NO.

IN THE
SUPREME COURT OF THE UNITED STATES

KENRICK BRATHWAITE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

MATTHEW W. BRISSENDEN
Counsel of Record
MATTHEW W. BRISSENDEN, P.C.
666 Old Country Road, Suite 501
Garden City, NY 11530
(516) 683-8500
Matthew.W.Brissenden@gmail.com
Counsel for Petitioner Kenrick Brathwaite

QUESTION PRESENTED

Petitioner – an alleged drug courier – was charged with Conspiracy to Import a Controlled Substance, in violation of 21 U.S.C. § 963, and Conspiracy to Possess a Controlled Substance with Intent to Distribute, in violation of 21 U.S.C. § 846. The indictment alleged that the charged conspiracies "involved a substance containing cocaine," and that "[t]he amount of cocaine involved in the conspiracy . . . was at least five kilograms or more of a substance containing cocaine."

The jury was instructed that in order to convict Petitioner on either count, it need only find that he was involved in a conspiracy to import or distribute "some quantity of drug," without any specific finding as to the type or quantity of controlled substance involved. The jury was further instructed that upon making such a determination of general guilt, it would thereafter be asked to make a separate, specific finding as to the type and quantity of controlled substance attributable to Petitioner, which would determine his sentencing exposure.

After trial, the jury returned general verdicts of guilt with respect to both conspiracy counts. However, the jury declined to make any specific findings as to the type or quantity of controlled substance, indicating on its special verdict form that the Government had failed to meet its burden in that regard.

At sentencing, Petitioner argued that the lack of any such specific finding required the district court to sentence him pursuant to the provisions of 21 U.S.C. §§ 841(b)(3) and 960 (b)(7) – the least severe statutory penalties available under §§ 841 and 960 – which typically applies in cases involving "Schedule V" controlled

substances. Under §§ 841(b)(3) and 960 (b)(7), Petitioner's sentencing exposure would have been limited to a maximum of one year incarceration on each count.

The trial court rejected this argument, applying instead the statutory penalties set forth in §§ 841(b)(1)(C) and 960(b)(3), which apply to offenses involving an unquantified amount of cocaine. On appeal, the Second Circuit Court of Appeals affirmed.

As set forth below, circuit courts are divided on this issue. At least two circuit courts have held that when a jury renders a general verdict without identifying a specific controlled substance, the defendant's sentencing exposure should be limited to the penalties appliable to Schedule V controlled substances. These courts hold that "when the jury's factual findings do not include a finding as to the identity of the drug beyond a reasonable doubt, [*United States v.] Apprendi* will be violated when the sentence exceeds the lowest 'catch-all' statutory maximum of one year." *United States v. Henry*, 282 F.3d 242, 248 (3d Cir. 2002), *see also United States v. Hunt*, 656 F.3d 906 (9th Cir. 2011).

The Second Circuit, however, has rejected this rule, claiming that "Section 841(b)(3) is not a fallback provision applicable whenever the government fails to prove the particular controlled substance involved in a charged crime." Opinion at p. 3 (A-3). Instead, the Second Circuit has held that, in the case of a general verdict under 21 U.S.C. § 846, a district court should "sentence the defendant under the statutory provision carrying the most lenient sentence for which there was sufficient evidence supporting conviction." *United States v. Zillgitt*, 286 F.3d 128, 136 (2d Cir.

2002). Hence, while the Third and Ninth Circuits look to the statute in order to determine the lowest applicable sentence, the Second Circuit looks to the trial record.

Accordingly, this Petition presents the following question:

1. What is the statutory maximum sentence for a conspiracy conviction under 21 U.S.C. §§ 963 or 846, where the jury has declined to make *any* specific finding as to the type or weight of the controlled substance involved?

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes and Rules

OPINION BELOW

The summary order of the United States Court of Appeals for the Second Circuit appears at the Appendix to the petition, and is unpublished.

JURISDICTION

The judgment of the Court of Appeals was entered on March 12, 2021; no petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment, 21 U.S.C. §§ 841, 846, 960 and 963 are reproduced in the Appendix.

STATEMENT OF THE CASE

I. Trial

In April of 2017, Kenrick Brathwaite was arrested based upon his alleged participation in a scheme to import controlled substances into the United States through drug couriers, posing as tourists. He was charged with two conspiracy counts – the first charged a conspiracy to import a controlled substance, in violation of 21 U.S.C. § 963; the second count charged a conspiracy to possess such controlled substance with an intent to distribute, in violation of 21 U.S.C. § 846. Both counts alleged that the "offense involved a substance containing cocaine," and that "[t]he amount of cocaine involved in the conspiracy attributable to each defendant as a result of his or her own conduct, and the conduct of other conspirators reasonably

foreseeable to him or her, was at least five kilograms or more of a substance containing cocaine." Indictment, ¶¶ 1,2.

At trial, the Government introduced evidence that Mr. Brathwaite had acted as a drug courier on one occasion, and that he had thereafter encouraged others to do the same. Defense counsel, however, disputed that Mr. Brathwaite knew either the weight or the specific nature of the controlled substance which was being transported.

The trial evidence demonstrated that, while on vacation, Mr. Brathwaite was recruited by his girlfriend to carry a suitcase containing controlled substances, hidden within the lining of the bag. TR 102-107. Upon arriving in the United States, Mr. Brathwaite relinquished control of the bag to drug traffickers, and was later paid. TR 112. Mr. Brathwaite never saw what was hidden within his bag; moreover, because he was not intercepted upon returning to the United States, such substances were never seized or tested by the Government. TR 161.

The evidence further established that, at a later date, Mr. Brathwaite recruited an acquaintance named Ronald Lubin to make a similar trip on behalf of the same individuals. Mr. Lubin, however, was intercepted at the airport upon his return to the United States, and his bag was found to contain cocaine. TR 242-246. Mr. Lubin – who was a cooperating witness for the Government – testified that he assumed he was carrying a controlled substance, but did not know the specific type of controlled substance until after his arrest. TR 338.

Following the close of the evidence and the parties' summations, the trial court charged the jury. With respect to Count One, the jury was instructed:

> To find the defendant guilty of Count One, you must find beyond a reasonable doubt that the defendant conspired to import a controlled substance into the United States from a place outside of the United States. You need not find that he knew or believed that it was cocaine.
>
> TR 718.

Likewise, with respect to both Counts One and Two, the jury was charged:

> Let me also instruct you that the defendant need not know the exact nature of the drug involved in each conspiracy. You need only find that the co-conspirators agreed to import some quantity of narcotics[1] into the United States for the conspiracy charged in Count One and that the co-conspirators agreed to possess with intent to distribute some quantity of drug for the conspiracy charged in Count Two.
>
> TR 724.

Hence, the jury was instructed that it should convict under 21 U.S.C. §§ 963 and 846 if it determined that the Defendant had conspired to import or distribute *any* controlled substance.

The jury was instructed that, upon making such a determination of general guilt, it would thereafter be asked to make a separate, specific finding as to the type and quantity of controlled substance involved in the offense. Here, the jury was instructed as follows:

> If you find that the defendant is guilty of the crimes charged in either Count One or Count Two of the indictment, you must determine whether the government has proven beyond a reasonable doubt that the offenses involved the type and quantity of the controlled substance charged in the indictment. That is because Congress has provided for different treatment of different quantities of a particular controlled substance. Thus, if you determine that the defendant is guilty of the crimes charged in Count One or Count Two of the indictment, you will indicate on a special verdict form your determination as to the type and quantity of

---

[1] The court did not define the term "narcotics." Rather, it appeared to use the word colloquially, as synonymous with the terms "drugs" and "controlled substances."

the controlled substance involved in the offenses. As with your determination as to whether the defendant is guilty or not guilty, your determination as to the type, of the drug type and quantity must be unanimous.

TR 725.

Thereafter, the jury was provided with a verdict sheet which read as follows:

COUNT ONE
(Conspiracy to Import Cocaine)

For Count One, how do you find the defendant KENRICK BRATHWAITE?

GUILTY ___ NOT GUILTY ___

If you found the defendant guilty, answer questions a and b. If you found the defendant not guilty, move to Count Two.

a. Do you find that the government has proven beyond a reasonable doubt that Defendant KENRICK BRATHWAITE knew or should reasonably have foreseen that Count One of the indictment involved a substance containing cocaine?

Yes ___ No ___

b. Do you find that the government has proven beyond a reasonable doubt that the defendant knew or reasonably should have foreseen that crime charged in Count One of the indictment involved five kilograms or more of a substance containing cocaine?

Yes ___ No ___

COUNT TWO
(Conspiracy to Possess with Intent to Distribute Cocaine)

For Count Two, how do you find the defendant KENRICK BRATHWAITE?

GUILTY ___ NOT GUILTY ___

> If you found the defendant guilty, answer questions a and b. If you found the defendant not guilty, your deliberations are complete.
>
> a. Do you find that the government has proven beyond a reasonable doubt that Defendant KENRICK BRATHWAITE knew or should reasonably have foreseen that the crime charged in Count Two of the indictment involved a substance containing cocaine?
>
> Yes ___ No ___
>
> b. Do you find that the government has proven beyond a reasonable doubt that the defendant knew or reasonably should have foreseen that crime charged in Count Two of the indictment involved five kilograms or more of a substance containing cocaine?
>
> Yes ___ No ___

Finally, the Court instructed the jury on the difference between a conspiracy and a substantive offense, explaining that the Defendant could be guilty of the former without completing the later. During this portion of its charge, the court described Count 1 – in passing – as a "conspiracy to import cocaine."

> I remind you that the defendant is not charged in Count One with actually committing the unlawful act of importing, but rather with conspiring to commit it.
>
> *The Government must prove beyond a reasonable doubt that the defendant <u>conspired</u> to import cocaine into the United States*.
>
> TR 720 (emphasis added).

