceedings, notice shall be sent to all known
5 interested parties advising them of the discontinuance or dis-
6 missal. The United States shall not be liable in any action
7 arising out of the seizure, detention, and transfer of seized
8 property to State or local officials.

9 “(f) All right, title, and interest in property described in
10 subsection (a) of this section shall vest in the United States
11 upon commission of the act giving rise to forfeiture under this
12 section.

13 “(g) The filing of an indictment or information alleging a
14 violation of law which is also related to a forfeiture proceed-
15 ing under this section shall, upon motion of the United States
16 and for good cause shown, stay the forfeiture proceeding.

17 “(h) In addition to the venue provided for in section
18 1395 of title 28 or any other provision of law, in the case of
19 property of a defendant charged with a violation that is the
20 basis for forfeiture of the property under this section, a pro-
21 ceeding for forfeiture under this section may be brought in
22 the judicial district in which the defendant owning such prop-
23 erty is found or in the judicial district in which the criminal
24 prosecution is brought.

1 “(i) In the case of property subject to forfeiture under
2 subsection (a)(1)(B), the following additional provisions shall
3 apply:

4 “(1) Notwithstanding any other provision of law,
5 whenever property is civilly or criminally forfeited
6 under this subchapter, the Attorney General may equi-
7 tably transfer any conveyance, currency, and any other
8 type of personal property which the Attorney General
9 may designate by regulation for equitable transfer, or
10 any amounts realized by the United States from the
11 sale of any real or personal property forfeited under
12 this subchapter to an appropriate foreign country to re-
13 flect generally the contribution of any such foreign
14 country participating directly or indirectly in any acts
15 which led to the seizure or forfeiture of such property.
16 Such property when forfeited pursuant to subsection
17 (a)(1)(B) of this section may also be transferred to a
18 foreign country pursuant to a treaty providing for the
19 transfer of forfeited property to such foreign country. A
20 decision by the Attorney General pursuant to this
21 paragraph shall not be subject to review. The foreign
22 country shall, in the event of a transfer of property or
23 proceeds of sale of property under this subchapter, bear
24 all expenses incurred by the United States in the sei-
25 zure, maintenance, inventory, storage, forfeiture, and

1 disposition of the property, and all transfer costs. The
2 payment of all such expenses, and the transfer of
3 assets pursuant to this paragraph, shall be upon such
4 terms and conditions as the Attorney General may, in
5 his discretion, set.

6 “(2) The provisions of this section shall not be
7 construed as limiting or superseding any other author-
8 ity of the United States to provide assistance to a for-
9 eign country in obtaining property related to a crime
10 committed in the foreign country, including, but not
11 limited to, property which is sought as evidence of a
12 crime committed in the foreign country.

13 “(3) A certified order or judgment of forfeiture by
14 a court of competent jurisdiction of a foreign country
15 concerning property which is the subject of forfeiture
16 under this section and was determined by such court to
17 be the type of property described in subsection (a)(1)(B)
18 of this section, and any certified recordings or tran-
19 scripts of testimony taken in a foreign judicial proceed-
20 ing concerning such order or judgment of forfeiture,
21 shall be admissible in evidence in a proceeding brought
22 pursuant to this section. Such certified order or judg-
23 ment of forfeiture, when admitted into evidence, shall
24 constitute probable cause that the property forfeited by
25 such order or judgment of forfeiture is subject to for-

1 feiture under this section and creates a rebuttable pre-
2 sumption of the forfeitability of such property under
3 this section.

4 “(4) A certified order or judgment of conviction
5 by a court of competent jurisdiction of a foreign coun-
6 try concerning an unlawful drug activity which gives
7 rise to forfeiture under this section and any certified re-
8 cordings or transcripts of testimony taken in a foreign
9 judicial proceeding concerning such order or judgment
10 of conviction shall be admissible in evidence in a pro-
11 ceeding brought pursuant to this section. Such certified
12 order or judgment of conviction, when admitted into
13 evidence, creates a rebuttable presumption that the un-
14 lawful drug activity giving rise to forfeiture under this
15 section has occurred.

