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"(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 any sentence other than death that is authorized by law. Notwithstanding any other provision of law, the court may impose a sentence of 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 title 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 of the bill 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

designed to reflect the holdings of the Supreme Court in cases in which it has upheld state death penalty provisions. If the government determines that the death penalty is warranted, it must, in advance of trial, give special notice of this to the defendant. Then, if the defendant is convicted, there is a post-verdict sentencing hearing at which the government must introduce evidence of aggravating factors and the defendant may introduce evidence of mitigating factors.

Aggravating factors listed in the section include such matters as that the defendant had previously been convicted of a drug felony for which a sentence of life imprisonment was authorized, that the defendant knowingly caused the death of another person in the course of the offense, or that the defendant knew or intended that the commission of the offense would result in the unlawful obtaining of controlled substances by persons under 21. Evidence of other aggravating factors may also be considered. Mitigating factors listed in the section are that the defendant was less than eighteen years old, under unusual duress, or had a significantly diminished mental capacity. The fact finder may consider whether other mitigating factors exist.

Following the introduction of evidence, the fact finder (usually the jury that determined guilt) must first determine whether any aggravating factor has been established beyond a reasonable doubt. If not, the death penalty may not be imposed. If, however, the fact finder finds an aggravating factor, it must consider whether any mitigating factor was established by a

preponderance of the evidence. Then, the jury must determine whether any aggravating factors found outweigh any mitigating factors found, or if no mitigating factors are found, whether any aggravating factor or factors alone justify the imposition of the death penalty. If the jury so finds, the defendant shall be sentenced to death.

In Coker v. Georgia, 433 U.S. 584 (1977), the Supreme Court struck down the death penalty for rape of an adult female. However, it did not hold that the death penalty cannot be imposed for any crime which does not result in death. For example, treason and espionage have long carried a death penalty, and both this Administration and the Senate Judiciary Committee have concluded that nothing in the Supreme Court's recent decisions would bar the imposition of the death penalty for these heinous crimes. See Sen. Rpt. No. 99-282, 99th Congress, 2nd Sess., pp. 9-10. The enormous and pervasive threat to the fabric and security of the United States posed by large scale drug trafficking is in our judgment as great or greater than that from espionage and treason. Consequently, we believe the death penalty provision for the leaders of the largest drug trafficking organizations operating in this country is justified and would likely be held constitutional.

TITLE IV

INTERNATIONAL FORFEITURE ENABLING ACT OF 1986

Sec. 1. This title, may be cited as the International Forfeiture Enabling Act of 1986.

Sec. 2. (a) Part E of the Controlled Substances Act is amended by adding after section 516 (21 U.S.C. 886) a new section 517 to read as follows:

Forfeiture Relating to Foreign Unlawful Drug Activities

"(a) the following property located within the jurisdiction of the United States relating to an unlawful drug activity committed within the jurisdiction of a foreign country shall be subject to forfeiture to the United States:

"(1) any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the unlawful drug activity; and

"(2) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the unlawful drug activity;

except that no property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b)- Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881 of this title shall apply to forfeiture under this section.

"(c) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the

Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a) of this section may also be transferred to a foreign country pursuant to an international agreement providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(d) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(e) As used in this section--

"(1) the term 'property' includes real property, including things growing on, affixed to, or found in land, and tangible and intangible personal property, including rights, privileges, interests, claims, and securities; and

"(2) the term 'unlawful drug activity' means any act or activity constituting a drug offense under the laws of a foreign country within whose jurisdiction such act or activity occurred, punishable by death or imprisonment for a term exceeding one year, which would be punishable by this chapter by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States;

"(f) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(g) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(h) The provisions of subsections (f) and (g) of this section shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible."

(b) the Table of Sections at the beginning of chapter 13 of title 21 is amended by adding at the end of the following new item:

"887. Forfeiture Relating to Unlawful Drug Activities."

