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ADMINISTRATION
BILL

DRAFT

TITLE I

DRUG FREE WORKPLACE

DRAFT

Short Form
September 4, 1986 5:30 p.m.

A BILL

To make it clear that there is no federal statutory bar to drug testing in the workplace or in educational institutions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 101. This Act may be cited as the "Illegal Drug Use Prevention Act of 1986."

FINDINGS

SEC. 102. The Congress finds and declares that --

(a) Drug use is having alarming and tragic effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year.

(b) Employers are concerned with the well being of their employees, and the need to maintain employee productivity.

(c) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier work environment, increase productivity, improve public safety, and protect national security.

(d) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs while protecting non drug-using coemployees and the public from the harms caused by illegal drug users.

SEC. 103. Technical and Conforming Amendments

(a)(1) Subsection (c) of section 290ee-1 of title 42, United States Code, is amended by striking out paragraph (1) and inserting in lieu thereof the following:

A person who formerly used, or was addicted to, illegal drugs, but who, has not, in the last five years

used such drugs, may not be denied or deprived of Federal civilian employment or a Federal professional license or right solely on the ground of that prior drug addiction or use.

(2) Subsection (c)(2) of section 290ee-1 of title 42, United States Code, is amended by inserting between "apply" and "to employment" the following: "to persons who use illegal drugs, or".

(b) Subsection (7)(B) of section 706 of title 29, United States Code, is amended:

(i) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The", and

(ii) by striking out the second sentence and inserting in lieu thereof the following:

"The term 'handicapped individual' does not include any individual who uses, or is addicted to, illegal drugs, provided however that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if he is also addicted to drugs. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term 'handicapped individual' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(c) Section 706 of title 29, United State Code, is further amended by adding the following new subsection to the end thereof:

"(16) The term 'illegal drugs' means controlled substances, as defined by section 802(6) of title 21, United State Code, the possession or distribution of which is unlawful under chapter 13 of title 21, United States Code."

(d) The provisions of this Act shall supersede any inconsistent federal law, rule or regulation.

SEC. 104. Effective Date

This Act shall become effective on its date of enactment and shall apply to any pending litigation.

September 5, 1986 1000 a.m.

A BILL

To prevent the use of, and reduce the demand for, illegal drugs in workplaces by identifying users and holding them accountable for their use of illegal drugs; to ensure that federal law does not prohibit state and local governments, educational institutions, and private employers from conducting drug testing; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 101. This Act may be cited as the "Illegal Drug Use Prevention Act of 1986."

FINDINGS

SEC. 102. The Congress finds and declares that --

(a) Drug use is having alarming and tragic effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year.

(b) The Federal Government, as an employer, is concerned with the well being of its employees, the successful accomplishment of agency missions and the need to maintain employee productivity.

(c) The Federal Government as the largest employer in the nation can, and should show the way towards achieving drug free workplaces through a program designed to offer drug users a helping hand and, at the same time, getting the message to drug users that drug use will not be tolerated in the federal workplace.

(d) The use of illegal drugs by federal employees on or off duty is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special public trust given to such employees as servants of the public.

(e) An individual who uses illegal drugs on or off the job

is less productive, less reliable, prone to greater absenteeism, than those who do not use illegal drugs.

(f) The use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other employees.

(g) The use of illegal drugs by federal employees on or off duty impairs the efficiency of federal departments and agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively.

(h) The use of illegal drugs on or off duty by federal or private employees in certain positions evidences an unreliability, an instability, and a lack of judgment that is inconsistent with access to sensitive information, and renders such employees susceptible to coercion, influence, and irresponsible action under pressure so as to pose a serious risk to national security, public safety, and the effective enforcement of the law.

(i) The demand for illegal drugs encourages and supports the interstate trafficking in illegal drugs, and generates a range of serious criminal activity that threatens public peace and order and can corrupt public officials.

(j) Considered in the aggregate, the use of illegal drugs by employees reduces the productivity of the economy, undermining the ability of American industry to compete internationally, and causing the loss of jobs and productive capital.

(k) Individuals who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves. Such individuals will only take such steps if made accountable for their irresponsible and illegal use of drugs.

(l) Reducing the demand for illegal drugs will discourage interstate and foreign commerce in illegal drugs.

(m) Employers should establish clear policies to ensure that illegal drug users will be held accountable for their actions.

(n) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier work environment, increase productivity, improve public safety, and protect national security.

(o) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs while protecting non drug-using coemployees and the public from the harms caused by illegal drug users.