Such instruction did not, however, require the jury to find a cocaine-specific conspiracy. Rather, the court was merely seeking to convey that Petitioner need not have completed the substantive offence in order to be guilty of conspiracy. Hence, the court's emphasis here was on the word "*conspired,*" not the word "cocaine."

Indeed, with respect to Count Two, the court provided an identical charge *without* specifically mentioning cocaine:

> Again, I remind you that the defendant is not charged in Count Two with actually distributing or actually possessing a controlled substance with the intent to distribute it, but rather conspiring to do so.
>
> The government must prove beyond a reasonable doubt either that the defendant conspired to distribute a controlled substance or that the defendant conspired to possess a controlled substance with the intent to distribute it.
>
> TR 724.

II. Verdict and Sentencing

The jury returned a verdict convicting Mr. Brathwaite under both Counts One and Two, but answering "NO" as to *all* of the remaining questions on the verdict sheet concerning the specific type and weight of controlled substance attributable to the Petitioner. Hence, the jury declined to find that Mr. Brathwaite was responsible for a cocaine-specific conspiracy.

At sentencing, defense counsel argued that the district court was constrained by the specific findings made by the jury as to the type and weight of controlled substance attributable to the Defendant.

As defense counsel noted, the maximum statutory penalties under §§ 963 and 846 hinge upon the type and quantity of controlled substance. Those maximum penalties range from "life" (*see* 21 U.S.C. § 841[b][1][A]; § 960[b][1]) to one-year incarceration (*see* § 841[b][3]; § 960[b] [7]). The latter provisions apply to offenses involving "Schedule V" controlled substances.

Counsel argued that in the absence of any specific factual finding as to the type *or* quantity of controlled substance attributable to the Petitioner, the court was constrained to sentence Petitioner in accordance with the lowest applicable statutory maximum – *i.e.*, one year. Defendant's 8/21/19 Sentencing Submission.

The Government disagreed, arguing that notwithstanding the jury's verdict, the statutory maximum should be determined by reference to § 21 U.S.C. 841(b)(1)(C), which provides for a twenty-year maximum penalty wherever such offense involves "a controlled substance in schedule I or II." The Government argued that even without any specific finding by the jury, the Court could sentence the Defendant based upon a factual finding that he personally and directly participated in a conspiracy which, in fact, involved cocaine. *See* 9/10/19 Govt. Sentencing Submission.

The trial court agreed with the Government, adopting the statutory penalties set forth in 21 U.S.C. §§ 841(b)(1)(C) and 960(b)(3). *See* 10/2/19 Sentencing Transcript at p. 17. After determining the Petitioner's advisory guidelines to be 78-97 months, the court imposed a below-guidelines sentence of 18 months' incarceration on *each* count, to run concurrently. The court also imposed three years' supervised release on each count, to run concurrently.

III. Appeal

On Appeal, Petitioner argued that the district court had violated the rule set forth in *United States v. Apprendi*, 530 U.S. 466 (2000), when it sentenced Petitioner pursuant to the statutory penalties under 21 U.S.C. §§ 841(b)(1)(C) and 960(b)(3), based upon a factual finding – not made by the jury – that Petitioner participated in a drug transaction involving cocaine.

The United States Court of Appeals for the Second Circuit affirmed. To begin with, the appellate court sought to side-step the legal issue, holding that, by and through its general verdict, the jury had implicitly found "that the charged conspiracies in fact dealt with cocaine." In support of this contention, the appellate court cited the lower court's instruction distinguishing substantive offenses from conspiracy offenses. Taking such instruction entirely out of context, the court claimed that "the district court specifically charged the jury that, to find the defendant guilty, 'the government must prove beyond a reasonable doubt that the defendant conspired to import cocaine into the United States.'" Opinion at p. 3 (A-3).

In any event, the appellate court reasoned, Section 841(b)(3) would not apply absent a specific finding that the conspiracy involved Schedule V controlled substances. In the Circuit's view:

> Section 841(b)(3) is not a fallback provision applicable whenever the government fails to prove the particular controlled substance involved in a charged crime. Rather, it pertains to offenses involving (1) "narcotic drugs containing non-narcotic active medical ingredients," *i.e.*, codeine, dihydrocodeine, ethylmorphine, diphenoxylate, opium, and difenoxin; (2) stimulants, *i.e.*, pyrovalerone; and (3) central nervous system depressants, *i.e.*, brivaracetam, cenobamate, ezogabine, lacosamide, lasmiditan, and pregabalin.

Opinion at p. 3 (A-3).

Here, the court noted, "no facts were adduced suggesting that the conspiracy trafficked in Schedule V controlled substances." In support of its position, the court also cited to its prior decision in *United States v. Zillgitt*, 286 F.3d. 128 (2d Cir. 2002). *Id.*

ARGUMENT

Certiorari should be granted in this case to resolve the applicable statutory maximum sentence where a defendant is convicted of general conspiracy under 21 U.S.C. §§ 846 and/or 963, but where the jury has not made any specific findings as to the type or amount of controlled substance.

I. Applicable Statutes

§§ 846 and 963 are conspiracy statutes which correspond to the substantive offenses described at 21 U.S.C. §§ 841 and 960, respectively. Both statutes provide that:

> Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties which are prescribed for the offense, the commission of which was the object of the conspiracy.

Hence, the penalty for conspiracy in each case is defined by reference to the penalties set forth in the corresponding substantive statutes. The structure of the two substantive statutes is similar. § 841 criminalizes possession with intent to distribute, while § 960 covers the importation of controlled substances. Both

substantive statutes, however, provide for a range of punishments depending upon the type and amount of controlled substance which is possessed and/or imported.

Specifically, both statutes provide maximum sentences ranging from life imprisonment (for offenses involving large quantities of heroin, cocaine, "crack," PCP, LSD, fentanyl, marijuana, and methamphetamine), to one year incarceration (for offenses involving Schedule V controlled substances). *Compare* 21 U.S.C. § 841(b)(1)(A) and § 960(b)(1) (imposing sentence of ten-to-life) with § 841(b)(3) and § 960(b) (7) (maximum sentence of one-year for Schedule V offenses).

As noted above, the question here is *which* statutory subdivision should apply when a jury fails to make *any* specific finding as to the specific type or weight of controlled substance which was the subject of the conspiracy.

II. The Jury Found That the Government Had Failed to Prove That the Conspiracy Involved Cocaine

To begin with, the Second Circuit sought to side-step this question by insisting that, in convicting Petitioner of generic conspiracy, the jury implicitly made a factual finding as to the type of controlled substance. In support of this contention, the court cited to a single line of the district court's instructions, dealing with the difference between substantive offenses and conspiracies. As noted above, the relevant portion of the charge was as follows:

> I remind you that the defendant is not charged in Count One with actually committing the unlawful act of importing, but rather with conspiring to commit it.
>
> The Government must prove beyond a reasonable doubt that the defendant conspired to import cocaine into the United States.

TR 720.

Here, the circuit latched onto the final line of this instruction – *i.e.*, "[t]he Government must prove beyond a reasonable doubt that the defendant conspired to import cocaine into the United States" – as evidence that the jury made a cocaine-specific determination as part of its general verdict.

However, this single line simply does not bear the weight which the court sought to assign it. Indeed, it is clear that the purpose of the above instruction was not to require a finding as to the type of controlled substance, but merely to explain the difference between a substantive crime and a conspiracy. If there could be any doubt about this fact, it is resolved by the district court's almost-identical instruction on Count Two, which omitted any reference to cocaine.

> Again, I remind you that the defendant is not charged in Count Two with actually distributing or actually possessing a controlled substance with the intent to distribute it, but rather conspiring to do so.
>
> The government must prove beyond a reasonable doubt either that the defendant conspired to distribute a controlled substance or that the defendant conspired to possess a controlled substance with the intent to distribute it.

TR 724.

It is crystal clear that these instructions – considered in context – did not require the jury to find a cocaine-specific conspiracy in order to return a general verdict. To the contrary, the jury was <u>expressly</u> told that, in rendering its general verdict, it was *not* being asked to determine the type and quantity of controlled substance. The jury was instructed:

> You need only find that the co-conspirators agreed to import *some quantity of narcotics* into the United States for the conspiracy charged in Count One and that the co-conspirators agreed to possess with intent to distribute *some quantity of drug* for the conspiracy charged in Count Two.
>
> TR 724 (emphasis added).

The jury was further instructed that a determination as to the type and amount of controlled substance involved in the offense would be answered *via* a special verdict sheet, if and *only if* the jury determined that Petitioner was guilty on the generic charge. Indeed, the jury was told that such a supplemental determination was necessary because "Congress has provided for different treatment of different quantities of a particular controlled substance." Hence, the jury was instructed:

> If you find that the defendant is guilty of the crimes charged in either Count One or Count Two of the indictment, you must determine whether the government has proven beyond a reasonable doubt that the offenses involved the type and quantity of the controlled substance charged in the indictment. That is because Congress has provided for different treatment of different quantities of a particular controlled substance. Thus, if you determine that the defendant is guilty of the crimes charged in Count One or Count Two of the indictment, you will indicate on a special verdict form your determination as to the type and quantity of the controlled substance involved in the offenses. As with your determination as to whether the defendant is guilty or not guilty, your determination as to the type, of the drug type and quantity must be unanimous.
>
> TR 725.

As noted above, the jury in this case unanimously and expressly found that the Government had *not* proven, beyond a reasonable doubt, that either of the charged conspiracies involved cocaine. As such, the circuit's assertion in this case – that the

Government "proved . . . the charged conspiracies in fact dealt with cocaine" – is demonstrably untrue.

III. Certiorari Should Be Granted to Determine Which Statutory Penalty Applies to General Verdicts of Guilt Under 21 U.S.C. §§ 846 and 963

In *United States v. Apprendi*, 530 U.S. 466 (2000), this Court held that, "other than the fact of a prior conviction, *any fact* that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *See also Burrage v. United States*, 571 U.S. 204, 134 S. Ct. 881 (2014) (Because the "death results" enhancement of the Controlled Substances Act increased the minimum and maximum sentences to which the defendant was exposed, it was an element that was required to be submitted to the jury and found beyond a reasonable doubt.).