Analysis

This title adds a new section to the Controlled Substances Act to implement the forfeiture provisions of the Treaty between the United States and the Italian Republic on Mutual Assistance in Criminal Matters. It was ratified by the Senate on June 28, 1984. Article 18 of the Treaty contemplates authority whereby

the United States could, for example, request that Italy seize moneys deposited in an Italian bank that were profits of an operation smuggling heroin into the United States, profits that would clearly be subject to forfeiture under our laws if they had remained in the United States. Italy could then forfeit these profits and transfer them to the United States. The United States would exercise similar authority where, for example, forfeitable profits of an Italian crime were deposited in a United States bank.

However, legislation is needed to implement the seizure and forfeiture article. Currently there are no statutory procedures for the seizure and forfeiture of assets found within our borders that represent the fruits or instrumentalities of drug crimes against foreign countries. Present forfeiture authority extends only to property which is used in, or is the product of, a violation of the laws of the United States.

This section is designed not only to meet our obligations under the treaty with Italy, but also to accommodate seizure and forfeiture of assets based on violations of other nations' drug laws. It provides that the United States may seize and civilly forfeit property located in the United States that was either derived from the commission of foreign drug laws or used or intended to be used in their commission. The offense must also be one which would be a felony drug violation under United States law had the offense occurred within our jurisdiction. It includes an "innocent owner" exception like that found in certain existing forfeiture statutes (see, e.g., 21 U.S.C. § 881(a)) to

assure that there can be no forfeiture of property owned by a person who did not consent to or have knowledge about the crime on which the forfeiture is based.

The section is framed as a civil forfeiture statute, and the procedural aspects of seizures and forfeitures under this provision are to be governed by the procedures provided for civil forfeitures under the customs laws. This approach is now employed with respect to civil forfeitures under our drug laws (see 21 U.S.C. § 881(d)). Under current civil forfeiture laws, including those under the customs laws, a forfeitable asset may be seized on a probable cause basis prior to entry of the order of forfeiture.

TITLE V

REPEAL OF THE "MANSFIELD AMENDMENT"

Subsection 481(c) of the Foreign Assistance Act of 1981, as amended, (22 U.S.C. 2291(c)) is repealed.

Purpose. The purpose of this provision is to repeal the "Mansfield amendment" which prohibits officers or employees of the United States from participating in narcotics arrests in foreign countries, or from interrogating or being present at the interrogation of a United States person arrested in a foreign country with respect to narcotics control without the written consent of the person being interrogated. A 1985 amendment to the "Mansfield amendment" provides that it shall not prohibit federal officers from being present during direct police arrest actions with respect to narcotics control in a foreign country to the extent that the Secretary of State and the government of the foreign country agree to the exemption. Even as amended, the "Mansfield amendment" imposes unreasonable restrictions on participation by United States law enforcement officers in joint operations designed to attack drug trafficking involving the United States and another country and hampers our drug intelligence gathering efforts.

TITLE VI

JUVENILE DRUG TRAFFICKING ACT OF 1986

Sec. 1. This title may be cited as the Juvenile Drug Trafficking Act of 1986.

Sec. 2. Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"Employment of minors in controlled substance trafficking"

"Sec. 405B. (a) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age is punishable by a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b) of this Act, and at least twice any special parole term authorized by section 401(b) of this Act, for a first offense.

"(b) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age, after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this Act for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this Act for a first offense under that section."

"(c) In the case of any 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 of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this Act shall not be eligible for parole under section 4202 of Title

18 until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

Sec. 3. Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b) is amended by deleting the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

Sec. 4. Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

Sec. 5. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:
"405B. Employment of minors in controlled substance trafficking."