16 “(5) The provisions of paragraphs (3) and (4) of
17 this subsection shall not be construed as limiting the
18 admissibility of any evidence otherwise admissible, nor
19 shall they limit the ability of the United States to es-
20 tablish probable cause that property is subject to for-
21 feiture by any evidence otherwise admissible.

22 “(k) For purposes of this section—

23 “(1) the term ‘Attorney General’ means the At-
24 torney General or his delegate; and

1 “(2) the term ‘Secretary of the Treasury’ means
2 the Secretary of the Treasury or his delegate.

3 **“§ 982. Criminal forfeiture**

4 “(a) The court, in imposing sentence on a person con-
5 victed of an offense under section 1956 of this title shall
6 order that the person forfeit to the United States any proper-
7 ty, real or personal, which represents the gross receipts the
8 person obtained, directly or indirectly, as a result of such
9 offense, or which is traceable to such gross receipts.

10 “(b) The provisions of subsections 413 (c) and (e)
11 through (o) of the Comprehensive Drug Abuse Prevention
12 and Control Act of 1970 (21 U.S.C. 853 (c) and (e)–(o)) shall
13 apply to property subject to forfeiture under this section, to
14 any seizure or disposition thereof, and to any administrative
15 or judicial proceeding in relation thereto, if not inconsistent
16 with this section.”.

17 (b) The chapter analysis of part I of title 18, United
18 States Code, is amended by inserting after the item for chap-
19 ter 45 the following:

“46. Forfeiture..... 981”.



DRAFT

TITLE V

LAW ENFORCEMENT ENHANCEMENT PROVISIONS

PART A

Sec. 1. This Part may be cited as the Drug Penalties Enhancement Act of 1986.

Sec. 2. Sections 401(b)(1)(A) and (B) of the Controlled Substances Act (21 U.S.C. 841 (b)(1)(A)) are amended to read as follows:

"(1)(A) 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 substance referred to in subclauses (I) through (III);";

"(iii) 25 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); or

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl;

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 results from the use of such substance shall be 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 or \$2,000,000 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 one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marijuana, or depressant or stimulant substances, have 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 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 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein."

"(B) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death 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 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 one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death 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 or \$2,000,000 if the defendant is an individual or \$10,000,000 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 special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term 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 subparagraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

Sec. 3. Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(a) In subsection (b), paragraph (1)(C) is amended by striking out the phrase "a fine of not more than \$50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is and individual or \$1,000,000 if the defendant is other than an individual", and by striking out the phrase "a fine of not more than \$100,000" and inserting in lieu

thereof the phrase "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual";

(b) In subsection (b), paragraph (2) is amended by striking out the phrase "a fine of not more than \$25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual", and by striking out the phrase "a fine of not more than \$50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual";

(c) In subsection (b), paragraph (3) is amended by striking out the phrase "a fine of not more than \$10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual", and by striking out the phrase a fine of not more than \$20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with 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";

(d) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating 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,

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

or

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

or both."; and

(e) subsection (d) is amended by striking out the phrase "a fine of not more than \$15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual".

Sec. 4. Section 994 of title 28 of the United States Code is amended by--

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower

than that which is established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

Sec. 5. (a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by adding the following at the end thereof: "The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that which is established by statute as a minimum sentence."

(b) The amendment made by this section shall take effect on the date of the taking effect of Rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

Analysis

This part contains a series of amendments to the provision in Title 21 (21 U.S.C. 841) that sets out penalties for large-scale domestic drug trafficking.

Section two amends 21 U.S.C. 841(b)(1)(A) to lower the amounts of drugs required to trigger the maximum sentences. It also increases the maximum term of imprisonment authorized for large scale drug trafficking from 20 to 40 years. Moreover, it provides mandatory minimum terms of five years for first offenses and ten years for second offenses. Fines are also increased to \$2,000,000 for first offenders who are individuals (\$5,000,000

for defendants other than individuals) and to \$4,000,000 and \$10,000,000 for repeat offenders. The fine provisions also cross-reference the Criminal Fine Enforcement Act of 1984 in title 18 to clarify that that Act's provisions, which can increase fines even beyond these levels to double the amount of the defendant's gain, are applicable.