In this instant case, the sentencing court held that Petitioner's statutory exposure was controlled by 21 U.S.C. §§ 841(b)(1)(C) and 960(b)(3). Both of these sections provide for zero-to-twenty years' incarceration for offenses involving "a controlled substance in schedule I or II." However, as noted above, the jury in this case *expressly declined* to find that the offense involved cocaine (a Schedule II controlled substance). In short, the district court ignored the jury's verdict to make its own factual determination as to the nature of the conspiracy. As a result, Petitioner was subject to an enhanced statutory penalty, based upon a factual finding – not made by the jury – that his offense involved cocaine. We respectfully submit that such result plainly ran afoul of this Court's holding in *Apprendi*.

In the absence of a factual finding by the jury, Mr. Brathwaite should have been subject to the least severe penalties available under §§ 841 and 960 – a maximum sentence of one-year incarceration and one-year of supervised release.[2] Indeed, both the Third and Ninth Circuit Courts of Appeal have held that "when the jury's factual findings do not include a finding as to the identity of the drug beyond a reasonable doubt, *Apprendi* will be violated when the sentence exceeds the lowest 'catch-all' statutory maximum of one year." *United States v. Henry*, 282 F.3d 242, 248 (3d Cir. 2002), *citing* 21 U.S.C. § 841(b)(3); *see also United States v. Hunt*, 656 F.3d 906 (9th Cir. 2011).

The facts of this case are closely analogous to those considered by the Ninth Circuit in *Hunt*. In *Hunt*, the defendant was arrested in possession of a package containing cocaine. He ultimately pled to a violation of 18 U.S.C. § 846; at his allocution, Hunt admitted possessing a controlled substance, but disclaimed knowledge as to the specific nature of that substance. The court thereafter sentenced Hunt pursuant to the 21 U.S.C. § 841(b)(1)(C) – the statutory provision applicable to an unspecified amount of cocaine.

On appeal, the Ninth Circuit found an *Apprendi* error, because the defendant had never admitted to possessing cocaine, and no jury had made such a determination. In the absence of such a determination, the Ninth Circuit held that

---

[2] *See* 18 U.S.C § 3583(b)(3), dictating maximum sentence of one-year supervised release.

the maximum statutory penalty which the judge could impose was one year, under § 841(b)(3):

> Because Hunt did not admit that he attempted to possess cocaine, and because the government did not prove that fact to a jury beyond a reasonable doubt, that fact could not be used to support an increase in the maximum statutory sentence Hunt faced. Section 841(b) contains numerous penalty provisions that correspond to various types and amounts of drugs. The penalties range from a maximum of one year in prison to a maximum of life in prison. *See, e.g.*, 21 U.S.C. § 841(b)(3) (maximum of one year for schedule V substance) . . . § 841(b)(1)(B) (maximum of 40 years for more than 500 grams of cocaine or a maximum of life in prison where death or serious injury results from the use of the drug). The district court sentenced Hunt under section 841(b)(1)(C) for possession with intent to distribute an unspecified amount of cocaine, exposing Hunt to a maximum sentence of 20 years in prison. The district court erred under *Apprendi* in sentencing Hunt under section 841(b)(1)(C) because his maximum penalty increased from one year to 20 years in prison based on a fact—Hunt's possession of cocaine—that Hunt never admitted and that the government never proved beyond a reasonable doubt to a jury.
>
> *United States v. Hunt*, 656 F.3d 906, 913 (9th Cir. 2011).

Hence, both the Third and Ninth Circuits treat the one-year maximum under § 841(b)(3) as the "baseline" punishment for *Apprendi* purposes. Any fact which increases a defendant's statutory exposure over this baseline must be submitted to a jury, and proved beyond a reasonable doubt.

The Second Circuit, however, had balked at this result, complaining that, in this case, there were "no facts . . . adduced suggesting that the conspiracy trafficked in Schedule V controlled substance." The court emphasized that this was not a fact that was "easily overlooked," because in the Second Circuit's view, "Section 841(b)(3) is *not* a fallback provision applicable whenever the government fails to prove the particular controlled substance involved in a charged crime. Rather, it pertains to

offenses involving (1) "narcotic drugs containing non-narcotic active medical ingredients. . ." Opinion at p. 3 (A-3).

But this assertion begs the question – if the baseline penalty is *not* set by § 841(b)(3) (as held by the Ninth and Third Circuit), what *is* the statutory sentencing range when "the government fails to prove the particular controlled substance involved in a charged crime?" The Second Circuit's answer to this question appears to be dictated by its holding in *United States v. Zillgitt*, 286 F.3d. 128 (2d Cir. 2002), which is cited with approval in the court's March 12th Summary Order.

Zillgitt holds that, in the case of a general verdict under 21 U.S.C. § 846, the district court should "sentence the defendant under the statutory provision carrying the most lenient sentence for which there was sufficient evidence supporting conviction." *United States v. Zillgitt*, 286 F.3d 128, 136 (2d Cir. 2002). In order to make this determination, the Second Circuit conducts a "review of the record--including the evidence presented at trial, the government's summation, and the charge to the jury." *Id.* at 138.

An example of such approach can be found at *United States v. Barnes*, 158 F.3d 662 (2d Cir. 1998) – a case which predates *Apprendi*, but which is cited with approval by *Zillgitt*. The indictment in *Barnes* "charged the defendant with conspiring to possess four different controlled substances--cocaine, crack, heroin, and marijuana--with the intent to distribute them." *Id.* at 666-667. As in this case, the jury returned a general verdict which provided "no guidance in determining which statutorily mandated sentence is applicable." *Id.* at 671. Despite this, the district court applied

the statutory penalties applicable to crack cocaine, the most serious available. On appeal, the defendant argued that, given the jury's general verdict, he should have been sentenced for a conspiracy to distribute marijuana only – the least serious of the alleged substances. The Second Circuit, however, after parsing the evidence, found that, notwithstanding the allegations in the indictment, the evidence in support of a marijuana conspiracy was insufficient; instead, the court concluded that the defendant should be sentenced for a conspiracy to distribute heroin. *Id.* at 674.

This approach, of course, is fundamentally at odds with that described in *Henry* and *Hunt.* Rather than defaulting to the lowest available sentencing range under the statute, the Second Circuit instructs a district court to parse the trial evidence and apply the statutory sentencing range applicable to the least serious *proven offense*. Hence, there is a clear circuit split on this issue.

We respectfully submit that this Court should grant *certiorari*, not merely because there is split, but because the Second Circuit's approach is fundamentally incompatible with this Court's holding in *Apprendi*. The *Zillgitt* rule requires a sentencing court to step into the shoes of the jury, in order to make a factual determination which increases the defendant's statutory exposure. Such procedure violates a defendant's Sixth Amendment right to have each and every element of the offense determined by a jury beyond a reasonable doubt.

CONCLUSION

As set forth above, the Second Circuit Court of Appeals has decided an important federal question in a manner which conflicts with the decisions of this Court, as well as the decisions of other circuit courts to have considered such question. Accordingly, we respectfully submit that there are compelling reasons to grant *certiorari* in this matter.

Respectfully submitted,

MATTHEW W. BRISSENDEN
Counsel of Record
MATTHEW W. BRISSENDEN, P.C.
666 Old Country Road, Suite 501
Garden City, NY 11530
(516) 683-8500
Matthew.W.Brissenden@gmail.com
Counsel for Petitioner Brathwaite

APPENDIX

20-230-cr
United States v. Ramkissoon (Brathwaite)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of March, two thousand twenty-one.

PRESENT: JOSÉ A CABRANES,
REENA RAGGI,
RICHARD J. SULLIVAN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

KENRICK BRATHWAITE,

Defendant-Appellant,

POORAN RAMKISSOON, also known as "Gary," HAYMAN RAMKISSOON, CHANEL STEVENS,

Defendants.

FOR APPELLANT: MATTHEW BRISSENDEN, Matthew Brissenden, P.C., Garden City, New York.

FOR APPELLEE: JO ANN M. NAVICKAS, PHILIP A. SELDEN, Assistant United States Attorneys, *for* Seth D. DuCharme, Acting United States Attorney for the Eastern District of New York, Brooklyn, New York.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Sterling Johnson, Jr., *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the judgment entered on January 15, 2020, is AFFIRMED.

Defendant Kenrick Brathwaite stands convicted for (1) conspiracy to import cocaine, *see* 21 U.S.C. §§ 952(a)(1), 963; and (2) conspiracy to possess cocaine with intent to distribute, *see id.* §§ 841(a), 846. On this appeal, Brathwaite does not dispute his guilt. Rather, he challenges only that part of the judgment requiring him to serve concurrent 18-month prison terms followed by a total of two years' supervised release for these crimes. Pointing to the jury's special verdict finding that the government had not demonstrated beyond a reasonable doubt that Brathwaite knew or should reasonably have foreseen that the proved conspiracies involved cocaine, Brathwaite argues that the district court erred in sentencing him pursuant to 21 U.S.C. §§ 841(b)(1)(C) and 960(b)(3)—which prescribe zero-to-twenty year prison terms for trafficking in unspecified quantities of Schedule II controlled substances such as cocaine. He maintains that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), required the district court to sentence him to the least severe zero-to-one year prison term prescribed in §§ 841(b)(3) and 960(b)(7) for trafficking in Schedule V controlled substances such as codeine mixed with "non-narcotic active medicinal ingredients." 21 C.F.R. § 1308.15.

To the extent Brathwaite's argument raises questions of law or sufficiency, our review is *de novo*, but we view the evidence in the light most favorable to the jury verdict. *See United States v. Thompson*, 961 F.3d 545, 549 (2d Cir. 2020); *United States v. Litvak*, 889 F.3d 56, 65 (2d Cir. 2018). We assume the parties' familiarity with the facts and record of proceedings, which we reference only as necessary to explain our decision to affirm.