DEFINITIONS

SEC. 103. As used in this Act --

(a) "federal employee" includes all members of the Civil Service, the Uniformed Services (but not including the Armed Forces), and other employees as defined by sections 2101, 2105, and 2107 of title 5, United States Code;

(b) "illegal drugs" means controlled substances, as defined by Schedules I and II, section 802(6) of title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law;

(c) "drug testing" means any drug testing conducted in accordance with scientific and technical guidelines promulgated by the Secretary of Health and Human Services

DRUG PROGRAM

SEC. 104. Drug Free Federal Workforce

(a) All federal employees are required to refrain from the use of illegal drugs.

(b) Drug testing may be conducted of applicants for employment and current employees to determine if they use illegal drugs:

(1) when they have been or may be granted access to classified information;

(2) when they perform tasks relating to, or that may have an effect on, the national security, public safety, the protection of life or property, or the investigation of possible violations of federal law;

(3) serving under Presidential appointments, appointed to the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code, or appointed to Schedule C positions in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577; and

(4) in any other position determined by the head of the federal agency or by the appointing authority within the legislative or judicial branches to promote the efficiency of the service or position.

(c) In addition to the testing authorized by subsection (b) of this section, federal employers are authorized to conduct drug testing of any federal employee to determine if that employee uses illegal drugs:

(1) whenever there is a reasonable suspicion that any employee uses illegal drugs;

(2) following an accident in which a federal employee was involved, or in the course of a safety investigation that relates to tasks or responsibilities of a federal employee;

(3) As part of or as a follow-up to an agency approved counseling or rehabilitation program.

(d) Federal employment shall be refused to all applicants who are found to be using illegal drugs.

(e) If it is determined that any federal employee uses illegal drugs the federal employer shall propose discipline for the employee, including, if appropriate, removal from federal service.

(f) The Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of these provisions.

SEC. 105. Drug Free Private Workforce

(a) It shall not be unlawful under federal law for an employer to require as a condition of hiring or continued employment that employees refrain from the use of illegal drugs.

(b) It shall not be unlawful under federal law for any employer to conduct drug testing of its employees or applicants to determine if they use illegal drugs.

(c) It shall not be unlawful under federal law for an employer to refuse employment to applicants who use illegal drugs.

(d) It shall not be unlawful under federal law for an employer to take disciplinary action against an employee, including removal from employment, who use illegal drugs on or off the job.

SEC. 106. Disqualification From Federal Employment Upon Conviction For Drug Offenses

(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 the Controlled Substances Act, 21 U.S.C. § 841 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 any provision of section 404 of the Controlled Substances Act, 21 U.S.C. § 844 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 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 404 becomes final.

SEC. 107. Drug Free Federal Contractor Workplace

(a) Federal agencies are authorized to require government contractors to institute programs to achieve drug-free workplaces, including drug testing of contractor employees and applicants whose duties involve access to classified information or tasks that may have an effect on national security, public safety or the protection of life and property.

SEC. 108. Judicial Review

(a) The promulgation of scientific and technical guidelines by the Secretary of Health and Human Services pursuant to section 3(d) of this Act is committed to the exclusive discretion of the

Secretary and shall not be subject to judicial review except for constitutional questions.

(b) The decision to require drug testing of federal employees pursuant to sections 4(b) or (c) of this Act shall not be subject to judicial review except for constitutional questions.

SEC. 109. Severability

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

SEC. 110. Technical and Conforming Amendments

(a)(1) Subsection (c) of section 290ee-1 of title 42, United States Code, is amended by striking out paragraph (1) and inserting in lieu thereof the following:

A person who formerly used, or was addicted to, illegal drugs, but who, has not, in the last five years used such drugs, may not be denied or deprived of Federal civilian employment or a Federal professional license or right solely on the ground of that prior drug addiction or use.

(2) Subsection (c)(2) of section 290ee-1 of title 42, United States Code, is amended by inserting between "apply" and "to employment" the following: "to persons who use illegal drugs, or".

(b) Subsection (7)(B) of section 706 of title 29, United States Code, is amended:

(i) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The", and

(ii) by striking out the second sentence and inserting in lieu thereof the following:

"The term 'handicapped individual' does not include any individual who uses, or is addicted to, illegal drugs. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term 'handicapped individual' does not include any individual who is an alcoholic whose current use of

alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(c) Section 706 of title 29, United State Code, is further amended by adding the following new subsection to the end thereof:

"(16) The term 'illegal drugs' means controlled substances, as defined by section 802(6) of title 21, United State Code, the possession or distribution of which is unlawful under chapter 13 of title 21, United States Code."

