NO. _____

In The
Supreme Court of the United States

KENNETH KENNEDY SHANNON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: September 4, 2018

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QUESTION(S) PRESENTED

1. Did the trial court err in denying the Petitioner's Motion for Verdict of Acquittal and for New Trial, because the evidence taken in the light most favorable to the Government does not support a verdict as to Count 1 for a quantity of heroin in excess of 1 kilogram?

2. Did the trial court err in denying the Petitioner's motion to suppress evidence seized as a result of the Title III wiretap?

3. Did the trial court err in denying the Petitioner's motion to suppress evidence seized at 210 Compton Court?

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JURISDICTION

The date on which the United States Court of Appeals decided the case was June 6, 2018. No petition for rehearing was timely filed by counsel for the Petitioner. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions:

- **U.S. Const. amend. IV**
- **U.S. Const. amend. VI**

Statutory Provisions:

- **18 U.S.C. § 2516**
- **18 U.S.C. § 2518**
- **18 U.S.C. § 2518(1)(b)(iv)**
- **18 U.S.C. § 2518(3)(a)**
- **18 U.S.C. § 3123**
- **18 U.S.C. § 3123(b)(1)(B)**
- **21 U.S.C. § 841, *et seq*.**
- **21 U.S.C. § 841(a)(1)**
- **21 U.S.C. § 841(b)(1)(A)**
- **21 U.S.C. § 841(b)(1)(B)**
- **21 U.S.C. § 843(b)**
- **21 U.S.C. § 843(d)(1)**
- **21 U.S.C. § 851**
- **28 U.S.C. § 1291**

STATEMENT OF THE CASE

The above captioned matter involves the appeal of the Petitioner's criminal conviction and sentence of incarceration as a result thereof in the United States District Court for the District of South Carolina. The Petitioner was convicted of seven (7) counts then pending, following a three (3)-day jury trial held on July 27-29, 2016, in the following particulars: conspiracy to distribute narcotics, possession with the intent to distribute heroin (2 counts), and four (4) counts of use of a communications facility to distribute controlled substances, all violations of Title 21, U.S. Code 841, et seq. The Petitioner was sentenced to Life Imprisonment on two (2) counts, but also sentenced separately to lesser terms of commitment than life, all to run concurrently. The litigation in this matter commenced on August 12, 2014, with the filing of the Indictments against Mr. Shannon, and was concluded on or about July 28, 2017 with his sentencing. Final Judgment was entered in this case August 1, 2017. The Petitioner filed a notice of appeal on August 2, 2017. On June 6, 2018, the Fourth Circuit Federal Court of Appeals affirmed the Petitioner's convictions in an unpublished opinion.

STATEMENT OF THE FACTS

In 2013, law enforcement in the Charleston, South Carolina area began an investigation into alleged heroin distribution. Edward Maurice Singleton (a/k/a "Apple") was identified by law enforcement as the primary target of the investigation. (Jt. Appendix Volume I, p. 400, lines 9-13.) On September 10, 2014, the Petitioner

was indicted as a result of the investigation into the activities of Singleton, and was charged with seven (7) counts, in the following particulars:

> Count 1 – Conspiracy to possess with intent to distribute heroin and to distribute heroin in excess of 1 kilogram;
>
> Count 2 – Possession with intent to distribute heroin and distribution of heroin on March 26, 2010;
>
> Count 20 – Possession with intent to distribute heroin in excess of 100 grams on February 28, 2014; and
>
> Counts 32, 39, 40 and 47: Use of a communication facility to facilitate a felony under the Controlled Substance Act on November 11, 2013, February 11, 2014, February 13, 2014, and March 2, 2014.

(Jt. Appendix Volume I, pp. 29-39.)