Sec. 6. Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended, in subsection (a), by adding after the word "distributing" the words "or manufacturing" and by striking the words "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

Analysis

Section two of this title provides for additional penalties for persons who make use of juveniles in drug trafficking. It provides that anyone over 21 who acts in concert with a person under 21 in violating 21 U.S.C. 841(a) is subject to an enhanced

fine and jail term. Such a person would be subject to double the fine and period of imprisonment authorized in 21 U.S.C. 841(b) for a first offense in which he acted in concert with a juvenile, and to triple the fine and period of imprisonment for a second or subsequent conviction. The phrase "acting in concert" was deliberately chosen to include not just the situation where the adult offender and the juvenile are in an employer-employee relationship, respectively. While it would certainly cover the situation where minors are used to distribute drugs, act as lookouts, couriers, or cashiers, or perform other duties related to drug trafficking, it would also cover relationships not so formal, as where the juvenile is more of an "independent contractor" distributing drugs on consignment. It would also cover the situation where a drug seller sold drugs to a person under 21 knowing, or having reason to know from the quantity or other circumstances, that the minor intended to resell them. Sections three, four, and five, make technical and conforming changes necessitated by section two.

Section six of this title amends section 405A of the Controlled Substances Act (21 U.S.C. 845a). Currently section 405A, which was added in 1984, prohibits the distribution of controlled substances within 1000 feet of a public or private elementary or secondary school. Persons violating this section are subject, for a first offense, to a prison term and fine twice that otherwise applicable, and for a subsequent offense, to life imprisonment. The amendment would strengthen this section by expanding the prohibited activity to include manufacturing as

well as distributing a controlled substance, thereby reaching such conduct as operating a "crack" house or PCP laboratory within the prohibited distance. This concept is included in a bill, S. 2562, introduced by Senator Chiles. The amendment would also expand the category of protected educational institutions to include vocational schools, colleges and universities, on the ground that drug trafficking in, on, or near such institutions poses an equivalent danger to the nation's young people and to the security and mission of the institutions themselves.

TITLE VII

CONTROLLED SUBSTANCES IMPORT AND EXPORT
PENALTIES ENHANCEMENT ACT OF 1986

Sec.1. This title may be cited as the Controlled Substances Import and Export Penalties Enhancement Act of 1986.

Sec.2. Sections 1010(b)(1) and (2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1) and (2)) are amended to read as follows:

"(1) 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) 25 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);
or

"(F) 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;

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 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 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 subsection, or for a felony under any other provision of this title or title II 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 of not 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 paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein. Provided, however, that upon the motion of the United States Attorney, the sentencing court may reduce or suspend the sentence of any person sentenced under this paragraph who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals, or who otherwise provides substantial assistance leading to the identification, arrest, or conviction of any other offenders under this section. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance.

"(2) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), 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 and not 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 subsection, or for a felony under any other provision of this title or title II 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 paragraph 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 paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence. Provided

however, that upon the motion of the United States Attorney, the sentencing court may reduce or suspend the sentence of any person sentenced under the provisions of this paragraph which require a mandatory term of imprisonment if death results who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals, or who otherwise provides substantial assistance leading to the identification, arrest, of conviction of any other person under this section. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance."

Sec. 3. Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended--

(1) by striking out ",except as provided in paragraph (4)"; and

(2) by striking out the phrase "fined not more than \$50,000" and inserting in lieu thereof "fined 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".

Analysis

This title contains amendments of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. §960(b)) to conform the penalties for import and export violations generally to those established by Title I of this bill for violations

of the Controlled Substances Act (CSA). This title also conforms the specific quantities of controlled substances which trigger enhanced penalties to the quantities and substances listed in Title I of this proposal.

Section 2 of this title generally applies the penalties included in Title I of this bill under 21 U.S.C. §841(b)(1)(A) and (B) to the parallel import and export provisions of 21 U.S.C. §960(b)(1) and (2), concerning large quantities of specified drugs and any schedule I or II substance, respectively. Section 2 also includes for purposes of these import and export violations the amendment contained in Title I of this proposal providing for life imprisonment when death results from the use of a substance involved in a violation. Including this amendment in the Controlled Substances Import and Export Act for the most serious categories of offenses is consistent with the view that the result of death from the use of a substance involved in a violation justifies a severe penalty not only for the unlawful manufacture and distribution of controlled substances, but also for their unlawful importation.