(d) The provisions of this Act shall supersede any inconsistent federal law, rule or regulation.

SEC. 111. Effective Date

This Act shall become effective on its date of enactment and shall apply to any pending litigation.



DRAFT

TITLE II
DRUG FREE SCHOOLS

A BILL

To promote excellence in American education by achieving and maintaining a drug-free environment in our Nation's elementary and secondary schools, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Drug-Free Schools Act of 1986 (The Zero-Tolerance Act)".

FINDINGS

Sec. 202. The Congress finds the following:

(1) Drug use is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well;

(2) The use of drugs by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process;

(3) The tragic consequences of drug use by students are felt not only by the students, themselves, and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality;

(4) Among our cultural institutions, schools, assisted by parents and the community, have a special responsibility to assist in combating the scourge of drug use by adopting and applying firm but fair drug policies; and

(5) That prompt action by our Nation's schools can bring us significantly closer to the goal of a drug-free generation.

(6) Educational Institutions should establish clear policies to ensure that illegal drug users will be held accountable for their actions.

(7) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier educational environment, increase productivity, improve public safety, and protect fellow students, faculty and employees.

(8) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs with protecting non drug-using students, faculty and employees from the harms caused by illegal drug users.

PURPOSE

Sec. 203. The purpose of this Act is to assist State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools.

AUTHORIZATION OF APPROPRIATIONS

Sec. 204. For the purpose of carrying out this Act there are authorized to be appropriated \$100,000,000 for the fiscal year 1987 and such sums as may be necessary for each of the succeeding fiscal years.

RESERVATIONS AND ALLOTMENTS

Sec. 205. (a) From the funds appropriated under section 4 for any fiscal year, the Secretary shall reserve 20 per centum for national programs under section 10.

(b) (1) From the remainder of the amount appropriated to carry out this Act for each fiscal year after the application of subsection (a), the Secretary may reserve up to one per centum for projects authorized by this Act in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands,

(2) The Secretary shall allot the funds reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for assistance under this Act.

(c) (1) From the remainder of the amount appropriated to carry out this Act for each fiscal year after the application of subsections (a) and (b), the Secretary shall allot each State an amount which bears the same ratio to that remaining amount as the number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to the Secretary.

(2) (A) The Secretary may reallocate all or a portion of the State's allotment for any fiscal year if the State does not submit a State application under section 6, or otherwise indicates to the Secretary that it does not need or cannot use

the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallocations.

(B) The Secretary may reallocate funds on a competitive basis to one or more States that demonstrate a current need for additional funds under this Act. Any funds reallocated to another State shall be deemed to be part of its allotment for the fiscal year in which the funds are reallocated.

(d) For the purpose of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

STATE APPLICATIONS

Sec. 206. (a) Any State desiring to receive a grant from funds allotted under section 5 for any fiscal year shall submit to the Secretary a State application which meets the requirements of this section.

(b) Each State application shall--

(1) cover a period of three fiscal years;

(2) be submitted at the time and in the manner specified by the Secretary; and

(3) contain whatever information the Secretary may reasonably require, including--

(A) assurances that--

(i) the State educational agency will be responsible for the administration, including supervision, of all State and local projects supported by the State's grant and shall maintain whatever fiscal control and fund accounting procedures are necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State under this Act;

(ii) the State educational agency will distribute at least 90 per centum of its allotment on a competitive basis to local educational agencies to pay the Federal share of the costs of local projects under section 8; and

(iii) the State educational agency will provide for continuing administrative direction and control by a public agency over funds under this Act used to benefit teachers, school administrators, and students in private nonprofit elementary and secondary schools;

(iv) no more than 5 per centum of the amount allotted to a State under section 5(c) will be used for State administration; and

(B) description of--

(i) the priorities and goals the State has selected for the use of funds under this Act during the period of the State application;

(ii) how, in establishing its priorities and goals under the State plan, the State has taken into account the needs of those public and private nonprofit elementary and secondary schools which desire to have their teachers, school

administrators, and students participate in projects under this Act;

(iii) the procedures and criteria the State will use to select local projects to be supported under this Act from among the applications received;

(iv) how parents, local educational agencies, private nonprofit elementary and secondary schools, law enforcement agencies, the courts, State agencies engaged in preventing drug abuse, drug and alcohol treatment programs, and other interested community resources have been involved in the development of the State's priorities and goals under the State application;

(v) the projects the State will carry out with the portion of its allotment not distributed to local educational agencies or used for State administration, and

(vi) the procedures the State will adopt to ensure compliance with section 9.