In *Apprendi v. New Jersey*, the Supreme Court stated that the Fifth and Sixth Amendments to the Constitution require that "any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." 530 U.S. at 476 (internal quotation marks omitted). Following *Apprendi*, this court ruled *en banc* that "if the type and quantity of drugs involved in a charged crime may be used to impose a sentence above the statutory maximum for an indeterminate quantity of drugs, then the type and quantity of drugs is an element of the offense that must be charged in the indictment and submitted to the jury." *United States v. Thomas*, 274 F.3d 655, 660 (2001) (*en banc*). No *Apprendi/Thomas* concern arises here because, to the extent cocaine, even in an unquantified amount, increases the maximum penalty for drug trafficking above what it would be for Schedule III, IV, or V controlled substances, the government here pleaded and proved that the charged conspiracies in fact dealt in cocaine. Indeed, the district court specifically charged the jury that, to find the defendant guilty, "the government must prove beyond a reasonable doubt that the defendant conspired to import cocaine into the United States." App'x at 59 (instructing on Count One); *see id.* at 60–61 (cross-referencing instruction with respect to Count Two). No other drug was at issue. *Cf. United States v. Zillgitt*, 286 F.3d 128, 133–36 (2d Cir. 2002) (discussing findings required when government charges conspiracy trafficking in multiple drugs falling within different schedules and, therefore, subject to different statutory sentencing ranges). Certainly, no facts were adduced suggesting that the conspiracy trafficked in Schedule V controlled substances.[1]

[1] The omission is not easily overlooked. Section 841(b)(3) is not a fallback provision applicable whenever the government fails to prove the particular controlled substance involved in a charged crime. Rather, it pertains to offenses involving (1) "narcotic drugs containing non-narcotic active medical ingredients," *i.e.*, codeine, dihydrocodeine, ethylmorphine, diphenoxylate, opium, and difenoxin; (2) stimulants, *i.e.*, pyrovalerone; and (3) central nervous system depressants, *i.e.*, brivaracetam, cenobamate, ezogabine, lacosamide, lasmiditan, and pregabalin. 21 C.F.R. § 1308.15. Thus, although we need not decide the question here, it is not apparent that § 841(b)(3)

Insofar as Brathwaite argues that, to punish him for conspiring to traffic in a Schedule II controlled substance, the government was *further* obliged to prove that he knew (or could reasonably foresee) the type of drug involved in the conspiracy he joined, *Apprendi* does not compel that conclusion. *See United States v. King*, 345 F.3d 149, 151 (2d Cir. 2003) (stating that *Apprendi* did not "alter[] th[e] well-settled principle" that "sentencing enhancements provided in § 841(b) are imposed regardless of the defendant's state of mind concerning the type or quantity of drugs in his possession"). The principle reaches conspiracy cases. As this court ruled in *United States v. Andino*, 627 F.3d 41 (2d Cir. 2010), "the government need not prove *scienter* as to drug *type* or *quantity* when a person personally and directly participates in a drug transaction underlying a conspiracy charge." *Id.* at 47 (emphasis in original) (collecting cases in "reaffirm[ing] . . . rule" as applied to conspiracy cases); *see id.* at 45–46 (explaining how statutory structure of § 841 supports conclusion). That is this case.

Even if Brathwaite's recruitment of couriers would not, by itself, demonstrate his personal and direct participation in the conspiracies' drug transactions, *cf. id.* at 47 n.3 (citing courier case to illustrate where participation was insufficiently personal and direct); *accord United States v. Culbertson*, 670 F.3d 183, 191 (2012), that was not the limit of Brathwaite's service to the conspiracy. Specifically, in September 2015, Brathwaite himself acted as a drug courier for the conspiracy, and thus personally and directly participated in the conspiracies' objects of possession and importation of controlled substances into the United States. *See United States v. Andino*, 627 F.3d at 47 n.3 (explaining that, in cases where defendants directly participated or personally

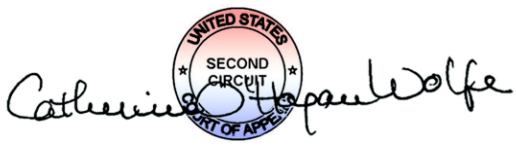
---

can be applied in the absence of any factual support. *Cf. United States v. Outen*, 286 F.3d 622, 638 (2d Cir. 2002) ("In applying *Apprendi* to two or more statutory provisions . . . the proper 'baseline' or 'default' provision is not the provision with the lowest penalty, but rather the one which states a complete crime upon the fewest facts." (emphasis omitted)).

transported drugs, court "did not require proof of reasonable foreseeability as to type and quantity"). In these circumstances, where the evidence, viewed most favorably to the jury's verdict, was sufficient to demonstrate that the controlled substance imported and possessed by Brathwaite was cocaine, the government was not required further to prove that Brathwaite knew or could reasonably have foreseen the type of drug he carried in order for the district court to sentence him under the statutory penalty provisions pertaining to unspecified amounts of a Schedule II controlled substance.[2] *See id.*, 627 F.3d at 47.

We have considered Brathwaite's remaining arguments and conclude that they are without merit. Accordingly, the judgment of the district court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



[2] We note that evidence also showed that, on September 21, 2015, within days of two couriers (one recruited by Brathwaite) successfully importing cocaine into the United States, Brathwaite was one of four conspirators who wired thousands of dollars to drug confederates in Trinidad. Viewed in the light most favorable to the government, this evidence indicates a distribution of financial proceeds of a drug transaction. We do not here decide whether a person who participates in such distribution is personally and directly involved in the drug transaction generating the proceeds, *see generally United States v. Salmonese*, 352 F.3d 608, 615 (2d Cir. 2003) (reciting rule that "where a conspiracy's purpose is economic enrichment, the jointly undertaken scheme continues through the conspirators' receipt of 'their anticipated economic benefits'" (quoting *United States v. Mennuti*, 679 F.2d 1032, 1035 (2d Cir. 1982)), because the government did not make this particular argument on appeal.

Constitution of the United States

Sixth Amendment

Sixth Amendment Annotated

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

(i) Reporting of telemedicine by VHA during medical emergency situations

(1) In general

Any practitioner issuing a prescription for a controlled substance under the authorization to conduct telemedicine during a medical emergency situation described in section 802(54)(F) of this title shall report to the Secretary of Veterans Affairs the authorization of that emergency prescription, in accordance with such requirements as the Secretary of Veterans Affairs shall, by regulation, establish.

(2) To Attorney General

Not later than 30 days after the date that a prescription described in subparagraph (A) is issued, the Secretary of Veterans Affairs shall report to the Attorney General the authorization of that emergency prescription.

(j) Clarification concerning prescription transfers

Any transfer between pharmacies of information relating to a prescription for a controlled substance shall meet the applicable requirements under regulations promulgated by the Attorney General under this chapter.

(Pub. L. 91–513, title II, § 311, as added Pub. L. 110–425, § 3(d)(1), Oct. 15, 2008, 122 Stat. 4825.)

REFERENCES IN TEXT

Section 309, referred to in subsec. (c)(7), is section 309 of Pub. L. 91–513, which is classified to section 829 of this title.

For effective date of this section, referred to in subsec. (d)(3), see Effective Date note below.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (g)(1), (2)(B), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

This chapter, referred to in subsec. (j), was in the original ''this Act'', meaning Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

EFFECTIVE DATE

Section effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110–425, set out as an Effective Date of 2008 Amendment note under section 802 of this title.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a viola-

tion of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sen-

tence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

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

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

or both.

(6) Any person who violates subsection (a) of this section, or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) PENALTIES FOR DISTRIBUTION.—

(A) IN GENERAL.—Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) of this section by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) DEFINITION.—For purposes of this paragraph, the term ''without that individual's knowledge'' means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, or both.

(3) For the purposes of this subsection, the term ''boobytrap'' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term ''date rape drug'' means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4–butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term ''authorized purchaser'' means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A ''qualifying medical relationship'' means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are

conducted by other heath[1] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any ''date rape drug'' for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4–butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally—

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of the title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections[2] 823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

(A) This subsection does not apply to—

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to—

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

(Pub. L. 91–513, title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub. L. 95–633, title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub. L. 96–359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub. L. 98–473, title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub. L. 99–570, title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207–2, 3207–5, 3207–6, 3207–11, 3702–192; Pub. L. 100–690, title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub. L. 101–647, title X, § 1002(e), title XII, § 1202, title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub. L. 103–322, title IX, § 90105(a), (c), title XVIII, § 180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub. L. 104–237, title II, § 206(a), title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub. L. 104–305, § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub. L. 105–277, div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681–759; Pub. L. 106–172, §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub. L. 107–273, div. B, title III, § 3005(a), title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub. L. 109–177, title VII, §§ 711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub. L. 109–248, title II, § 201, July 27, 2006, 120 Stat. 611; Pub. L. 110–425, § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub. L. 111–220, §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372.)

[1] So in original. Probably should be ''health''.

[2] So in original. Probably should be ''section''.

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1), (c)(1), (2), (f)(1), (g)(1), and (h)(1), (3)(A)(i), was in the original ''this title'', meaning title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the ''Controlled Substances Act''. For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

Schedules I, II, III, IV, and V, referred to in subsec. (b), are set out in section 812(c) of this title.

Subchapter II of this chapter, referred to in subsec. (b)(1), was in the original ''title III'', meaning title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of title III, see Tables.

Section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 2000, referred to in subsec. (b)(1)(C), is section 3(a)(1)(B) of Pub. L. 106–172, which is set out in a note under section 812 of this title.