Section 3 amends 21 U.S.C. §960(b)(3), concerning schedule III, IV, and V substances and small quantities of marihuana and hashish. It should be noted that, unlike the CSA, the Controlled Substances Import and Export Act (21 U.S.C. §960(b)(3)) currently treats all schedule III, IV, and V substances alike for purposes of sentencing and subjects all these substances to the level of penalties imposed for schedule III substances under the CSA. This title preserves this scheme and increases the fines

for schedule III, IV, and V substances, as well as for small quantities of marihuana and hashish, to the levels established in Title I of this bill for schedule III substances.

TITLE VIII

NARCOTIC TRAFFICKERS DEPORTATION ACT OF 1986

Sec.1. This title may be cited as the Narcotic Traffickers Deportation Act of 1986.

Sec.2. Subsection (a)(11) of Title II of Chapter 477 of the Act of June 27, 1952 (8 U.S.C. 1251), as amended, is further amended to delete all language which follows "has been convicted of a violation of" and to insert in its stead, "any provision of the Controlled Substances Act, the Controlled Substances Import and Export Act, the Act of September 15, 1980 (Pub.L. 96-350, 94 Stat. 1159-60), or any other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances."

Analysis The purpose of this title is to remove the unnecessary dichotomy that presently exists between offenses involving narcotic drugs, cocaine, or marihuana and other controlled substance offenses in Title 21, United States Code, for purposes of deportation under the immigration statutes (viz., 8 U.S.C. 1251(a)(4)). As presently in effect, 8 U.S.C. 1251(b) gives authority to the sentencing judge to make a binding recommendation to the Attorney General that aliens convicted of a variety of federal offenses not be deported. One exception to this authority involves aliens who have been convicted of drug offenses explicitly listed in subsection (a)(11):

A violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture,

production, compounding, transportation, sales, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, and salt [,] derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate").

The revised language would expand the exception contained in 1251(b) to allow deportation, without overriding judicial involvement, in all matters involving controlled substance offenses. The above change incorporates language similar to that contained in the Controlled Substances Act and the Controlled Substances Import and Export Act - both enacted in 1970 - and deletes from Section 1251(a)(11) outmoded concepts utilized in pre-CSA-related tax laws, etc., in referring to controlled substance offenses. The amendment would also incorporate drug violations of state and foreign law, as well as related federal offenses not contained in Title 21, for purposes of this exception, thereby making the exception similar in coverage to recent amendments to the recidivist provisions of the Controlled Substances Act and the Controlled Substances Import and Export Act.

TITLE IX

FEDERAL EMPLOYEES DRUG ABUSE ACT OF 1986

Sec. 1. This title may be cited as the Federal Employees Drug Abuse Act of 1986.

Sec. 2. Part D of the Controlled Substances Act is amended by adding after section 405B as added by the Juvenile Drug Trafficking Act of 1986 a new section as follows:

"Penalties for drug possession by federal employees"

"Sec. 405C. (a) Any officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, who violates any provision of section 401 of this Act shall, in addition to any other punishment provided by law, be disqualified from ever holding any office of honor, trust, or profit under the United States. Such disqualification shall commence at the time a conviction under section 401 becomes final.

"(b) Any officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, who violates section 404 of this Act during the course of his or her employment or on or in any property, building, or conveyance owned or leased by the government of the United States shall, in addition to any other property provided by law, be disqualified from ever holding any office of honor, trust, or profit under the United States. Such disqualification shall commence at the time a conviction under section 404 becomes final".

Sec. 3. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting

after the item relating to 405B (as added by the Juvenile Drug Trafficking Act of 1986) the following:

"405C. Controlled substances offenses by federal employees."