This matter came before the trial court for a jury trial on July 27 – 29, 2016. Prior to the trial of this matter, the Petitioner filed motions to exclude any evidence obtained from the search warrant executed at 210 Compton Court, as well as to exclude the Title III wiretap and evidence obtained therefrom. (Jt. Appendix Volume I, pp. 40-86.) The trial judge denied both motions to suppress. (Jt. Appendix Volume I, pp. 234-243.) Following a jury trial, the jury returned verdicts of guilty on all counts then pending pursuant to the Indictment against the Petitioner. (Jt. Appendix Volume III, pp. 1051-1055.) Regarding Count 1 of the Indictment, the jury found the Petitioner responsible for an excess of 1 kilogram of heroin. (Jt. Appendix, Volume

III, pp. 1051-1055.) Regarding Count 20, the jury found the Petitioner responsible for over 100 grams of heroin. (Jt. Appendix, Volume III, pp. 1051-1055.)

On August 12, 2016, the Petitioner filed a timely Motion for Acquittal and New Trial, raising several issues including whether evidence taken in the light most favorable to the Government supported a verdict as to Count 1 for a quantity of heroin in excess of 1 kilogram; whether the trial court erred in failing to timely grant an en camera hearing concerning the Petitioner's request for discuss the issue of effective assistance of counsel, and for failure to grant a mistrial when the Petitioner raised the matter before the Court; and whether the trial court erred in failing to exclude evidence from the Title III wiretap and 210 Compton Court. (Jt. Appendix, Volume III, pp. 892-916.) The court denied the Petitioner's Motion for Verdict of Acquittal and for New Trial. The Defendant was sentenced on July 28, 2017, in the following particulars: Count 1 – Life Imprisonment; one-hundred-eighty-eight (188) months on Counts 2 and 20; and ninety-six (96) months on Counts 32, 39, 40 & 47, all sentences to run concurrently. (Jt. Appendix, Volume III, pp. 971-1049; pp. 1051-1055) The Petitioner was also ordered to complete supervised release for a total of ten (10) years on all counts, which counts were to run concurrently. (Jt. Appendix, Volume III, pp. 1048-1049.) The Final Judgment was entered in this case August 1, 2017. (Jt. Appendix, Volume III, pp. 1051-1055.) The Petitioner filed a notice of appeal on August 2, 2017. (Jt. Appendix, Volume III, p. 1056.) On June 6, 2018, the Fourth Circuit Federal Court of Appeals affirmed the convictions of the Petitioner in an unpublished opinion.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully submits that this Honorable Court should grant his Petition and review the opinion of the Fourth Circuit Federal Court of Appeals, due to the fact that the Petitioner was sentenced to life imprisonment upon his conviction at trial. A life sentence is second only to the death penalty in gravity of punishment in the United States. The Petitioner has raised in his brief below compelling issues regarding the sufficiency of the evidence presented at trial by the Government to establish that the Petitioner conspired to possess with the intent to distribute heroin and to distribute heroin in excess of 1 kilogram. In addition, the Petitioner has raised compelling issues regarding illegal searches and seizures of evidence presented against the Petitioner at trial.

Sufficiency of Evidence to Establish 1 Kilogram of Heroin

The trial court erred in denying the Petitioner's Motion for Verdict of Acquittal and for New Trial, because the evidence taken in the light most favorable to the Government does not support a verdict as to Count 1 for a quantity of heroin in excess of 1 kilogram. In reviewing whether the evidence was sufficient to convict a Defendant, "The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *United States v. Murphy*, 35 F.3d 143 (4th Cir. 1994), *cert denied*, 115 S. Ct. 954, 130 L. Ed. 2d 897 (1995).

