

# APPENDIX

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUL 15 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 19-50365

Plaintiff-Appellee,

D.C. No.

v.

3:18-cr-04834-AJB-1

DONALD STANLEY,

Southern District of California,  
San Diego

Defendant-Appellant.

ORDER

Before: MURGUIA, BADE, and LEE, Circuit Judges.

The panel has voted to deny the petition for rehearing. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are DENIED.

**NOT FOR PUBLICATION**

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MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Anthony J. Battaglia, District Judge, Presiding

Submitted June 7, 2021\*\*  
Pasadena, California

Before: MURGUIA, BADE, and LEE, Circuit Judges.

Defendant-Appellant Donald Stanley (“Stanley”) appeals his conviction and sentence for possession of a controlled substance, methamphetamine, with intent to distribute in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1. The district court did not abuse its discretion under Federal Rules of Evidence 404 and 403 by admitting electronic messages sent and received by Stanley in which he conducted drug transactions, including selling methamphetamine from his residence, in the months preceding his July 2018 arrest. *United States v. Vo*, 413 F.3d 1010, 1017 n.4 (9th Cir. 2005). The government introduced evidence of Stanley’s prior methamphetamine sales because it was probative of his knowledge of drug distribution and intent to distribute the methamphetamine, both of which are permissible reasons for admitting evidence of prior drug transactions under Federal Rule of Evidence 404(b). *See id.* at 1018 (“We have consistently held that evidence of a defendant’s prior possession or sale of narcotics is relevant under Rule 404(b) to issues of intent, knowledge, motive, opportunity, and absence of mistake or accident in prosecutions for possession of, importation of, and intent to distribute narcotics.”) (quoting *United States v. Mehrmanesh*, 689 F.2d 822, 832 (9th Cir. 1982)). Not only were the electronic messages relevant to a “material point” and element of the charged offense—Stanley’s intent to distribute methamphetamine—but the drug transactions described in the messages were “similar to the offense charged,” and “not too remote in time.” *Id.* (citation omitted).

We also reject Stanley’s assertion that the district court inadequately applied Federal Rule of Evidence 403 before admitting the electronic messages, “as it

appears from the record as a whole that the trial judge adequately weighed the probative value and prejudicial effect of proffered evidence before its admission.” *United States v. Verduzco*, 373 F.3d 1022, 1029 n.2 (9th Cir. 2004) (quoting *United States v. Sangrey*, 586 F.2d 1312, 1315 (1978)). When ruling on the motion in limine regarding the 404(b) evidence, the district court stated that it would give a limiting instruction tracking the language of Rule 404(b) to explain the limited purposes for which the jury could consider the evidence, and then gave such instructions to the jury both when the messages were introduced and before closing arguments. We have consistently rejected arguments that Rule 403 precludes admission of bad acts evidence “where, as here, the evidence was probative of intent and the district court properly instructed the jury as to the limited purpose for which the evidence was being admitted.” *United States v. Hinton*, 31 F.3d 817, 823 (9th Cir. 1994). And even if the district court erred in admitting the evidence of Stanley’s other drug transactions, which we do not conclude here, any error was harmless given the overwhelming evidence of Stanley’s guilt, including his admissions during a phone call from jail just hours after the arrest referring to “my backpack” and “the stuff” within it.

**2.** The district court did not abuse its discretion by declining to give the adverse-inference instruction that Stanley requested based on the officers’ alleged failure to preserve evidence from the backpack and bedroom. *United States v.*

*Sivilla*, 714 F.3d 1168, 1172 (9th Cir. 2013). This case does not involve “evidence [that] was lost or destroyed while in [the government’s] custody,” *id.* at 1173 (citation omitted), but, rather, evidence from the backpack and Stanley’s room that he characterizes as “lost or destroyed” because police failed to seize it. But police do not have an “undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution.” *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).