(c) Each State application after the first must contain information on the State and local projects carried out under the preceding State application, including data on the number and characteristics of persons who participated, and an assessment of the degree to which those projects accomplished the goals described in the State application.

STATE PROJECTS

Sec. 207. (a) The State educational agency shall use that portion of its allotment that is not distributed to local educational agencies or used for State administration for State projects under this section.

(b) Funds under this section shall be used to--

(1) provide inservice training for teachers and schools administrators relating to--

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) Develop, disseminate, and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol abuse;

(3) support State activities designed to enhance the involvement of parents in preventing drug and alcohol use among students, through such activities as educating parents about the symptoms and effects of drug use;

(4) establish cooperative programs between the schools

and law enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources;

(5) collect and disseminate information about drug and alcohol use by students;

(6) provide technical assistance to local educational agencies under this Act; or

(7) support any other State project, consistent with the purposes of this Act, that the State deems necessary to achieve and maintain a drug-free environment that is conducive with learning in the elementary and secondary schools of that State.

LOCAL PROJECTS

Sec. 208. (a) To apply for an award under this Act, a local educational agency shall submit to the State educational agency a plan which describes how the local educational agency will achieve and maintain drug-free elementary and secondary schools. Each plan must be for a period of three years. In addition, the plan must describe for grades kindergarten through 12--

(1) the extent and nature of the current drug and alcohol problem in the schools of the local educational agency, including detailed information which shows--

(A) the number or percentage of students who use drugs or alcohol;

(B) the grade level of those students;

(C) the type of drugs they use; and .

(D) how the local educational agency obtained this information;

(2) the local educational agency's drug and alcohol policy, including an explanation of (A) the disciplinary practices and procedures it will strictly enforce to eliminate the sale or use of drugs and alcohol on school premises; and (B) how it will inform students that drug use is both harmful and wrong;

(3) the drug and alcohol prevention curricula, counseling programs, and teaching materials the local educational agency will adopt, including an explanation of why these curricula programs, and materials are appropriate in light of the current drug and alcohol problem in the local educational agency;

(4) the inservice training the local educational agency will provide for teachers and school administrators, including an explanation of why this inservice training is appropriate in light of the current drug and alcohol problem in the local educational agency;

(5) how the local agency's plan was developed and will be implemented with the involvement of local community resources, including parents, law-enforcement agencies, the courts, and drug and alcohol treatment programs;

(6) how the local educational agency will monitor the effectiveness of its plan; and

(7) how the plan, if successful, will be continued after Federal assistance under this Act terminates.

(b)(1) In order to apply for funds under this Act for the second and third year of its plan, a local educational agency shall submit to the State educational agency an annual progress report at the end of the first and second years of its plan, as appropriate. Each annual progress report must describe in detail--

(A) the local educational agency's significant accomplishments under the plan during the preceding year;

(B) the extent to which the original objectives of the plan are being achieved, including a reduction in the number of students who use drugs; and

(C) any modifications of the plan that are appropriate.

(2) No local educational agency may receive funds under this Act for the second or third year of its plan unless its annual progress report shows that the local educational agency is making reasonable progress towards accomplishing the purposes of this Act.

(3) At the end of the third year of its plan, the local educational agency shall submit to the State educational agency a final report which assesses the effectiveness of the three-year plan in meeting its objectives. Each final report must contain information which indicates the extent to which the

plan has succeeded in achieving and maintaining schools that are drug-free.

(c) A local educational agency shall use funds under this section, in accordance with its plan, to--

(1) provide inservice training for teachers and school administrators relating to--

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) support increased security measures in schools;

(3) develop and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(4) involve parents, teachers, and school administrators in preventing drug and alcohol use among students, through such activities as educating those parents, teachers, school administrators about the symptoms and effects of drug use;

(5) establish cooperative programs between local law-enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources; or

(6) any other local project consistent with the purpose of this Act, that the local educational agency deems necessary to achieve and maintain a drug-free environment that is conducive to learning in its elementary and secondary schools.

(d) The Federal share of the cost of a local project under this Act may not exceed 67 per centum.

PARTICIPATION OF PRIVATE SCHOOL TEACHERS, SCHOOL ADMINISTRATORS, AND STUDENTS

Sec. 209. (a)(1) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools in the State, the State educational agency shall ensure equitable participation in the purposes and benefits of State projects under section 7 for teachers, school administrators, and students in such schools.

(2) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools located in the school district of a local educational agency, that local educational agency shall ensure equitable participation in the purposes and benefits of local projects under section 8 for teachers, school administrators, and students in such schools.