This chapter, referred to in subsec. (g)(2)(B), (3), was in the original ''this Act'', meaning Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–220, §4(a)(1), in concluding provisions, substituted ''$10,000,000'' for ''$4,000,000'', ''$50,000,000'' for ''$10,000,000'', ''$20,000,000'' for ''$8,000,000'', and ''$75,000,000'' for ''$20,000,000''.

Subsec. (b)(1)(A)(iii). Pub. L. 111–220, §2(a)(1), substituted ''280 grams'' for ''50 grams''.

Subsec. (b)(1)(B). Pub. L. 111–220, §4(a)(2), in concluding provisions, substituted ''$5,000,000'' for ''$2,000,000'', ''$25,000,000'' for ''$5,000,000'', ''$8,000,000'' for ''$4,000,000'', and ''$50,000,000'' for ''$10,000,000''.

Subsec. (b)(1)(B)(iii). Pub. L. 111–220, §2(a)(2), substituted ''28 grams'' for ''5 grams''.

2008—Subsec. (b)(1)(D). Pub. L. 110–425, §3(e)(1)(A), struck out ''or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam'' after ''hashish oil''.

Subsec. (b)(1)(E). Pub. L. 110–425, §3(e)(1)(B), added subpar. (E).

Subsec. (b)(2). Pub. L. 110–425, §3(e)(2), substituted ''5 years'' for ''3 years'', ''10 years'' for ''6 years'', and ''after a prior conviction for a felony drug offense has become final,'' for ''after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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,''.

Subsec. (b)(3). Pub. L. 110–425, §3(e)(3), substituted ''4 years'' for ''2 years'' and ''after a prior conviction for a felony drug offense has become final,'' for ''after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter 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,'' and inserted at end ''Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.''

Subsec. (h). Pub. L. 110–425, §3(f), added subsec. (h).

2006—Subsec. (b)(5). Pub. L. 109–177, §732, inserted ''or manufacturing'' after ''cultivating'' in introductory provisions.

Subsec. (f)(1). Pub. L. 109–177, §711(f)(1)(B), inserted '', except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies,'' after ''shall''.

Subsec. (g). Pub. L. 109–248 added subsec. (g).

2002—Subsec. (b)(1)(A), (B). Pub. L. 107–273, §3005(a), substituted ''Notwithstanding section 3583 of title 18, any sentence'' for ''Any sentence'' in concluding provisions.

Subsec. (b)(1)(C), (D). Pub. L. 107–273, §3005(a), substituted ''Notwithstanding section 3583 of title 18, any sentence'' for ''Any sentence''.

Subsec. (d)(1). Pub. L. 107–273, §4002(d)(2)(A)(i), substituted ''or fined under title 18, or both'' for ''and shall be fined not more than $10,000''.

Subsec. (d)(2). Pub. L. 107–273, §4002(d)(2)(A)(ii), substituted ''or fined under title 18, or both'' for ''and shall be fined not more than $20,000''.

2000—Subsec. (b)(1)(C). Pub. L. 106–172, §3(b)(1)(A), inserted ''gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000),'' after ''schedule I or II,'' in first sentence.

Subsec. (b)(1)(D). Pub. L. 106–172, §3(b)(1)(B), substituted ''(other than gamma hydroxybutyric acid), or 30'' for '', or 30''.

Subsec. (b)(7)(A). Pub. L. 106–172, §5(b), inserted ''or controlled substance analogue'' after ''distributing a controlled substance''.

Subsecs. (c) to (g). Pub. L. 106–172, §9, redesignated subsecs. (d) to (g) as (c) to (f), respectively.

1998—Subsec. (b)(1). Pub. L. 105–277 in subpar. (A)(viii) substituted ''50 grams'' and ''500 grams'' for ''100 grams'' and ''1 kilogram'', respectively, and in subpar. (B)(viii) substituted ''5 grams'' and ''50 grams'' for ''10 grams'' and ''100 grams'', respectively.

1996—Subsec. (b)(1)(C). Pub. L. 104–305, §2(b)(1)(A), inserted '', or 1 gram of flunitrazepam,'' after ''schedule I or II''.

Subsec. (b)(1)(D). Pub. L. 104–305, §2(b)(1)(B), inserted ''or 30 milligrams of flunitrazepam,'' after ''schedule III,''.

Subsec. (b)(7). Pub. L. 104–305, §2(a), added par. (7).

Subsec. (d). Pub. L. 104–237, §302(a), in concluding provisions, substituted ''not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical,'' for ''not more than 10 years,''.

Subsec. (f). Pub. L. 104–237, §206(a), inserted ''manufacture, exportation,'' after ''distribution,'' and struck out ''regulated'' after ''engaging in any''.

1994—Subsec. (b). Pub. L. 103–322, §180201(b)(2)(A), inserted ''849,'' before ''859,'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 103–322, §§90105(c), 180201(b)(2)(A), in concluding provisions, inserted ''849,'' before ''859,'' and struck out ''For purposes of this subparagraph, the term 'felony drug offense' means an offense that is a felony under any provision of this subchapter or any other Federal law that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances or a felony under any law of a State or a foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.'' before ''Any sentence under this subparagraph''.

Subsec. (b)(1)(B). Pub. L. 103–322, §90105(a), in sentence in concluding provisions beginning ''If any person commits'', substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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''.

Subsec. (b)(1)(C). Pub. L. 103–322, §90105(a), in sentence beginning ''If any person commits'', substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or sub-

chapter II of this chapter 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''.

Subsec. (b)(1)(D). Pub. L. 103–322, § 90105(a), in sentence beginning ''If any person commits'', substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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''.

1990—Subsec. (b). Pub. L. 101–647, § 1002(e)(1), substituted ''section 859, 860, or 861'' for ''section 845, 845a, or 845b'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101–647, § 1002(e)(1), substituted ''section 859, 860, or 861'' for ''section 845, 845a, or 845b'' in concluding provisions.

Subsec. (b)(1)(A)(ii)(IV). Pub. L. 101–647, § 3599K, substituted ''any of the substances'' for ''any of the substance''.

Subsec. (b)(1)(A)(viii). Pub. L. 101–647, § 1202, substituted ''or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine'' for ''or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine''.

Subsec. (b)(1)(B)(ii)(IV). Pub. L. 101–647, § 3599K, substituted ''any of the substances'' for ''any of the substance''.

Subsec. (c). Pub. L. 101–647, § 1002(e)(2), directed amendment of subsec. (c) by substituting ''section 859, 860, or 861 of this title'' for ''section 845, 845a, or 845b of this title''. Subsec. (c) was previously repealed by Pub. L. 98–473, § 224(a)(2), as renumbered by Pub. L. 99–570, § 1005(a), effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment. See 1984 Amendment note and Effective Date of 1984 Amendment note below.

1988—Subsec. (b)(1)(A). Pub. L. 100–690, §§ 6452(a), 6470(g), 6479(1), inserted '', or 1,000 or more marihuana plants regardless of weight'' in cl. (vii), added cl. (viii), substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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'' in second sentence, and added provisions relating to sentencing for a person who violates this subpar. or section 485, 485a, or 485b of this title after two or more prior convictions for a felony drug offense have become final and defining ''felony drug offense''.

Subsec. (b)(1)(B). Pub. L. 100–690, §§ 6470(h), 6479(2), inserted '', or 100 or more marihuana plants regardless of weight'' in cl. (vii) and added cl. (viii).

Subsec. (b)(1)(D). Pub. L. 100–690, § 6479(3), substituted ''50 or more marihuana plants'' for ''100 or more marihuana plants''.

Subsec. (b)(6). Pub. L. 100–690, § 6254(h), added par. (6).

Subsec. (d). Pub. L. 100–690, § 6055(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any person who knowingly or intentionally—

''(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this subchapter, or

''(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this subchapter,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both.''

Subsecs. (f), (g). Pub. L. 100–690, § 6055(b), added subsecs. (f) and (g).

1986—Pub. L. 99–570, § 1005(a), amended Pub. L. 98–473, § 224(a). See 1984 Amendment note below.

Subsec. (b). Pub. L. 99–570, § 1103(a), substituted '', 845a, or 845b'' for ''or 845a'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 99–570, § 1002(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of a violation of subsection (a) of this section involving—

''(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of—

''(I) coca leaves;

''(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

''(III) a substance chemically identical thereto;

''(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

''(iii) 500 grams or more of phencyclidine (PCP); or

''(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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 40 years, a fine of not more than $500,000, or both''.

Subsec. (b)(1)(B). Pub. L. 99–570, § 1002(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C),, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter 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, a fine of not more than $250,000, 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.''

Subsec. (b)(1)(C). Pub. L. 99–570, § 1002(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 99–570, § 1004(a), substituted ''term of supervised release'' for ''special parole term'' in two places.

Pub. L. 99–570, §§ 1002(1), 1003(a)(1), redesignated former subpar. (C) as (D), substituted ''a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual'' for ''a fine of not more than $50,000'' and ''a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual'' for ''a fine of not more than $100,000'', and inserted ''except in the case of 100 or more marihuana plants regardless of weight,''.

Subsec. (b)(2). Pub. L. 99–570, § 1004(a), substituted ''term of supervised release'' for ''special parole term'' in two places.

Pub. L. 99–570, §1003(a)(2), substituted ''a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual'' for ''a fine of not more than $25,000'' and ''a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual'' for ''a fine of not more than $50,000''.

Subsec. (b)(3). Pub. L. 99–570, §1003(a)(3), substituted ''a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual'' for ''a fine of not more than $10,000'' and ''a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual'' for ''a fine of not more than $20,000''.

Subsec. (b)(4). Pub. L. 99–570, §1003(a)(4), which directed the substitution of ''1(D)'' for ''1(C)'' was executed by substituting ''(1)(D)'' for ''(1)(C)'' as the probable intent of Congress.

Subsec. (b)(5). Pub. L. 99–570, §1003(a)(5), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Notwithstanding paragraph (1), any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be fined not more than—

''(A) $500,000 if such person is an individual; and

''(B) $1,000,000 if such person is not an individual.''