Section two also contains mandatory terms of imprisonment for large scale drug traffickers in cases where death results from someone using their drugs. This provision was inspired by the death of basketball player Len Bias. Imprisonment in such a case would be not less than twenty years and could extend to life imprisonment. In a case where death resulted and the defendant already had another drug trafficking conviction (whether or not death had resulted from the events that gave rise to the earlier conviction) the defendant would have to be sentenced to life imprisonment.

Finally, section two's amendment of 21 U.S.C. 841(b)(1)(A) adds two new types of particularly dangerous controlled substances to those already listed in 21 U.S.C. 841(b)(1)(A) that require the most severe penalties. It would extend those penalties to persons trafficking in 25 grams or more of "crack" or a gram of fentanyl or any analog of this frequently deadly substance.

Section two also amends 21 U.S.C. 841(b)(1)(B) to raise the term of imprisonment for trafficking in smaller amounts of controlled substances from fifteen to twenty years. Fines are also increased for trafficking in smaller amounts. The fine would be the greater of \$1,000,000 or twice the gain for an

individual and to \$5,000,000 or twice the gain for an entity other than an individual. For an individual sentenced under 841(b)(1)(B) who had a previous drug conviction, the fine would be the greater of \$2,000,000 or four times the gain, and the fine for an entity other than an individual that had a previous drug conviction would be the greater of four times the gain or \$10,000,000.

Section three makes a series of amendments to the fine provisions in 21 U.S.C. 841 that apply to trafficking in small amounts of drugs generally believed not to be quite as harmful as cocaine, heroin, and LSD.

Subsection 3(a) amends 21 U.S.C. 841(b)(1)(C). That provision presently authorizes a fine of up to the greater of \$50,000 (\$100,000 for a second offense) or that authorized in the Fine Enforcement Act. The amendment would raise the fine to the greater of \$250,000 or twice the gain for an individual and to \$1,000,000 or twice the gain for an entity other than an individual. For an individual sentenced under 841(b)(1)(C) who had a previous drug conviction, the fine would be the greater of \$500,000 or four times the gain, and the fine for an entity other than an individual that had a previous drug conviction would be the greater of four times the gain or \$2,000,000.

Subsection 3(b) amends 21 U.S.C. 841(b)(2) which sets out fines for trafficking in schedule IV controlled substances. The present authorized fine is the greater of \$25,000 (\$50,000 for a second offense) or that authorized in the Fine Enforcement Act. The amendment would raise the fine to the greater of \$250,000 or

twice the gain for an individual and to \$1,000,000 or twice the gain for an entity other than an individual. For an individual sentenced under 841(b) (2) who had a previous drug conviction, the fine would be the greater of \$500,000 or four times the gain, and the fine for an entity other than an individual that had a previous drug conviction would be the greater of four times the gain or \$2,000,000.

Subsection 3(c) amends 21 U.S.C. 841(b) (3) which sets out fines for trafficking in schedule V controlled substances. The present authorized fine is the greater of \$10,000 (\$20,000 for a second offense) or that authorized in the Fine Enforcement Act. The amendment would raise the fine to the greater of \$100,000 or twice the gain for an individual and to \$250,000 or twice the gain for an entity other than an individual. For an individual sentenced under 841(b) (3) who had a previous drug conviction, the fine would be the greater of \$200,000 or four times the gain, and the fine for an entity other than an individual that had a previous drug conviction would be the greater of four times the gain or \$500,000.