(b) To satisfy the requirements of subsection (a), a State educational agency or a local educational agency shall--

(1) consult with appropriate private nonprofit school representatives during the design and development of the project to determine which schools desire to participate in the project

and the needs of the teachers, school administrators, and students in those participating schools, and

(2) then provide, as appropriate, benefits authorized by this Act for teachers, school administrators, and students in such schools.

(c) No funds under this Act may be used--

(1) for any religious worship, proselytization, or activity of a school or department of divinity, or

(2) to provide or improve any program of religious instruction.

NATIONAL PROGRAMS

Sec. 210. (a) The Secretary shall use funds reserved under section 5(a) to carry out national programs designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this section with the Secretary of Health and Human Services.

(b) The Secretary shall use funds under this section to--

(1) collect and disseminate information about drug and alcohol use among students in elementary and secondary schools;

(2) collect and disseminate information on effective curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(3) conduct research on the effects of drug and alcohol use on elementary and secondary education;

(4) conduct workshops and seminars to encourage greater cooperation between schools and the community, including parents, law-enforcement agencies, the courts, and social service agencies; or

(5) carry out any other national level project or activity, consistent with the purpose of this Act, that the Secretary deems necessary to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools.

DRUG TESTING IN EDUCATIONAL INSTITUTIONS

Sec. 211. (a) It shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

(b) It shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

(c) It shall not be unlawful under federal law for an

educational institution to refuse enrollment to applicants for admission who use illegal drugs.

(d) It shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who use illegal drugs whether or not committed at the educational institution.

USE OF FUNDS

Sec. 212. Federal funds made available to a State or local educational agency under this Act shall be used to supplement and, to the extent practicable, increase the amount of non-Federal funds that would, in the absence of such Federal funds, be made available for the purposes of this ACT, and in no case to supplant such non-Federal funds.

CONFORMING AMENDMENTS

Sec. 213 Section 583(b) of Education Consolidation and Improvement Act (20 U.S.C. 3851(b)) is amended by--

- (1) inserting an "and" at the end of paragraph (2);
- (2) striking out paragraph (3); and
- (3) by redesignating paragraph (4) as paragraph (3).

DEFINITIONS

Sec. 214. The definitions of terms used in this Act shall be the same definitions given those terms under section 595 of the Education Consolidation and Improvement Act (20 U.S.C. 3875).

EFFECTIVE DATE

Sec. 215. The provisions of this Act shall take effect upon enactment.

DRUG FREE SCHOOLS ACT OF 1986 (THE ZERO-TOLERANCE ACT)

Section-by-Section Analysis

The bill, the Drug-Free Schools Act of 1986 (The Zero Tolerance Act) ("Act") would authorize a new State-administered grant program to assist State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools. The bill would also make clear that federal law would not bar an educational institution from initiating a program of drug testing. The major provisions of the Act are explained in the following section-by-section analysis.

Section 202 Section 202 of the Act would contain a statement of Congressional findings.

Section 203 Section 203 of the Act would state the purpose of the Act as assisting State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools. To accomplish this purpose the bill would authorize national, State and local programs.

Section 204 Section 204 of the Act would authorize the appropriation of \$100 million for the fiscal year 1987 and such sums as may be necessary thereafter through fiscal year 1991 to carry out the Act.

Section 205 Section 205 of the Act would prescribe how funds under the Act for each fiscal year would be allotted. First, the Secretary would be authorized to reserve 20 per centum of the amount appropriated for national programs. From the remainder the Secretary would be authorized to reserve up to one per centum for programs under the Act in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Finally, the Secretary would be required to allot to each State an amount which bears the same ratio to the remainder of the funds as the number of children aged five to seventeen, inclusive, in a State bears to the number of such children in all States. Under certain circumstances, section four would also authorize the Secretary to make appropriate reallocations of funds among the States.

Section 206 Section 206 of the Act describes the three-year State application a State would be required to submit to the Secretary in order to receive funds under the Act. Among other things, the State would be required to assure the Secretary that the State educational agency will be responsible for the administration of the State's program; that at least 90 per centum of the State's allotment will be distributed to local

educational agencies on a competitive basis; and that no more than 5 per centum of the State's total allotment under section 5(c) will be used for State administration. The State would also be required to include in its State administration. The State would also be required to include in its State applications description of its priorities and goals for using funds under this Act; how the State has taken into account the needs of public and private elementary and secondary schools which desire to participate in the program; the procedures and criteria the State will use to select local projects; how parents, local educational agencies, private nonprofit schools, the law enforcement community, State agencies engaged in preventing drug abuse, and drug and alcohol treatment programs have been involved in the development of the State's priorities and goals; the projects the State will carry out; and the State's procedures for ensuring equitable participation for teachers, school administrators, and students in private nonprofit schools. Each State application after the first would contain information on the State and local projects carried out under the preceding application, including data on the number and characteristics of the participants and an assessment of the extent to which those projects accomplished their goals.