Analysis

This title provides that federal employees convicted of drug offenses, other than simple possession, shall be permanently barred from federal employment. It also provides that federal employees convicted of simple possession during working hours or while on federal property shall also be barred from federal employment. The provision applies to all federal employees except members of the armed forces. Members of the Armed Forces are subject to court-martial jurisdiction and a the type of court-martial that would normally consider a drug case may include a punitive discharge as part of its sentence. The provision states that the disqualification from office shall commence at the time the conviction under section 401 or 404 becomes final. Thus, such a person's employment would cease (and he or she could receive no further salary) on the date his or her appeal from a conviction was denied or on the last date when an appeal was authorized but not taken, if such an employee has not resigned or been fired prior to that time.

TAB C

99TH CONGRESS
2D SESSION

S. 2715

To provide an emergency Federal response to the crack cocaine epidemic through law enforcement, education and public awareness, and prevention.

IN THE SENATE OF THE UNITED STATES

AUGUST 5 (legislative day, AUGUST 4), 1986

Mr. CHILES (for himself, Mr. BIDEN, Mr. BYRD, Mr. CRANSTON, Mr. DECONCINI, Mr. DODD, Mr. LEAHY, Mr. NUNN, Mr. ROCKEFELLER, and Mr. SASSER, Mr. BOREN, Mr. INOUE, Mr. MELCHER, Mr. KERRY, Mr. BUMPERS, Mr. HART, Mr. BINGAMAN, Mr. HEFLIN, Mr. BAUCUS, Mr. LEVIN, Mr. SARBANES, Mr. MITCHELL, Mr. JOHNSTON, Mr. PRYOR, Mr. FORD, Mr. GORE, Mr. LAUTENBERG, Mr. LONG, Mr. ROCKEFELLER, Mr. MOYNIHAN, Mr. SIMON, Mr. GLENN, Mr. METZENBAUM, Mr. HOLLINGS, and Mr. MATSUNAGA) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To provide an emergency Federal response to the crack cocaine epidemic through law enforcement, education and public awareness, and prevention.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Emergency Crack
5 Control Act of 1986".

1 **TITLE I—LAW ENFORCEMENT**

2 **SEC. 101. ADDITION OF COCAINE FREEBASE TO SCHEDULE I.**

3 (a) **RESCHEDULING.**—Schedule I of section 202(c) of
4 the Controlled Substances Act is amended by adding at the
5 end thereof the following:

6 “(d) Cocaine freebase.”.

7 (b) **INCREASED PENALTIES.**—Subsection (b)(1)(A) of
8 section 401 of the Controlled Substances Act is amended
9 by—

10 (1) striking out “or” after the semicolon in clause
11 (iii);

12 (2) striking out the matter after the semicolon in
13 clause (iv) through the period and inserting in lieu
14 thereof “or” and the following:

15 “(v) 5 grams or more of cocaine freebase,
16 such person shall be sentenced to a term of imprisonment of
17 not more than 20 years or a fine of not more than \$250,000,
18 or both.”.

19 **SEC. 102. CREATING NEW OFFENSES AND INCREASING PEN-**
20 **ALTIES.**

21 (a) **EMPLOYMENT OR USE OF PERSONS UNDER**
22 **TWENTY-ONE YEARS OF AGE IN DRUG OPERATIONS.**—(1)
23 Part D of the Controlled Substances Act is amended by
24 adding after section 405A the following new section:

1 "EMPLOYMENT OR USE OF PERSONS UNDER TWENTY-ONE
2 YEARS OF AGE IN DRUG OPERATIONS

3 "SEC. 405B. (a) Except as authorized by this title, it
4 shall be unlawful for any person at least eighteen years of
5 age knowingly and intentionally—

6 "(1) to employ, hire, or use a person under
7 twenty-one years of age to violate any provision of this
8 title; or

9 "(2) to employ, hire, or use a person under
10 twenty-one years of age to assist in avoiding detection
11 or apprehension for any offense of this title by any
12 Federal, State, or local law enforcement official.