The evidence presented in this case established that Singleton was receiving heroin from the Petitioner beginning on or about November or December, 2012. (Jt. Appendix, Volume II, p. 539, lines 17-18.) The last time that Singleton received heroin from the Petitioner was on or about March, 2014 – thus a period of time lasting approximately fifteen (15) months. (Jt. Appendix, Volume II, p. 605, lines 7-10.) Both Singleton and Diketta Williams testified at the trial of this matter that there was a "drought" in the Petitioner's heroin supply from July, 2013 to December, 2013, and then again from January, 2014 to March, 2014. (Jt. Appendix, Volume II, p. 606, lines 7-25; p. 635, lines 23-25; p. 636, limes 1-25.) In total, the testimony accounted for a period of approximately seven (7) months wherein the Petitioner was supplying heroin to Singleton and through Williams. If Singleton's testimony is to be believed, he was distributing approximately fifty (50) bundles of heroin a month from Shannon from November or December 2012, to March 2013, however he testified that he couldn't tell "for sure" the weights of the packages. (Jt. Appendix Volume II, p. 580, lines 7-11; lines 18-21.) Substantially all of Singleton's testimony described estimates of heroin, without exact records an amounts attributable to the Petitioner. The estimate pursuant to Singleton's testimony would total 250 bundles, or just 75 grams of heroin. Further, if the testimony of Singleton is to be believed that the Petitioner was responsible for up to 300 bundles a month from the end of March 2013 until the "drought" as described above, that total would only be approximately an additional 270 grams. (Jt. Appendix, Volume II, p. 586, lines 7-20.) Taking the further evidence in the light most favorable to the government if Singleton were to quickly build a

customer base back in February to March, 2014, his maximum per month pursuant to his testimony would only add another 90 grams to the total that he received from Shannon.

No matter how generously the trial court indulged the available reasonable inferences in favor of the Government, to reach the sum of one kilogram based on the record and testimony of this trial, would be a mathematical impossibility, and would require reasoning so attenuated as to provide insufficient support for the jury verdict. *See United States v. Hickman*, 626 F.3d 756, 764 (4th Cir. 2010). Singleton's testimony only established a weight of 425 grams of heroin. Heroin was also found during the search of 210 Compton (which search was improper, see Argument 4, below). The total of the heroin seized at 210 Compton – 129.8 grams and 184.6 grams, respectively – when added to the amounts pursuant to the testimony of Singleton still falls short of a total of 1 kilogram of heroin attributable at trial to the Petitioner. (Jt. Appendix, Volume II, p. 651, lines 7-8; p. 680, lines 23-25.) From this testimony, and the other evidence in the record, no reasonable trier of fact could accept as adequate and sufficient to support a conclusion that the Petitioner was responsible for 1 kilogram of heroin beyond a reasonable doubt. *See United States v. Young*, 609 F.3d 348, 355 (4th Cir. 2010). Therefore, the trial court erred in denying the Petitioner's motion for a verdict of acquittal as to the charge of conspiracy to possess with intent to distribute an amount of heroin in excess of one kilogram.

The Government presented testimony from Agency Grill regarding a single phone call intercepted from the Petitioner, and attempted to use this testimony to

extrapolate a fifteen-month period of heroin quantities. (Jt. Appendix, Volume II, p. 730, lines 1-25; p. 731, lines 1-25; p. 732, lines 1-4.) Federal law is clear that it is impermissible to enhance drug amounts without particularized evidence of narcotics transactions. In *Hickman*, the Fourth Circuit explained that "Where drug-quantity extrapolations have been upheld, the Government managed to demonstrate an adequate basis in fact and that the drug quantities were determined in a manner consistent with the accepted standards of reasonable reliability." Courts have further cautioned against using small sample sizes. *See United States v. Rivera-Maldonado*, 194 F.3d 224, 232 (1st Cir. 1999) (warning that "the smaller the sampling, the less reliable the resulting probability estimate."); *United States v. Howard*, 80 F.3d 1194 (7th Cir. 1996) ("Absent a reliable evidentiary basis supporting the …… assumption as to the amounts [buyers] were able to purchase from the [defendant].....we are unwilling to rest on speculation [from the details of a known purchase].)

In the case at bar, the Government's assertion that the average quantity of heroin Singleton received from the Petitioner was 400 bundles per month is not supported by the testimony and evidence presented in this case. In fact, it is specifically contradicted by the testimony of Singleton and Williams. The extrapolation presented by Agent Grill is inadequate because it is based on a single transaction. *See Rivera-Maldonado.* The trial court erred in denying the motion for acquittal and new trial, and this Honorable Court should reverse its ruling.