Subsection 3(d) amends 21 U.S.C. 841(b) (5) which sets out fines for persons convicted of cultivating controlled substances on federal land. The fine is \$500,000 for individuals and \$1,000,000 for entities other than individuals. Unlike most other parts of section 841, 841(b) (5) does not provide for enhanced fines for a second conviction. The amendment rewrites 841(b) (5) to clarify that persons who commit such an offense can be imprisoned as well as fined and to set out the maximum fine as

that authorized in section 841 (which is now in excess of \$500,000 or \$1,000,000 for many offenses), that authorized pursuant to the Fine Enforcement Act in Title 18, or \$500,000 for individuals or \$1,000,000 for entities other than individuals.

Subsection 3(e) amends 21 U.S.C. 841(d) which sets out a fine of \$15,000 for possession of piperidine with intent to manufacture PCP. Of course the fine is actually that authorized by the Criminal Fine Enforcement Act, the greater of \$250,000 for individuals (\$500,000 for organizations) or double the defendant's gain. The effect of the amendment is to leave the fine for an individual at the greater of \$250,000 or twice the gain but to raise the fine authorized to the greater of \$1,000,000 or twice the gain for a defendant other than an individual.

Section four of this part amends 28 U.S.C. §994 to provide that the sentencing guidelines to be issued by the United States Sentencing Commission reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed to take into account a defendant's substantial assistance in the investigation or prosecution of others. The amendment expressly provides that such a lower sentence may be below a level established by statute as a minimum sentence. Pursuant to 18 U.S.C. §3553, effective November 1, 1987, the courts will be required to use the guidelines in imposing a sentence. The amendment is needed since defendants would be extremely unlikely to provide information on accomplices if they knew that, despite their cooperation, they would be subject to substantial or mandatory prison terms. Without the assistance of defendants, the government's task of

investigating and prosecuting the top levels of a drug ring, for example, would be practically impossible. Moreover, the ability of a court to sentence below a statutory minimum, such as that established by Part A for violations of the Controlled Substances Act involving large quantities of controlled substances, is necessary to encourage such cooperation.

Section five of this part amends Rule 35(b) of the Federal Rules of Criminal Procedure, as amended by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, to provide explicit authority to the court to lower a sentence to a level below that which is established by a statutory minimum. Subdivision (b) of the Rule, as it will take effect on November 1, 1987, provides authority for the court, within one year after the imposition of a sentence, to lower a sentence to reflect the defendant's subsequent, substantial assistance in the investigation or prosecution of another person, to the extent that such assistance is a factor in the applicable guidelines or policy statements of the Sentencing Commission. The amendment in section 5 is a conforming amendment to the immediately preceding amendment.

PART B

Sec. 1. This Part may be cited as the Drug Possession Penalty Act of 1986.

Sec. 2. Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

§ 844. Penalty for simple possession

"(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, and shall be fined a minimum of \$1,000 but not more than \$5,000, or both, except that if he commits such offense after a prior conviction under this subsection, or a prior conviction for any drug or narcotic offense chargeable under the law of any state, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than two years, and shall be fined a minimum of \$2,500 but not more than \$10,000, except, further, that if he commits such offense after two or more prior convictions under this subsection, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any state or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than ninety days but not more than

three years, and shall be fined a minimum of \$5,000 but not more than \$25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be taxed the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in 28 U.S.C.

§§1918, 1920§, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provisions of title 18 that the defendant lacks the ability to pay.

"(b) As used in this section, the term "drug or narcotic offense" means any offense chargeable under the law of any state which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this chapter."

Analysis

This part rewrites the provisions of 21 U.S.C. 844 setting out the punishment for simple possession of controlled substances. It provides for the imposition of a mandatory fine of between \$1,000 and \$5,000 for a first offense, for a mandatory fine of between \$2,500 and \$5,000 if the defendant already has been convicted of one other state or federal narcotics offense, and for a mandatory fine of between \$5,000 and \$25,000 if the

defendant has previously been convicted of two other such offenses.

Moreover, the section would provide for a mandatory term of imprisonment of at least fifteen days and up to two years for persons guilty of simple possession who have a previous state or federal drug conviction. It provides for a mandatory term of imprisonment of between ninety days and three years for persons guilty of simple possession who have two or more previous state or federal drug convictions. The imposition or execution of mandatory minimum sentences under the section could not be suspended or deferred.