In any event, there is no indication “that the evidence was destroyed in bad faith” or that Stanley “was prejudiced by its destruction.” *United States v. Romo-Chavez*, 681 F.3d 955, 961 (9th Cir. 2012) (citations omitted). Police seized only those items that they thought had evidentiary value, and collected video evidence with their body cameras of everything they observed in the backpack and in the room. Moreover, “the probable effect on the jury from the absence of the [evidence] was not significantly prejudicial because [Stanley]’s counsel was permitted, and did, argue before the jury that [the government] failed to preserve the [evidence].” *United States v. Robertson*, 895 F.3d 1206, 1214 (9th Cir. 2018).

3. The district court did not commit reversible error in instructing the jury that it need not find that Stanley knew the type or quantity of drug he possessed. To obtain a particular sentence under 21 U.S.C. § 841(b)(1)(A) for a violation of 21 U.S.C. § 841(a), “the government must prove beyond a reasonable

doubt the specific type and the quantity of substance involved in the offense, *but not the defendant's knowledge of (or intent) with respect to that type and quantity.*" *United States v. Collazo*, 984 F.3d 1308, 1329 (9th Cir. 2021) (en banc) (emphasis added). *Collazo* forecloses Stanley's argument that the jury instructions improperly led to the imposition of an enhanced sentence under 21 U.S.C. § 841(b)(1)(A).

4. The district court adequately addressed Stanley's objection that the Presentence Report ("PSR") failed to make adequate findings regarding whether violence was used in connection with the offense for purposes of a sentencing enhancement under U.S.S.G. § 2D1.1(b)(2) and his ineligibility for safety-valve relief under U.S.S.G. § 5C1.2 pursuant to 18 U.S.C. § 3553(f). Regardless of whether Stanley's objection to the PSR constituted more than a "conclusory denial[] of the [PSR's] ultimate finding," to which Federal Rule of Criminal Procedure 32 does not apply, *United States v. Carter*, 219 F.3d 863, 867 (9th Cir. 2000); *see United States v. Petri*, 731 F.3d 833, 841 (9th Cir. 2013), the district court met its obligation under Rule 32 to "rule on the dispute," Fed. R. Crim. P. 32(i)(3)(B). At sentencing, the district court gave Stanley and the government the opportunity to be heard concerning Stanley's use of violence in connection with the offense before concluding that "the government's evidence overwhelms here; that violence was, indeed, involved." As a result, the district court applied the

enhancement under U.S.S.G. § 2D1.1(b)(2) and found “that safety valve . . . would not apply.”

5. For the reasons above, reversal is also not warranted for cumulative error. *Cf. United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996).

**AFFIRMED.**

 KeyCite Yellow Flag - Negative Treatment  
Unconstitutional or PreemptedPrior Version Held Unconstitutional by [U.S. v. Grant](#), C.D.Cal., Nov. 30, 2007

 KeyCite Yellow Flag - Negative TreatmentProposed Legislation

**United States Code Annotated**

**Title 21. Food and Drugs (Refs & Annos)**

**Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)**

**Subchapter I. Control and Enforcement**

**Part D. Offenses and Penalties**

**21 U.S.C.A. § 841**

**§ 841. Prohibited acts A**

**Effective: December 21, 2018**

**Currentness**

**(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 serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 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 violation of this subparagraph or of [section 849](#), 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years 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 serious drug felony or serious violent felony 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 Hillary 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 sentence 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), 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) 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 health<sup>1</sup> 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 this 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<sup>2</sup> 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).

#### **CREDIT(S)**

([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, 3207-192; [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; [Pub.L. 115-391, Title IV, § 401\(a\)\(2\)](#), Dec. 21, 2018, 132 Stat. 5220.)

#### [Notes of Decisions \(8244\)](#)

#### Footnotes

[1](#) So in original. Probably should be “health”.

[2](#) So in original. Probably should be “section”.

21 U.S.C.A. § 841, 21 USCA § 841

Current through P.L. 117-57. Some statute sections may be more current, see credits for details.