Subsec. (c). Pub. L. 99–570, §1004(a), substituted ''term of supervised release'' for ''special parole term'' wherever appearing, effective Nov. 1, 1987, the effective date of the repeal of subsec. (c) by Pub. L. 98–473, §224(a)(2). See 1984 Amendment note below.

Pub. L. 99–570, §1103(b), substituted '', 845a, or 845b'' for ''845a'' in two places.

Subsec. (d). Pub. L. 99–570, §1003(a)(6), substituted ''a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual'' for ''a fine of not more than $15,000''.

Subsec. (e). Pub. L. 99–570, §15005, added subsec. (e).

1984—Subsec. (b). Pub. L. 98–473, §503(b)(1), inserted reference to section 845a of this title in provisions preceding par. (1)(A).

Pub. L. 98–473, §224(a)(1)–(3), (5), which directed amendment of this subsection effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98–473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99–570, §1005(a), and the remaining pars. (4) and (6) of Pub. L. 98–473, §224(a), were redesignated as pars. (1) and (2), respectively.

Subsec. (b)(1)(A). Pub. L. 98–473, §502(1)(A), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(1)(B). Pub. L. 98–473, §502(1)(A), (B), redesignated former subpar. (A) as (B), substituted ''except as provided in subparagraphs (A) and (C),'' for ''which is a narcotic drug'', ''$125,000'' for ''$25,000'', and ''$250,000'' for ''$50,000'', and inserted references to laws of a State and a foreign country. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 98–473, §502(1)(A), (C), redesignated former subpar. (B) as (C), substituted ''less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil'' for ''a controlled substance in schedule I or II which is not a narcotic drug'', ''and (5)'' for '', (5), and (6)'', ''$50,000'' for ''$15,000'', and ''$100,000'' for ''$30,000'', and inserted references to laws of a State and a foreign country.

Subsec. (b)(2). Pub. L. 98–473, §502(2), substituted ''$25,000'' for ''$10,000'' and ''$50,000'' for ''$20,000'', and inserted references to laws of a State or of a foreign country.

Subsec. (b)(3). Pub. L. 98–473, §502(3), substituted ''$10,000'' for ''$5,000'' and ''$20,000'' for ''$10,000'', and inserted references to laws of a State or of a foreign country.

Subsec. (b)(4). Pub. L. 98–473, §502(4), substituted ''(1)(C)'' for ''(1)(B)''.

Pub. L. 98–473, §224(a)(1), as renumbered by Pub. L. 99–570, §1005(a), substituted ''in section 844 of this title and section 3607 of title 18'' for ''in subsections (a) and (b) of section 844 of this title''.

Subsec. (b)(5). Pub. L. 98–473, §502(5), (6), added par. (5) and struck out former par. (5) which related to penalties for manufacturing, etc., phencyclidine.

Subsec. (b)(6). Pub. L. 98–473, §502(5), struck out par. (6) which related to penalties for violations involving a quantity of marihuana exceeding 1,000 pounds.

Subsec. (c). Pub. L. 98–473, §224(a)(2), as renumbered by Pub. L. 99–570, §1005(a), struck out subsec. (c) which read as follows: ''A special parole term imposed under this section or section 845, 845a, or 845b of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845, 845a, or 845b of this title shall be in addition to, and not in lieu of, any other parole provided for by law.''

Pub. L. 98–473, §503(b)(2), inserted reference to section 845a of this title in two places.

1980—Subsec. (b)(1)(B). Pub. L. 96–359, §8(c)(1), inserted reference to par. (6) of this subsection.

Subsec. (b)(6). Pub. L. 96–359, §8(c)(2), added par. (6).

1978—Subsec. (b)(1)(B). Pub. L. 95–633, §201(1), inserted '', except as provided in paragraphs (4) and (5) of this subsection,'' after ''such person shall''.

Subsec. (b)(5). Pub. L. 95–633, §201(2), added par. (5).

Subsec. (d). Pub. L. 95–633, §201(3), added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110–425, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6055 of Pub. L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100–690, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1004(b) of Pub. L. 99–570 provided that: ''The amendments made by this section [amending this section and sections 845, 845a, 960, and 962 of this title] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [Nov. 1, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 224(a) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95–633 set out as an Effective Date note under section 830 of this title.

REPEALS

Pub. L. 96–359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95–633, which had provided for the repeal of subsec. (d) of this section effective Jan. 1, 1981.

§ 842. Prohibited acts B

(a) Unlawful acts

It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 829 of this title;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 825 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 825 of this title;

(5) to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter or subchapter II of this chapter;

(6) to refuse any entry into any premises or inspection authorized by this subchapter or subchapter II of this chapter;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 824(f) or 881 of this title or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter II of this chapter, any information acquired in the course of an inspection authorized by this subchapter concerning any method or process which as a trade secret is entitled to protection, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section;

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 830(a)(3) of this title.[1]

(10) negligently to fail to keep a record or make a report under section 830 of this title or negligently to fail to self-certify as required under section 830 of this title;

(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this subchapter or subchapter II of this chapter, with reckless disregard for the illegal uses to which such a laboratory supply will be put;

(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 830 of this title—

(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section;

(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 830(e)(1) of this title, information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities; or

(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 830(b)(3)(B) of this title, unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 830(e)(1)(B)(v) of this title.

As used in paragraph (11), the term ''laboratory supply'' means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer. For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 830(e)(1)(B)(v) of this title, the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 830(e)(1)(B)(v) of this title.

(b) Manufacture

It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical, which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 826 of this title; or

(2) in excess of a quota assigned to him pursuant to section 826 of this title.

(c) Penalties

(1)(A) Except as provided in subparagraph (B) of this paragraph and paragraph (2), any person who violates this section shall, with respect to

[1] So in original. Probably should be ''section 830(a)(3) of this title;''.

(f) Compromise

The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(g) Judicial review

If the Attorney General issues an order pursuant to subsection (e) of this section after a hearing described in such subsection, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

(h) Civil action

If an individual does not request a hearing pursuant to subsection (e) of this section and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) of this section seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28. Such interest shall accrue from the expiration of the 30-day period described in subsection (g) of this section. In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(i) Limitation

The Attorney General may not under this subsection[1] commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a) of this section.

(j) Expungement procedures

The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years if—

(1) the individual has not previously been assessed a civil penalty under this section;

(2) the individual has paid the assessment;

(3) the individual has complied with any conditions imposed by the Attorney General;

(4) the individual has not been convicted of a Federal or State offense relating to a controlled substance; and

(5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

(Pub. L. 91–513, title II, § 405, formerly Pub. L. 100–690, title VI, § 6486, Nov. 18, 1988, 102 Stat. 4384, renumbered § 405 of Pub. L. 91–513, and amended Pub. L. 101–647, title X, § 1002(g)(1), (2), Nov. 29, 1990, 104 Stat. 4828.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 91–513 was renumbered section 418 and is classified to section 859 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647, § 1002(g)(2)(A), made technical amendments to references to sections 841(b)(1)(A) and 844 of this title to correct references to corresponding provisions of original act.

Subsecs. (c), (j)(4). Pub. L. 101–647, § 1002(g)(2)(B), (C), struck out ''as defined in section 802 of this title'' after ''controlled substance''.

§§ 845 to 845b. Transferred

CODIFICATION

Section 845, Pub. L. 91–513, title II, § 405, Oct. 27, 1970, 84 Stat. 1265, as amended, which related to distribution of controlled substances to persons under age twenty-one, was renumbered § 418 of Pub. L. 91–513 by Pub. L. 101–647, title X, § 1002(a)(1), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 859 of this title.

Section 845a, Pub. L. 91–513, title II, § 405A, as added Pub. L. 98–473, title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069, and amended, which related to distribution or manufacturing of controlled substances in or near schools and colleges, was renumbered § 419 of Pub. L. 91–513 by Pub. L. 101–647, title X, § 1002(b), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 860 of this title.

Section 845b, Pub. L. 91–513, title II, § 405B, as added Pub. L. 99–570, title I, § 1102, Oct. 27, 1986, 100 Stat. 3207–10, and amended, which related to employment or use of persons under 18 years of age in drug operations, was renumbered § 420 of Pub. L. 91–513 by Pub. L. 101–647, title X, § 1002(c), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 861 of this title.

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91–513, title II, § 406, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 100–690, title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

AMENDMENTS

1988—Pub. L. 100–690 substituted ''shall be subject to the same penalties as those prescribed for the offense'' for ''is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense''.

§ 847. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

[1] So in original. Probably should be ''section''.

(h) Separate registrations for each principal place of business

A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances or list I chemicals.

(i) Emergency situations

Except in emergency situations as described in section 952(a)(2)(A) of this title, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 952(a) of this title authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

(Pub. L. 91–513, title III, § 1008, Oct. 27, 1970, 84 Stat. 1289; Pub. L. 98–473, title II, §§ 524, 525, Oct. 12, 1984, 98 Stat. 2076; Pub. L. 99–570, title I, § 1866(d), Oct. 27, 1986, 100 Stat. 3207–55; Pub. L. 103–200, § 3(f), Dec. 17, 1993, 107 Stat. 2337; Pub. L. 108–447, div. B, title VI, § 633(c), Dec. 8, 2004, 118 Stat. 2922.)

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in subsecs. (a), (c), and (i), are set out in section 812(c) of this title.

This subchapter, referred to in subsecs. (d)(4) and (g), was in the original ''this title'', meaning title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended. Part A of title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of title III, see Tables.

CODIFICATION

In subsecs. (a) and (d), ''May 1, 1971'' substituted for ''the effective date of this section'' and ''the effective date of this part'', respectively.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–447, which directed amendment of subsec. (f) of section 1088 of the Controlled Substances Import and Export Act by inserting ''and control'' after ''the registration'' and substituting ''listed chemicals'' for ''list I chemicals under this section'', was executed to subsec. (f) of this section, which is section 1008 of the Controlled Substances Import and Export Act, to reflect the probable intent of Congress.