Additionally, because the Petitioner was sentenced pursuant to a Pre-sentence investigation report finding an excessive amount of drugs contrary to what is

supported in the record of this case, the Petitioner's sentence of Life imprisonment should be reversed as the information in the pre-sentence investigation is not therefore valid against the Petitioner.

Illegal Search and Seizure Issues

The trial court erred in denying the Petitioner's motion to suppress evidence seized as a result of a Title III wiretap. On October 28, 2013, the Government secured a Title III wiretap for the phone of Edward Maurice Singleton (a/k/a "Apple"). (Jt. Appendix, Volume I, p. 132, lines 1-14; p. 375, lines 6-12.) The order expired on November 27, 2013. (Jt. Appendix, Volume I, p. 375, lines 11-15.) The Petitioner was not named as a target of the wiretap, however phone calls were intercepted during this period of time between Singleton and the Petitioner. (Jt. Appendix Volume I, p. 377, lines 1-11.) Upon information and belief, the Government first identified the Petitioner as an alleged source of heroin supply who sent a quantity of heroin back because the supply "wasn't right." Despite the fact that the Petitioner was not named as a target of the wiretap, the Petitioner's name appears on the Government's line sheet summary of the telephone call as well as the connecting number for Singleton during the period of the wiretap surveillance, as described above. (Jt. Appendix, Volume I, p. 96, lines 8-14.) After the expiration of the October, 2013 order authorizing the wiretap, the Government sought no further electronic surveillance of Singleton nor any of his associates until a second applicable for a Title III wiretap on February 10, 2014. (Jt. Appendix, Volume I, p. 413, lines 18-25; p. 414, lines 1-4.) Nevertheless, the Petitioner was not listed as a target of the wiretap in the

subsequent application however phone calls between Singleton and the Petitioner were intercepted pursuant to the second Title III wiretap. (Jt. Appendix, Volume I, p. 113, lines 8-20.)

To obtain a wiretap under Title III, the government must specify the "identity of the person, if known, committing the offense and whose communications are to be intercepted." 18 U.S.C. § 2518(1)(b)(iv). A wiretap application must name an individual if the Government has probable cause to believe that the individual is engaged in the criminal activity under investigation and expects to intercept the individual's conversations over the target telephone. *U.S. v. Donovan*, 429 U.S. 413, 428, 97 S. Ct. 658, 50 L. Ed. 652 (1977).

The Judge to whom the application is submitted may enter an order authorizing a wiretap if the application shows that "there is probable cause for belief that an individual is committing, has committed, or is about to commit" an offense enumerated in § 2516. 18 U.S.C. § 2518(3)(a). In *Donovan*, the Supreme Court held that § 2518(1)(b)(iv) does require the investigative agency to name in its application every probable converser who it has probable cause to believe is engaged in the criminal activity under investigation. *U.S. v. Martin*, 599 F.2d 880, 884 (9th Cir. 1979). *See also U.S. v. Gaines*, 639 F.3d 423, 430-33 (8th Cir. 2011).

The Government clearly should have included the Petitioner in the list of targets of the investigation, pursuant to the Title III wiretap. The Government had enough information prior to February 10, 2014, that it could obtain an original and then an extension of an order for the wiretap under 18 U.S.C. § 3123, which like 18

U.S.C. § 2518, requires the "identity, if known, of the person who is the subject of the criminal investigation." 18 U.S.C. § 3123(b)(1)(B). As a result, all evidence of calls involving the Petitioner should be excluded, pursuant to *Donovan.* Further, the trial court should have excluded any illegal fruits of the phone calls, including but not limited to heroin located at Compton Court and on Montague Avenue. *Wong Sun v. United States*, 371 U.S. 471, 484-86, 488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

Additionally, the trial court erred in denying the Petitioner's motion to suppress evidence seized at 210 Compton Court, Vance, South Carolina.