Section 207. Section 207 of the Act would authorize State projects, including: inservice training for teachers and school administrators relating to their authority to detect and discipline students using drugs and alcohol, the causes of drug and alcohol use by students, the identification of such students, and how to instruct or counsel them effectively; the development and implementation of curricula and teaching materials to prevent drug and alcohol use; educating parents about the symptoms and effects of drug use; cooperative programs between schools and law enforcement agencies and drug and alcohol treatment programs; and collection and dissemination of information about drug and alcohol use by students.

Section 208. Section 208 of the Act would authorize local projects. To receive funds under the Act, a local educational agency would be required to submit to the State educational agency a three-year plan for achieving and maintaining drug-free elementary and secondary schools. The plan must describe in detail the extent and nature of the current drug and alcohol problem in the applicant's schools; the applicant's drug and alcohol policy, including the disciplinary practices and procedures it will employ; the curricula and teaching materials it will adopt and the inservice training for teachers and schools administrators it will provide; how the plan was developed and will be implemented with the involvement of local community resources, including parents; and how the plan, if successful, will be continued after Federal assistance terminates. In addition, a local educational agency must submit to the State educational agency an annual progress report at the end of the first and second years of its plan, and, at the end of the third year of its plan, a final report which assesses the effectiveness

of the plan in achieving and maintaining schools that are drug-free. Funding for the second or third year of a local educational agencies plan would be contingent upon whether the plan is accomplishing the purposes of the Act. Local educational agencies would be authorized to carry out most of the same activities authorized for State projects; while local educational agencies would not be specifically authorized to increase security in their schools. Finally, Section 208 would establish the Federal share of the cost of local projects as no more than 67 per centum.

Section 209. Section 209 of the Act would require State and local educational agencies to ensure equitable participation in the purposes and benefits of their respective projects for teachers, school administrators, and students in participating private nonprofit elementary and secondary schools, consistent with the enrollment in such schools. State and local educational agencies would be required to consult with appropriate representatives of private nonprofit schools during the design and development of projects under the Act to determine which schools desire to participate and the needs of their teachers, school administrators, and students. Funds under this Act could not be used for religious worship or to provide or improve any program of religious instruction.

Section 210. Section 210 of the Act would authorize the Secretary to carry out national programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions and to coordinate activities with the Secretary of Health and Human Services, when appropriate. The Secretary would be authorized to collect and disseminate information about drug and alcohol use among students, as well as information on effective curricula, counseling programs, and teaching materials; consult research on the effects of drug and alcohol use on elementary and secondary education; and conduct workshops and seminars to encourage greater cooperation between schools and the community, including parents, law-enforcement agencies, the courts, and social service agencies.

Section 211. Section 211, paragraph (a), specifies that it shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

Paragraph (b) provides that it shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

Paragraph (c) authorizes educational institutions under federal law to refuse enrollment to applicants for admission who use illegal drugs.