13 "(b) Except as otherwise provided by this title—

14 "(1) any person who violates subsection (a)(1)
15 shall be subject to a term of imprisonment or fine twice
16 that authorized for the offense for which the person
17 under twenty-one is employed, hired, or used; and

18 "(2) any person who violates subsection (a)(2)
19 shall be punished by a term of imprisonment for not
20 more than fifteen years or a fine of not more than
21 \$125,000, or both.

22 "(c) Any person who violates subsection (a)(1) or
23 (a)(2)—

24 "(1) by providing any person under twenty-one
25 years of age with any controlled substance; or

1 “(2) if the person employed, hired, or used is four-
2 teen years of age or younger,
3 shall be subject to a term of imprisonment for not more than
4 five years or a fine of not more than \$50,000, or both, in
5 addition to any other punishment authorized by this
6 section.”.

7 (2)(A) Section 401(b) of such Act (21 U.S.C. 841(b)) is
8 amended by striking out “or 405A” and inserting in lieu
9 thereof “, 405A, or 405B”.

10 (B) Section 401(c) of such Act is amended by striking
11 out “405A” and inserting in lieu thereof “, 405A, or 405B”
12 each place it appears.

13 (C) Section 405 of such Act (21 U.S.C. 845) is amended
14 by striking out “or 405A” in subsections (a) and (b) and in-
15 serting in lieu thereof “, 405A, or 405B”.

16 **(b) MANUFACTURE OF A CONTROLLED SUBSTANCE IN**
17 **OR NEAR A SCHOOL.**—(1) Section 405A of the Controlled
18 Substances Act (21 U.S.C. 845a) is amended—

19 (A) in subsection (a) by inserting “manufacturing
20 or” before “distributing”; and

21 (B) in subsection (b) by inserting “manufacturing
22 or” before “distributing”.

23 (2) The caption for section 405A of the Controlled Sub-
24 stances Act is amended to read as follows:

1 “MANUFACTURE OR DISTRIBUTION IN OR NEAR
2 SCHOOLS”.

3 (c) MANUFACTURING OPERATIONS.—(1) Part D of the
4 Controlled Substances Act is amended by adding at the end
5 thereof the following new section:

6 “ESTABLISHMENT OF MANUFACTURING OPERATIONS

7 “SEC. 416. (a) Except as authorized by this title, it
8 shall be unlawful to—

9 “(1) open or maintain any place for the purpose of
10 manufacturing, distributing, or using any controlled
11 substance;

12 “(2) manage or control any building, room, or en-
13 closure, either as an owner, lessee, agent, employee, or
14 mortgagee, and knowingly and intentionally rent, lease,
15 or make available for use, with or without compensa-
16 tion, the building, room, or enclosure for the purpose of
17 unlawfully manufacturing, storing, distributing, or
18 using a controlled substance.

19 “(b) Any person who violates subsection (a) of this sec-
20 tion shall be sentenced to a term of imprisonment of not more
21 than 20 years or a fine of not more than \$250,000, or both.”.

22 (2) Section 405A of the Controlled Substances
23 Act is amended—

24 (A) in subsection (a) by inserting after “sec-
25 tion 401(a)(1)” the following: “or section 416”;
26 and

1 (B) in subsection (b) by inserting after “sec-
2 tion 401(a)(1)” the following: “or section 416”.