At approximately 5:40 p.m., on February 28, 2014, Federal and State agents executed a search warrant at 210 Compton Court in Vance, South Carolina, where they seized several items including what the Government asserts to be a large quantity of heroin. (Jt. Appendix, Volume I, pp. 51-58.) Upon information and belief, this search warrant was drafted on a standard South Carolina search form SCCA 513, as approved by the South Carolina Attorney General's Office. (Jt. Appendix, Volume I, pp. 53-56.) As is consistent with established practices, attached the search warrant is an affidavit setting out the probable cause for the warrant. (Jt. Appendix, Volume I, pp. 53-56.) This affidavit was signed by South Carolina State Trooper C. Michael Baird, who upon information and belief was assigned to the DEA Task Force. (Jt. Appendix, Volume I, p. 56.) The affidavit is silent to the time at which the affidavit was prepared. Likewise, the search warrant itself is as to the time that it was signed by South Carolina Circuit Court Judge Dianne Goodstein.

The assertion of probable cause in the affidavit suggests that this matter arose out of a traffic stop which began at approximately 1:44 p.m. As such, the entire time in question was no more than four (4) hours. Shannon asserts that this short time contributed to several errors which render the search warrant invalid for lack of probable cause to believe that illegal drugs were stored at 210 Compton Lane, Vance, South Carolina. To the contrary, the facts set out in the affidavit by its very terms seek authority to search a separate property 5 miles away on Camden Street also in Vance, South Carolina. (Jt. Appendix, Volume I, p. 57.) This discrepancy is clear on the face of the warrant, and needs no specialized knowledge to identify.

Second, the affidavit contains inaccurate information which would have suggested a nexus between Kenneth Shannon and any illegal drug activity. In particular, the affidavit alleges that during a traffic pursuit, officers saw Shannon throw a "softball size clear plastic baggie out of the driver's side window." However, no officers on the scene have actually claimed to have seen Shannon throw any object out the window. (Jt. Appendix, Volume I, pp. 59-71.) Instead, North Charleston Road Patrol Officers have asserted that an unnamed "concerned citizen" reported having seen an object being tossed from the window. (Jt. Appendix, Volume I, pp. 59-71.) Furthermore, the substance found by the officers was contained in a purple glove rather than a softball sized clear baggie. (Jt. Appendix, Volume I, pp. 59-80.) Shannon was arrested at 3:30pm, on February 28, 2014. (Jt. Appendix, Volume I, pp. 81-82.) The warrant, which references the arrest, must have been drafted shortly thereafter. (Jt. Appendix, Volume I, pp. 51-58.)

The affidavit also gave a long description of an interview with Stevenson Snider, the initial driver of the vehicle which was the subject of the traffic stop. (Jt. Appendix, Volume I, pp. 51-58.) Unusual for a DEA led investigation, there is no video, transcript, report or DEA-6 of this interview, or at least any of which Counsel for Shannon is aware. According to the affidavit, Snider drove 1 to Shannon to the latter's residence on February 27, and picked up from the same residence on the morning of February 28. According to Snider, that residence was on Camden Road, Vance, South Carolina. Snider does not describe any illegal activity at 210 Compton Court, and does not identify 210 Compton Court as any location to which either he or Shannon had ever been.

The Fourth Amendment provides that search warrants will not issue unless they particularly describe the place to be searched. Evidence seized in violation of the particularity requirement is subject to suppression pursuant to the judicially created exclusionary rule. See *Weeks v. USA*, 232 U.S. 383, 398, 34 S. Ct. 341, 346, 58 L. Ed. 652 (1914); *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684 1691, 6 L. Ed. 2d 1081 (1961). The particularity requirement prohibits general, exploratory searches. *Andresen v. Maryland*, 427 U.S. 463, 480, 96 S. Ct. 2737, 2748, 49 L. Ed. 2d 627 (1976). A warrant meets the particularity requirement "if the description is such that the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended." *Steele v. USA*, 267 U.S. 498, 503, 45 S. Ct. 414, 416, 69 L. Ed. 757 (1925). In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime,