1993—Subsec. (c). Pub. L. 103–200, § 3(f)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(3). Pub. L. 103–200, § 3(f)(2)(A), inserted ''or list I chemical or chemicals,'' after ''substances,''.

Subsec. (d)(6). Pub. L. 103–200, § 3(f)(2)(B), inserted ''or list I chemicals'' after ''controlled substances'' wherever appearing.

Subsec. (e). Pub. L. 103–200, § 3(f)(3), inserted reference to section 830 of this title.

Subsecs. (f) to (h). Pub. L. 103–200, § 3(f)(4), inserted ''or list I chemicals'' after ''controlled substances''.

1986—Subsec. (e). Pub. L. 99–570 substituted ''sections'' for first reference to ''section''.

1984—Subsec. (b). Pub. L. 98–473, § 524, substituted ''Registration granted under this section shall not entitle a registrant to import or export controlled substances other than specified in the registration'' for ''Registration granted under subsection (a) of this section shall not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration''.

Subsecs. (d) to (i). Pub. L. 98–473, § 525, added subsec. (d), redesignated former subsec. (d) as (e) and struck out reference to section 824 of this title, and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–200 effective on date that is 120 days after Dec. 17, 1993, see section 11 of Pub. L. 103–200, set out as a note under section 802 of this title.

§ 959. Possession, manufacture, or distribution of controlled substance

(a) Manufacture or distribution for purpose of unlawful importation

It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II or flunitrazepam or listed chemical—

(1) intending that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States; or

(2) knowing that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

(b) Possession, manufacture, or distribution by person on board aircraft

It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

(1) manufacture or distribute a controlled substance or listed chemical; or

(2) possess a controlled substance or listed chemical with intent to distribute.

(c) Acts committed outside territorial jurisdiction of United States; venue

This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

(Pub. L. 91–513, title III, § 1009, Oct. 27, 1970, 84 Stat. 1289; Pub. L. 99–570, title III, § 3161(a), Oct. 27, 1986, 100 Stat. 3207–94; Pub. L. 104–237, title I, § 102(a), (b), Oct. 3, 1996, 110 Stat. 3100; Pub. L. 104–305, § 2(b)(2)(A), Oct. 13, 1996, 110 Stat. 3807.)

REFERENCES IN TEXT

Schedules I and II, referred to in subsec. (a), are set out in section 812(c) of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–305 inserted ''or flunitrazepam'' after ''schedule I or II'' in introductory provisions.

Pub. L. 104–237, § 102(a), inserted ''or listed chemical'' after ''schedule I or II'' in introductory provisions and ''or chemical'' after ''substance'' in pars. (1) and (2).

Subsec. (b). Pub. L. 104–237, § 102(b), inserted ''or listed chemical'' after ''controlled substance'' in pars. (1) and (2).

1986—Pub. L. 99–570 designated first sentence as subsec. (a) and inserted ''or into waters within a distance of 12 miles of the coast of the United States'' in pars. (1) and (2), added subsec. (b), and designated last two sentences as subsec. (c).

§ 960. Prohibited acts A

(a) Unlawful acts

Any person who—

(1) contrary to section 952, 953, or 957 of this title, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 955 of this title, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 959 of this title, manufactures, possesses with intent to distribute, or distributes a controlled substance,

shall be punished as provided in subsection (b) of this section.

(b) Penalties

(1) In the case of a violation of subsection (a) of this section involving—

(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 280 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or

(H) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.[1]

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(2) In the case of a violation of subsection (a) of this section involving—

(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(B) 500 grams or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 28 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana; or

(H) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphet-

[1] So in original. The period probably should be a semicolon.

amine, its salts, isomers, or salts of its isomers.[1]

the person committing such violat ion shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or flunitrazepam, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results.

(4) In the case of a violation under subsection (a) of this section with respect to less than 50 kilograms of marihuana, except in the case of 100 or more marihuana plants regardless of weight, less than 10 kilograms of hashish, or less than one kilogram of hashish oil, the person committing such violation shall be sentenced in accordance with section 841(b)(1)(D) of this title.

(5) In the case of a violation of subsection (a) involving a controlled substance in schedule III, such person shall be sentenced in accordance with section 841(b)(1) of this title.

(6) In the case of a violation of subsection (a) involving a controlled substance in schedule IV, such person shall be sentenced in accordance with section 841(b)(2) of this title.

(7) In the case of a violation of subsection (a) involving a controlled substance in schedule V, such person shall be sentenced in accordance with section 841(b)(3) of this title.

(c) Repealed. Pub. L. 98–473, title II, § 225, formerly § 225(a), Oct. 12, 1984, 98 Stat. 2030, as amended by Pub. L. 99–570, title I, § 1005(c), Oct. 27, 1986, 100 Stat. 3207–6

(d) Penalty for importation or exportation

A person who knowingly or intentionally—

(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this subchapter or subchapter I of this chapter;

(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this subchapter or subchapter I of this chapter;

(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported;

(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 971 of this title applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation

qualifies for a waiver of the 15-day notification requirement granted pursuant to paragraph (2) or (3) of section 971(f) of this title by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported;

(6) imports a listed chemical in violation of section 952 of this title, imports or exports such a chemical in violation of section 957 or 971 of this title, or transfers such a chemical in violation of section 971(d) of this title; or

(7) manufactures, possesses with intent to distribute, or distributes a listed chemical in violation of section 959 of this title.[2]

shall be fined in accordance with title 18, imprisoned not more than 20 years in the case of a violation of paragraph (1) or (3) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (3) involving a list I chemical, or both.

(Pub. L. 91–513, title III, §1010, Oct. 27, 1970, 84 Stat. 1290; Pub. L. 98–473, title II, §§225, formerly §225(a), 504, Oct. 12, 1984, 98 Stat. 2030, 2070; Pub. L. 99–570, title I, §§1004(a), 1005(c), 1302, 1866(e), Oct. 27, 1986, 100 Stat. 3207–6, 3207–15, 3207–55; Pub. L. 100–690, title VI, §§6053(c), 6475, Nov. 18, 1988, 102 Stat. 4315, 4380; Pub. L. 101–647, title XII, §1204, title XXXV, §3599J, Nov. 29, 1990, 104 Stat. 4830, 4932; Pub. L. 103–200, §§4(b), 5(b), Dec. 17, 1993, 107 Stat. 2338, 2339; Pub. L. 103–322, title IX, §90105(a), title XXXIII, §330024(d)(2), Sept. 13, 1994, 108 Stat. 1987, 2151; Pub. L. 104–237, title I, §102(c), title III, §302(b), Oct. 3, 1996, 110 Stat. 3100, 3105; Pub. L. 104–305, §2(b)(2)(B), (C), Oct. 13, 1996, 110 Stat. 3807; Pub. L. 105–277, div. E, §2(b), Oct. 21, 1998, 112 Stat. 2681–759; Pub. L. 106–172, §3(b)(2), Feb. 18, 2000, 114 Stat. 9; Pub. L. 107–273, div. B, title III, §3005(b), Nov. 2, 2002, 116 Stat. 1806; Pub. L. 109–177, title VII, §§716(b)(1)(A), 717, Mar. 9, 2006, 120 Stat. 267; Pub. L. 110–425, §3(i), Oct. 15, 2008, 122 Stat. 4832; Pub. L. 111–220, §§2(b), 4(b), Aug. 3, 2010, 124 Stat. 2372.)

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in subsec. (b), are set out in section 812(c) of this title.

Section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 2000, referred to in subsec. (b)(3), is section 3(a)(1)(B) of Pub. L. 106–172, which is set out in a note under section 812 of this title.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–220, §4(b)(1), in concluding provisions, substituted ''$10,000,000'' for ''$4,000,000'', ''$50,000,000'' for ''$10,000,000'', ''$20,000,000'' for ''$8,000,000'', and ''$75,000,000'' for ''$20,000,000''.

Subsec. (b)(1)(C). Pub. L. 111–220, §2(b)(1), substituted ''280 grams'' for ''50 grams''.

Subsec. (b)(2). Pub. L. 111–220, §4(b)(2), in concluding provisions, substituted ''$5,000,000'' for ''$2,000,000'', ''$25,000,000'' for ''$5,000,000'', ''$8,000,000'' for ''$4,000,000'', and ''$50,000,000'' for ''$10,000,000''.

Subsec. (b)(2)(C). Pub. L. 111–220, §2(b)(2), substituted ''28 grams'' for ''5 grams''.

2008—Subsec. (b)(3). Pub. L. 110–425, §3(i)(3), struck out before period at end '', nor shall a person so sentenced be eligible for parole during the term of such a sentence''.

Subsec. (b)(4). Pub. L. 110–425, §3(i)(1), inserted ''or'' after ''hashish,'', struck out ''or any quantity of a controlled substance in schedule III, IV, or V, (except a violation involving flunitrazepam and except a violation involving gamma hydroxybutyric acid)'' after ''hashish oil,'', and substituted ''sentenced in accordance with section 841(b)(1)(D) of this title'' for ''imprisoned not more than five years, or be 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, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, notwithstanding section 3583 of title 18, in addition to such term of imprisonment, include (A) a term of supervised release of not less than two years if such controlled substance is in schedule I, II, III, or (B) a term of supervised release of not less than one year if such controlled substance is in schedule IV''.

Subsec. (b)(5) to (7). Pub. L. 110–425, §3(i)(2), added pars. (5) to (7).

2006—Subsec. (d)(5). Pub. L. 109–177, §716(b)(1)(A), substituted ''paragraph (2) or (3) of section 971(f) of this title'' for ''section 971(e)(2) or (3) of this title''.

Subsec. (d)(6). Pub. L. 109–177, §717, amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''imports or exports a listed chemical in violation of section 957 or 971 of this title; or''.