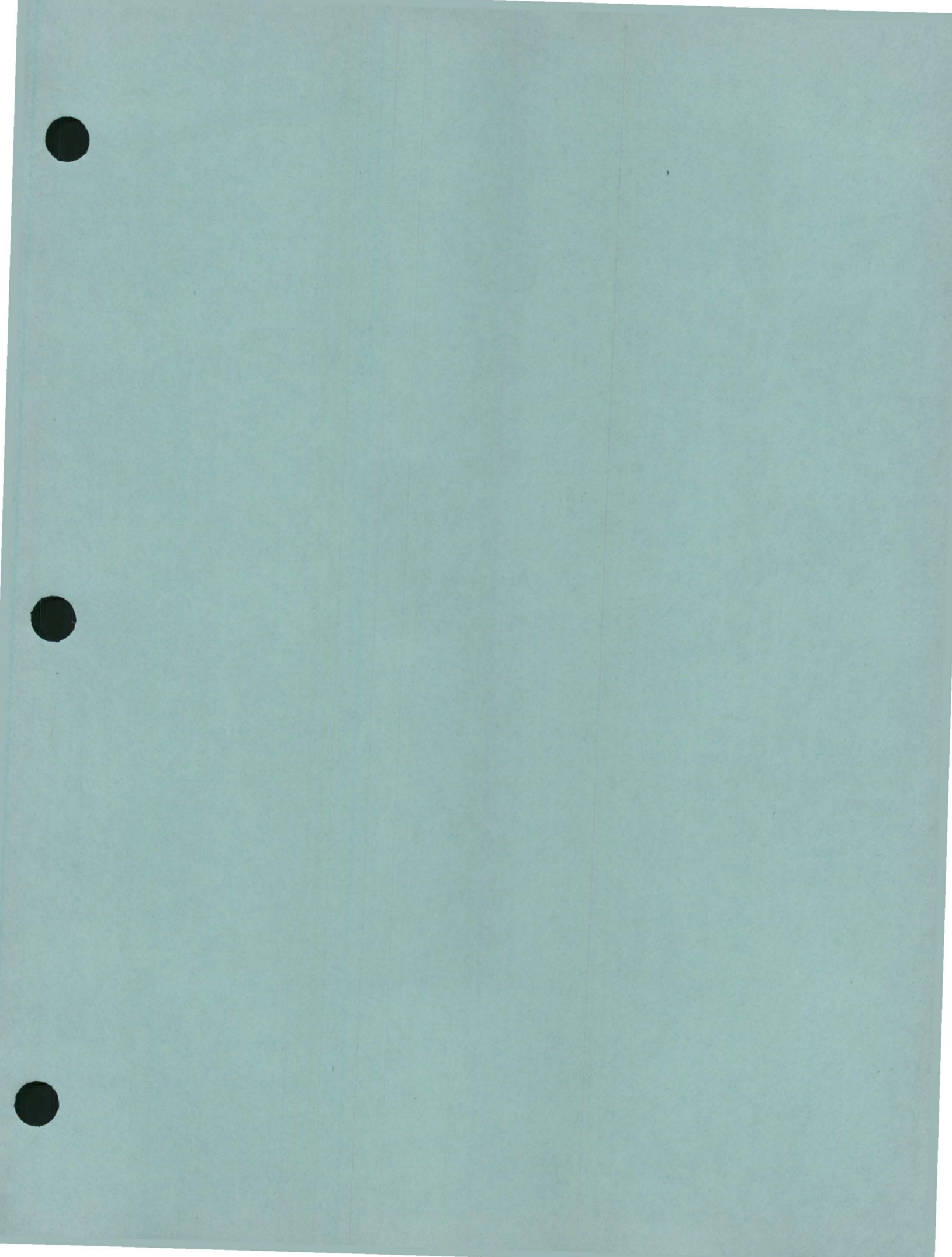
Paragraph (d) provides that it shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who uses illegal drugs (whether or not committed at the educational institution) or who refuses to participate in drug testing.

Section 212. Section 212 of the Act would require that State and local educational agencies use funds under the Act to supplement and, to the extent practicable, increase the amount of non-Federal funds that would, in the absence of Federal funds, be made available for the purposes of the Act, and not to supplant such non-Federal funds.

Section 213. Section 213 of the Act would delete as unnecessary the reference to alcohol and drug abuse education activities among the mandated priorities of the Secretary's Discretionary Program under Chapter 2 of the Education Consolidation and Improvement Act ("ECIA").

Section 214. Section 214 of the Act would incorporate the definitions of pertinent terms under Chapter 2 of the ECIA.

Section 215. Section 215 of the Act would provide for an effective date upon enactment.



DRAFT

TITLE III

SUBSTANCE ABUSE SERVICES AMENDMENTS 1986

A BILL

To extend and make improvements in substance abuse services programs, and for other purposes.

Be it enacted by the Senate and House of
Representatives of the United States of America in Congress
assembled,

SHORT TITLE AND REFERENCES IN ACT

SEC. 301. (a) This Act may be cited as the "Substance Abuse Services Amendments of 1986".

(b) The amendments in this Act apply to the Public Health Service Act.

EXTENSION OF BLOCK GRANT

SEC. 302. Section 1911 amended--

- (1) by striking out "and" after "1986,", and
- (2) by inserting before the period the following:
", \$___, ___, ___ for fiscal year 1988, \$___, ___, ___ for the fiscal year 1989, \$___, ___, ___ for fiscal year 1990, \$___, ___, ___ for fiscal year 1991, and \$___, ___, ___ for fiscal year 1992".

ELIMINATION OF CERTAIN BLOCK GRANT EARMARKS

SEC. 303. (a) Section 1916(c) is amended by striking out paragraphs (2), (7), (8), (14), and (15).