The revised section 844 would eliminate the provision in the current section whereby a first offender can be given pretrial diversion and for all practical purposes the offense does not appear as part of the person's criminal record.

The revisions to section 844 are designed to demonstrate the seriousness with which the federal government views drug use. In short, it sets the federal government squarely on record as opposing any notion that "social" or "recreational" use of drugs is acceptable behavior. While normally simple possession cases are prosecuted by the States, except in cases arising on federal enclaves, such a federal law would be helpful in certain cases and would set a good precedent which could be emulated by the States and municipalities.

PART C

Sec. 1. This part may be cited as the Continuing Drug Enterprise Penalty Act of 1986.

Sec. 2. Subsection 408(a) of the Controlled Substances Act (21 U.S.C.848(a) is amended as follows:

(a) by striking out the phrase "to a fine of not more than \$100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual,"; and

(b) by striking out the phrase "to a fine of not more than \$200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual".

Sec. 3. Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended--

(a) by redesignating subsections (b) and (c) as (c) and (d), respectively;

(b) by inserting the following new subsection after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life or sentenced to death, and fined in accordance with subsection (a), if--

"(1) such person is the principal administrator,

organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2) (A) the violation referred to in subsection (c) (1) involved at least 300 times the quantity of a substance described in section 401(b) (1) (A) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received \$10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b) (1) (A) of this Act."; and

(c) by adding at the end thereof the following:

"(e) A person who has been found guilty of an offense under this section shall be sentenced to death if, after consideration of the factors set forth in subsection (f) in the course of a hearing held pursuant to subsection (g), it is determined that imposition of a sentence of death is justified.

"(f) Factors to be considered in determining whether a sentence of death is justified

"(1) Mitigating Factors. -- In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the

following mitigating factors and determine which, if any, exist:

"(A) the defendant was less than eighteen years of age at the time of the offense;

"(B) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution; and

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution.

The jury, or if there is no jury, the court, may consider whether any other mitigating factor exists.

"(2) Aggravating Factors. -- In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any exist:

"(A) the defendant has previously been convicted of an offense under this subchapter, or of an offense under State law or under the law of a foreign country or political subdivision thereof, involving the manufacture, distribution, sale, or possession with intent to sell of a controlled substance as defined in this

subchapter, for which a sentence of death or life imprisonment was authorized;

"(B) in the commission of the offense the defendant knowingly caused the death of, or created a grave risk of death to, another person;

"(C) in the commission of the offense a person or persons with respect to whom the defendant occupies a position of organizer, a supervisory position, or any other position of management knowingly caused the death of another person and the defendant was aware of a substantial risk that such a death might occur;

"(D) the defendant, or any person with respect to whom the defendant occupies a position of organizer, a supervisory position, or any other position of management, engaged in any conduct and thereby caused bodily injury to another person or damaged the tangible property of another person with intent to retaliate against any person for providing information concerning the offense at any official proceeding or to a law enforcement officer."

"(E) the defendant knew or intended that the offense would result in the unlawful obtaining of controlled substances by persons under 21 years of age; and

"(F) in the course of the offense the defendant employed or made use of one or more persons under 21 years of age;

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(g) Special hearing to determine whether a sentence of death is justified

"(1) Notice by the Government. -- If, in a case involving an offense described in this section, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this section, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice--

"(A) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this section; and

"(B) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(2) Hearing Before a Court or Jury. -- If the attorney for the government has filed a notice as required under paragraph (1) and the defendant is found guilty of an offense described in this section, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted--

"(A) before the jury that determined the defendant's guilty;

"(B) before a jury impaneled for the purpose of the hearing if--

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury that determined the defendant's guilt was discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to subparagraph (B) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(3) Proof of Mitigating and Aggravating Factors. -- At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under subsection (f). Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence

of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(4) Return of Special Findings. -- The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, required to be considered under subsection (f). The jury must find the existence of a mitigating or aggravating factor by a unanimous vote.