3 **TITLE II—EDUCATION AND PUBLIC**
4 **AWARENESS**

5 **PART A—EMERGENCY RESPONSE**

6 **SEC. 201. NATIONAL DRUG ABUSE EDUCATION DAY.**

7 (a) **FINDINGS.**—The Congress finds that—

8 (1) drug abuse in the United States is a major
9 health problem that damages our social institutions and
10 threatens our most valuable human resource—our
11 young people;

12 (2) the 1984 National Strategy for Prevention of
13 Drug Abuse and Drug Trafficking stated that “preven-
14 tion has come to the forefront as the essential element
15 in the long-range goal of eliminating drug abuse”; and

16 (3) President Reagan has called drug abuse one of
17 the gravest problems facing the Nation and has further
18 warned that if we, as a Nation, fail to act we run the
19 risk of losing a great part of a whole generation.

20 (b) **NATIONAL DRUG ABUSE EDUCATION DAY.**—(1)
21 October 6, 1986, the first day of Drug Abuse Awareness
22 Week as established in Senate Joint Resolution 354, is desig-
23 nated as National Drug Abuse Education Day. The purpose
24 of National Drug Abuse Education Day is to focus national
25 attention on the rapidly escalating threat that drug abuse

1 poses to the Nation's health, by calling on the President of
2 the United States to proclaim a national day.

3 (2) As a part of National Drug Abuse Education Day,
4 the President shall—

5 (A) call upon every elementary and secondary
6 school, and all institutions of higher education to
7 devote the day's curriculum to instruction on the physi-
8 ological, psychological, social, and legal consequences
9 of drug use and abuse; and

10 (B) call upon students, parents, community
11 groups, and local law enforcement agencies to actively
12 participate in programs sponsored in conjunction with
13 National Drug Abuse Education Day.

14 (c) DEFINITION.—For purposes of this section, the term
15 “drug” shall include—

16 (1) any substance listed in section 102(17) of the
17 Controlled Substances Act (21 U.S.C. 802(17)); and

18 (2) alcohol.

19 **SEC. 202. EMERGENCY ASSISTANCE TO STATE AND LOCAL**
20 **EDUCATION AGENCIES.**

21 The Secretary of Education shall insure that State edu-
22 cational departments and local school districts and all ele-
23 mentary and secondary schools and institutions of higher edu-
24 cation have timely information on—

1 (1) the scope and nature of the cocaine freebase
2 epidemic;

3 (2) strategies for effective school level intervention
4 and community mobilization; and

5 (3) available resources including technical assist-
6 -ance and training.

7 The Secretary of Education shall publish and disseminate in-
8 formation required by this section no later than October 6,
9 1986 (National Drug Abuse Education Day).

10 (b) There are hereby authorized to be appropriated such
11 sums as are necessary to carry out the provisions of this
12 section.

13 **SEC. 203. EMERGENCY PUBLIC SERVICE ANNOUNCEMENTS.**

14 The Director of the National Institute of Drug Abuse
15 shall, in consultation and collaboration with the Centers for
16 Disease Control, produce and disseminate two emergency
17 public service announcements to warn the American people
18 of the physiological, psychological, social, and legal conse-
19 quences of cocaine freebase use. The announcements required
20 by this section shall be produced and disseminated not later
21 than October 6, 1986 (National Drug Abuse Education Day).

1 PART B—ESTABLISHMENT OF OFFICE WITHIN THE
2 DEPARTMENT OF EDUCATION
3 SEC. 211. ESTABLISHMENT OF OFFICE OF DRUG AND ALCO-
4 HOL ABUSE EDUCATION AND POLICY WITHIN
5 THE DEPARTMENT OF EDUCATION.

6 (a) ESTABLISHMENT OF OFFICE.—Title II of the De-
7 partment of Education Organization Act (Public Law 96-88)
8 is amended by adding at the end thereof the following new
9 section:

10 “OFFICE OF DRUG AND ALCOHOL ABUSE EDUCATION AND
11 POLICY

12 “SEC. 215. (a) There shall be in the Department an
13 Office of Drug and Alcohol Abuse Education and Policy to be
14 administered by the Assistant Secretary for Drug and Alco-
15 hol Abuse Education and Policy appointed under section
16 202(b).