2002—Subsec. (b)(1), (2). Pub. L. 107–273, §3005(b)(1), substituted ''Notwithstanding section 3583 of title 18, any sentence'' for ''Any sentence'' in concluding provisions.

Subsec. (b)(3). Pub. L. 107–273, §3005(b)(1), substituted ''Notwithstanding section 3583 of title 18, any sentence'' for ''Any sentence''.

Subsec. (b)(4). Pub. L. 107–273, §3005(b)(2), inserted ''notwithstanding section 3583 of title 18,'' before ''in addition to such term of imprisonment''.

2000—Subsec. (b)(3). Pub. L. 106–172, §3(b)(2)(A), inserted ''gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000),'' after ''schedule I or II,'' in first sentence.

Subsec. (b)(4). Pub. L. 106–172, §3(b)(2)(B), substituted ''flunitrazepam and except a violation involving gamma hydroxybutyric acid)'' for ''flunitrazepam)''.

1998—Subsec. (b)(1)(H). Pub. L. 105–277, §2(b)(1), substituted ''50 grams'' and ''500 grams'' for ''100 grams'' and ''1 kilogram'', respectively.

Subsec. (b)(2)(H). Pub. L. 105–277, §2(b)(2), substituted ''5 grams'' and ''50 grams'' for ''10 grams'' and ''100 grams'', respectively.

1996—Subsec. (b)(3). Pub. L. 104–305, §2(b)(2)(B), inserted ''or flunitrazepam,'' after ''schedule I or II,''.

Subsec. (b)(4). Pub. L. 104–305, §2(b)(2)(C), inserted ''(except a violation involving flunitrazepam)'' after ''schedule III, IV, or V,''.

Subsec. (d). Pub. L. 104–237, §302(b), in closing provisions, substituted ''not more than 20 years in the case of a violation of paragraph (1) or (3) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (3) involving a list I chemical,'' for ''not more than 10 years,''.

Subsec. (d)(7). Pub. L. 104–237, §102(c), added par. (7).

1994—Subsec. (b)(1), (2). Pub. L. 103–322, §90105(a), in sentence in concluding provisions beginning ''If any person commits'', substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter 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''.

Subsec. (b)(3). Pub. L. 103–322, §90105(a), in sentence beginning ''If any person commits'', substituted ''a prior conviction for a felony drug offense has become final'' for ''one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I

[2] So in original. The period probably should be a comma.

of this chapter 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''.

Subsec. (d)(5), (6). Pub. L. 103–322, § 330024(d)(2), amended directory language of Pub. L. 103–200, § 5(b)(3). See 1993 Amendment note below.

1993—Subsec. (d). Pub. L. 103–200, § 5(b), as amended by Pub. L. 103–322, § 330024(d)(2), added pars. (5) and (6).

Pub. L. 103–200, § 4(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any person who knowingly or intentionally—

''(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this subchapter or, in the case of an exportation, in violation of the law of the country to which the chemical is exported; or

''(2) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance in violation of this subchapter or, in the case of an exportation, in violation of the law of the country to which the chemical is exported;

shall be fined in accordance with title 18, or imprisoned not more than 10 years, or both.''

1990—Subsec. (b)(1)(H). Pub. L. 101–647, § 1204(a), added subpar. (H).

Subsec. (b)(2). Pub. L. 101–647, § 3599J, substituted ''supervised'' for ''suspervised'' in two places in concluding provisions.

Subsec. (b)(2)(H). Pub. L. 101–647, § 1204(b), added subpar. (H).

1988—Subsec. (a)(3). Pub. L. 100–690, § 6475, substituted ''manufactures, possesses with intent to distribute, or distributes a controlled substance'' for ''manufactures or distributes a controlled substance''.

Subsec. (d). Pub. L. 100–690, § 6053(c), added subsec. (d).

1986—Pub. L. 99–570, § 1005(c), amended Pub. L. 98–473, § 225. See 1984 Amendment note below.

Subsec. (b)(1), (2). Pub. L. 99–570, § 1302(a)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) In the case of a violation under subsection (a) of this section involving—

''(A) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

''(i) coca leaves;

''(ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

''(iii) a substance chemically identical thereto;

''(B) a kilogram or more of any other narcotic drug in schedule I or II;

''(C) 500 grams or more of phencyclidine (PCP);

''(D) 5 grams or more of lysergic acid diethylamide (LSD);

the person committing such violation shall be imprisoned for not more than twenty years, or fined not more than $250,000, or both.

''(2) In the case of a violation under subsection (a) of this section with respect to a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be imprisoned not more than fifteen years, or fined not more than $125,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.''

Subsec. (b)(3). Pub. L. 99–570, § 1302(a)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 99–570, § 1302(a)(1), (3), (b)(2), (3), redesignated former par. (3) as (4), inserted ''except in the case of 100 or more marihuana plants regardless of weight,'' and substituted ''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'' for ''fined not more than $50,000''.

Pub. L. 99–570, §§ 1302(b)(1), 1866(e), made identical amendment striking out '', except as provided in paragraph (4)'' after ''such violation shall''.

Pub. L. 99–570, § 1004(a), substituted ''term of supervised release'' for ''special parole term'' in two places.

Subsec. (c). Pub. L. 99–570, § 1004(a), substituted ''term of supervised release'' for ''special parole term'' wherever appearing, effective Nov. 1, 1987, the effective date of the repeal of subsec. (c) by Pub. L. 98–473, § 225. See 1984 Amendment note below.

1984—Subsec. (b). Pub. L. 98–473, § 225(a), which directed amendment of this subsection effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98–473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was omitted in the general amendment of section 225 of Pub. L. 98–473 by Pub. L. 99–570, § 1005(c).

Subsec. (b)(1). Pub. L. 98–473, § 504(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98–473, § 504(1), (2), redesignated former par. (1) as (2), inserted provisions excepting pars. (1) and (3), and substituted reference to controlled substance for reference to narcotic drug, and ''$125,000'' for ''$25,000''. Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–473, § 504(1), (3), redesignated former par. (2) as (3) and substituted ''less than 50 kilograms of marihuana, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall, except as provided in paragraph (4)'' for ''a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall'', and ''$50,000'' for ''$15,000''.

Subsec. (c). Pub. L. 98–473, § 225, as amended by Pub. L. 99–570, § 1005(c), struck out subsec. (c) which related to special parole terms imposed under this section or section 962 of this title. Notwithstanding directory language that the amendment be made to ''Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960)'', the amendment was executed to this section as the probable intent of Congress.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110–425, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 330024(d)(2) of Pub. L. 103–322 effective 120 days after Dec. 17, 1993, see section 330024(f) of Pub. L. 103–322, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–200 effective on date that is 120 days after Dec. 17, 1993, see section 11 of Pub. L. 103–200, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6053(c) of Pub. L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100–690, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 225 of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''one or more prior convictions of such person for a felony drug offense have become final'' for ''one or more prior convictions of him for a felony under any provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final''.

1986—Subsec. (a). Pub. L. 99–570, § 1005(c), amended Pub. L. 98–473, § 225. See 1984 Amendment note below.

Pub. L. 99–570, § 1004(a), substituted ''term of supervised release'' for ''special parole term''.

1984—Subsec. (a). Pub. L. 98–473, § 225(b), which directed amendment of this section effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98–473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was omitted in the general amendment of section 225 of Pub. L. 98–473 by Pub. L. 99–570, § 1005(c).

Subsec. (b). Pub. L. 98–473, § 505, inserted references to laws of a State or of a foreign country.

EFFECTIVE DATE OF 1986 AMENDMENT

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

§ 963. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91–513, title III, § 1013, Oct. 27, 1970, 84 Stat. 1291; Pub. L. 100–690, title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

AMENDMENTS

1988—Pub. L. 100–690 substituted ''shall be subject to the same penalties as those prescribed for the offense'' for ''is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense''.

§ 964. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Pub. L. 91–513, title III, § 1014, Oct. 27, 1970, 84 Stat. 1291.)

§ 965. Applicability of part E of subchapter I

Part E of subchapter I of this chapter shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this subchapter, to administrative and judicial proceedings under this subchapter, and to violations of this subchapter, to the same extent that such part applies to functions of the Attorney General (and such officers and employees) under subchapter I of this chapter, to such proceedings under subchapter I of this chapter, and to violations of subchapter I of this chapter. For purposes of the application of this section to section 880 or 881 of this title, any reference in such section 880 or 881 of this title to ''this subchapter'' shall be deemed to be a reference to this subchapter, any reference to section 823 of this title shall be deemed to be a reference to section 958 of this title, and any reference to section 822(d) of this title shall be deemed to be a reference to section 957(b)(2) of this title.

(Pub. L. 91–513, title III, § 1015, Oct. 27, 1970, 84 Stat. 1291; Pub. L. 95–633, title III, § 301(b), Nov. 10, 1978, 92 Stat. 3778.)

AMENDMENTS

1978—Pub. L. 95–633 inserted ''or 881'' after ''880'' wherever appearing.

TRANSFER OF FUNCTIONS

For abolition of Bureau of Narcotics and Dangerous Drugs, including Office of Director thereof, and creation of a single comprehensive agency for enforcement of drug laws by Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, see note set out under section 881 of this title.

§ 966. Authority of Secretary of the Treasury

Nothing in this chapter shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

(Pub. L. 91–513, title III, § 1016, Oct. 27, 1970, 84 Stat. 1291.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

§ 967. Smuggling of controlled substances; investigations; oaths; subpenas; witnesses; evidence; production of records; territorial limits; fees and mileage of witnesses

For the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of title 18 (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 802 of this title), the Secretary of the Treasury may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States.

(Aug. 11, 1955, ch. 800, § 1, 69 Stat. 684; Pub. L. 91–513, title III, § 1102(t), Oct. 27, 1970, 84 Stat. 1294.)

CODIFICATION

Section was not enacted as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970 which comprises this chapter.