"(5) Return of a Finding Concerning a Sentence of Death. -- If, in the case of an offense described in this section, an aggravating factor required to be considered under subsection (f) is found to exist, the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient

to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(6) Special Precaution to Assure Against Discrimination. -- In a hearing held before a jury, the court, prior to the return of a finding under paragraph (5), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under paragraph (5), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"(h) Imposition of a sentence of death

"Upon a finding under paragraph (5) of subsection (g) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under paragraph (5) of subsection (g) that a sentence of death is not justified, or under paragraph (4) of subsection (g) that no aggravating factor required to be found exists, the court shall impose a sentence of life imprisonment or life imprisonment without parole.

"(i) Review of a sentence of death

"(1) Appeal. -- In a case under this section in which a sentence of death is imposed, the sentence shall be subject

to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(2) Review. -- The court of appeals shall review the entire record in the case, including --

"(A) the evidence submitted during the trial;

"(B) the information submitted during the sentence hearing;

"(C) the procedures employed in the sentencing hearing; and

"(D) the special findings returned under paragraph (4) of subsection (g).

"(3) Decision and Disposition. --

"(A) If the court of appeals determines that --

"(i) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(ii) the information supports the special finding of the existence of an aggravating factor required to be considered under subsection (f) it shall affirm the sentence.

"(B) In any other case, the court of appeals shall remand the case for consideration under subsection (g).

"(C) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(j) Implementation of a sentence of death

"A person who has been sentenced to death pursuant to the provisions of this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgement of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does not provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(k) Use of State Facilities

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall

pay the costs thereof in an amount approved by the Attorney General."

Analysis

This part amends the Continuing Criminal Enterprise Statute (21 U.S.C. 848) to increase fines and to provide for the death penalty for persons found to be a major leader of a very large scale continuing drug enterprise.

Section two amends the fine provisions of the Continuing Criminal Enterprise statute to raise maximum authorized fines. The present law sets the fine levels at \$100,000 for a first conviction under the statute and \$200,000 for a second conviction. Of course the Criminal Fine Enforcement Act of 1984, which generally places fines at the lower of \$250,000 or double the gain obtained by the defendant in committing the offense, has effectively raised the maximum authorized fines.

Nevertheless, even the increased maximums authorized under that Act are not adequate. The provision would raise the maximum authorized fine to the greater of that authorized in the Criminal Fine Enforcement Act or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, in the case of a first conviction. In the case of a second conviction under the CCE statute the maximum authorized fine would be the greater of twice that authorized by the Criminal Fine Enforcement Act or \$4,000,000 for an individual or \$10,000,000 for an organization.

The section's reference to twice the amount authorized under the Criminal Fine Enforcement Act in title 18 for a second conviction ensures that a person convicted of a second offense could face a fine of up to four times the gain of the crime. This could result in an even higher fine than the \$4,000,000 (or \$10,000,000 for a defendant who is other than an individual) fine authorized by the CCE statute. The amendment thus blends together the salutary concept in the CCE statute that fines should be doubled for a second conviction and the equally salutary concept in the Criminal Fine Enforcement Act that authorized fines should be increased even beyond a dollar amount set out in the statute based on the gain derived by the defendant in committing the offense.

Section three provides for the death penalty as a possible punishment for the principal administrators, organizers or leaders of very large continuing criminal enterprises. The government may seek the death penalty in cases where the enterprise, as defined in section 848, received at least \$10 million in illegal drug money in a twelve-month period or where the violation involved trafficking in 300 times the quantity of controlled substances referred to in 21 U.S.C. 841(b)(1)(A) as justifying the maximum punishment. It also sets out detailed procedures which must be followed in cases in which the government seeks the death penalty. These procedures are patterned after death penalty bills that have been considered and approved by the Senate Judiciary Committee (and one of which, S. 1765 easily passed the Senate in the 98th Congress) which are