17 “(b) The Office of Drug and Alcohol Abuse Education
18 and Policy shall be responsible for—

19 “(1) developing and coordinating, in consultation
20 with appropriate Federal agencies, including law en-
21 forcement, health and education, a long-term and de-
22 tailed strategy for the Federal Government’s drug and
23 alcohol abuse education efforts;

24 “(2) monitoring, promoting, and encouraging, in
25 cooperation with the National Institute of Drug Abuse,
26 the National Institute on Alcohol Abuse and Alcohol-

1 ism, Alcohol, Drug Abuse, and Mental Health Admin-
2 istration, research in the area of drug and alcohol
3 education;

4 “(3) providing technical assistance to State educa-
5 tional departments and local school districts in imple-
6 menting promising drug and alcohol abuse education
7 programs;

8 “(4) developing and demonstrating new and prom-
9 ising drug and alcohol abuse education programs that
10 are appropriate and flexible for the unique needs of
11 State educational departments and local school dis-
12 tricts, and promoting the implementation of such pro-
13 grams by State educational departments and local
14 school districts;

15 “(5) significantly expanding the Department of
16 Education’s existing program for training elementary
17 and secondary school administrators, teachers, counsel-
18 ors, athletic directors, and other school personnel in
19 the area of drug and alcohol abuse education and
20 prevention; and

21 “(6) disseminating information to State education-
22 al departments and local school districts relating to re-
23 search, programs, and training opportunities in drug
24 and alcohol abuse education and prevention.

1 (b) TECHNICAL AMENDMENTS.—Subsection (b)(1) of
2 section 202 of such Act is amended—

3 (1) in clause (F) by striking out “and” after the
4 semicolon;

5 (2) in clause (G) by striking out the period and in-
6 serting in lieu thereof “; and”; and

7 (3) by adding at the end thereof the following:

8 “(H) an Assistant Secretary for Drug and Alcohol
9 Abuse Education and Policy.”.

10 (c) REPORT BY THE SECRETARY.—The Secretary of
11 Education shall submit to Congress one year after the date of
12 enactment of this title, a report which shall detail the Depart-
13 ment of Education’s progress in establishing the Office of
14 Drug and Alcohol Abuse and Policy and the long-term strat-
15 egy of the Office for drug and alcohol abuse education efforts
16 by the Federal Government.

17 PART C—STUDENT DRUG ABUSE AND PREVENTION

18 SECTION 221. SHORT TITLE.

19 This part may be cited as the “Student Drug Abuse
20 Education and Prevention Act of 1986”.

21 SEC. 222. FINDINGS.

22 The Congress hereby makes the following findings:

23 (1) drug abuse among young Americans is a na-
24 tional crisis;

1 (2) in 1985, 61 percent of all high school seniors
2 representing about two million adolescents tried an il-
3 licit drug at least once, and 41 percent of all seniors
4 used drugs other than marijuana;

5 (3) in 1985, one in twenty high school seniors
6 drank alcohol daily and 37 percent had five or more
7 drinks in a row at least once every two weeks;

8 (4) the use of cocaine is increasing among young
9 people;

10 (5) in 1985, 13 percent of high school seniors
11 used cocaine, the highest percentage ever reported;

12 (6) the use of crack (cocaine freebase), a danger-
13 ous and addictive form of cocaine, is being used by a
14 growing number of young people; and

15 (7) drug abuse costs the United States billions of
16 dollars in health care, law enforcement, and lost
17 productivity.

18 **SEC. 223. ESTABLISHMENT.**

19 The Secretary of Education, acting through the Assist-
20 ant Secretary for Drug and Alcohol Abuse Education and
21 Policy, shall establish a program of Federal grants to the
22 States for drug abuse education in elementary and secondary
23 schools in accordance with the provisions of this part.

24 **SEC. 224. USE OF FUNDS.**

25 (a) **STATE USE OF FUNDS.—**