(b) Subsections (g) and (h) of section 1916 are repealed.

(c) The second sentence of section 1917(a)(1) is amended--

(1) by striking out clause (C) through the comma, and

(2) by redesignating clause (D) as (C).

(d) The amendments made by the preceding subsections apply to appropriations for fiscal year 1988 and succeeding fiscal years.



DRAFT

TITLE IV

INTERNATIONAL COOPERATION AGAINST ILLICIT DRUGS

PART A

Sec. 1. This part 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 part 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.

PART B

Sec. 1. This part may be cited as the Mansfield Amendment Repeal Act.

Sec. 2. 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 part 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.

PART C

Sec.1. This part 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 part 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, sale, 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.

PART G

Sec. 1. This part may be cited as the "Money Laundering Crimes Act of 1986".

Sec. 2. (a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form

unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

“(A) with the intent to facilitate the carrying on of specified unlawful activity; or

“(B) knowing that the transaction is designed in whole or in part—

“(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

“(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

“(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

“(A) with the intent to facilitate the carrying on of specified unlawful activity; or

“(B) knowing that the monetary instrument or funds involved in the transportation represent the pro-

1 ceeds of some form of unlawful activity and knowing
2 that such transportation is designed in whole or in
3 part—

4 “(i) to conceal or disguise the nature, the lo-
5 cation, the source, the ownership, or the control
6 of the proceeds of specified unlawful activity; or

7 “(ii) to avoid a transaction reporting require-
8 ment under State or Federal law,

9 shall be sentenced to a fine of \$250,000 or twice the value of
10 the monetary instrument or funds involved in the transporta-
11 tion, whichever is greater, or imprisonment for not more than
12 twenty years, or both.

13 “(3) Whoever conducts or attempts to conduct a finan-
14 cial transaction that in whole or in part involves the proceeds
15 of specified unlawful activity with intent to violate or facili-
16 tate a violation of section 7201 or 7206 of the Internal Reve-
17 nue Code of 1954 shall be sentenced to a fine of not more
18 than \$250,000 or twice the value of the monetary instrument
19 or funds involved in the transaction, whichever is greater, or
20 imprisonment for not more than twenty years, or both.

21 “(b) Whoever conducts or attempts to conduct a trans-
22 action described in subsection (a)(1) or a transportation de-
23 scribed in subsection (a)(2) is liable to the United States for a
24 civil penalty of not more than the greater of—

1 “(1) the value of the property, funds, or monetary
2 instruments involved in the transaction; or

3 “(2) \$10,000.

4 “(c) As used in this section—

5 “(1) the phrase ‘knowing that the property in-
6 volved in a financial transaction represents the pro-
7 ceeds of some form of unlawful activity’ means that the
8 person knew the property involved in the transaction
9 represented proceeds from some form, though not nec-
10 essarily which form, of activity that constitutes a
11 felony under State or Federal law, regardless of
12 whether or not such activity is specified in paragraph
13 (7);

14 “(2) the term ‘conducts’ includes but is not limited
15 to initiating, concluding, or participating in initiating,
16 or concluding a transaction;

17 “(3) the term ‘transaction’ includes but is not lim-
18 ited to a purchase, sale, loan, pledge, gift, transfer, de-
19 livery, or other disposition, and with respect to a finan-
20 cial institution includes but is not limited to a deposit,
21 withdrawal, transfer between accounts, exchange of
22 currency, loan, extension of credit, purchase or sale of
23 any stock, bond, certificate of deposit, or other mone-
24 tary instrument, or any other payment, transfer, or de-

1 livery by, through, or to a financial institution, by
2 whatever means effected;

3 “(4) the term ‘financial transaction’ means a
4 transaction involving the movement of funds by wire or
5 other means or involving one or more monetary instru-
6 ments, which in any way or degree affects interstate or
7 foreign commerce, or a transaction involving the use of
8 a financial institution which is engaged in, or the ac-
9 tivities of which affect, interstate or foreign commerce
10 in any way or degree;

11 “(5) the term ‘monetary instruments’ means coin
12 or currency of the United States or of any other coun-
13 try, travelers’ checks, personal checks, bank checks,
14 money orders, investment securities in bearer form or
15 otherwise in such form that title thereto passes upon
16 delivery, and negotiable instruments in bearer form or
17 otherwise in such form that title thereto passes upon
18 delivery;

19 “(6) the term ‘financial institution’ has the defini-
20 tion given that term in section 5312(a)(2) of title 31,
21 United States Code, and the regulations promulgated
22 thereunder;

23 “(7) the term ‘specified unlawful activity’
24 means—