but whether it is reasonable to believe that the items to be seized will be found in the place to be searched. *USA v. Lalor*, 996 F.2d 1578, 1582 (4th Cir. 1993). In *USA v. Anderson*, the Fourth Circuit adopted the rule that "the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inference of where one would likely keep such evidence." *USA v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988), *cert. denied*, 488 U.S. 1031 (1989). The Anderson Court held that probable cause can be inferred from the circumstances, and a warrant is not invalid for failure to produce direct evidence that the items to be seized will be found at a particular location. See *Id*. However in this case, there is no evidence in the affidavit, circumstantial or direct, linking any drugs or other illegal activity to 210 Compton Court. In the case at bar, this warrant is "so facially deficient" as to render it invalid. First, the defect itself is clear from a simple reading of the warrant. The affidavit in support of the warrant lists one address; the description of the place to be searched lists another. The only things in common are the city and the state. There is no way that this is a simple typographical error. At the very least, the speed at which this search warrant was obtained and served, the inconsistencies in the address to be served, and the and the conflicting information in the affidavit and the incident reports, should satisfy Petitioner's preliminary showing that false statements were at a minimum recklessly included in an affidavit supporting a search warrant and that, without those false statements, the affidavit cannot support a probable cause finding. *Id*. Therefore, because the trial court erred in denying the

Petitioner's motion to suppress, this ruling should be reversed and this matter remanded for a new trial.

CONCLUSION

Wherefore, the Petitioner, Kenneth Shannon, respectfully prays that this Honorable Court will grant his Petition for Writ of Certiorari.

Respectfully Submitted,

/s/ Scarlet B. Moore
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September 4, 2018.

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4500

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH KENNEDY SHANNON, a/k/a James Smith, a/k/a Kevin Sanders,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (2:13-cr-00977-DCN-8)

Submitted: May 29, 2018 Decided: June 6, 2018

Before MOTZ, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Scarlet B. Moore, Greenville, South Carolina, for Appellant. Beth Drake, United States Attorney, Sean Kittrell, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted Kenneth Kennedy Shannon of conspiracy to possess with intent to distribute and distribution of one kilogram or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (2012), possession with intent to distribute and distribution of heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), possession with intent to distribute 100 grams or more of heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), and four counts of using a communication facility, i.e., a telephone, to facilitate the commission of a felony under the Controlled Substances Act, in violation of 21 U.S.C. § 843(b), (d)(1) (2012). The district court sentenced Shannon to a total term of life imprisonment. Shannon raises several issues on appeal. We affirm.

Shannon first argues that the district court erred in denying his Fed. R. Crim. P. 29 motion for verdict of acquittal as to the conspiracy charge because insufficient trial evidence supported the finding that he distributed one kilogram or more of heroin. We review a district court's denial of a motion for verdict of acquittal de novo. *United States v. Said*, 798 F.3d 182, 193 (4th Cir. 2015). Where, as here, the motion challenges the sufficiency of evidence, we "view the evidence in the light most favorable to the government and sustain the jury's verdict if any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." *Id.* at 193-94 (internal quotation marks omitted). "Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." *Id.* at 194 (alteration and internal quotation marks omitted). After a review of the record, we conclude that the Government

presented evidence sufficient to allow a rational trier of fact to find that Shannon distributed more than one kilogram of heroin during the course of the conspiracy.

Shannon next argues that the district court erred in failing to immediately hold an in camera hearing on Shannon's claim of ineffective assistance of counsel. This claim is without merit. "While the Sixth Amendment includes the right to counsel of one's own choosing, this right is not absolute and must not obstruct orderly judicial procedure and deprive courts of the exercise of their inherent power to control the administration of justice." *United States v. Hackley*, 662 F.3d 671, 684-85 (4th Cir. 2011) (internal quotation marks omitted). The court's decision to hold an in camera hearing over the upcoming lunch break rather than to disrupt the ongoing trial proceedings was within its inherent authority.

Shannon also contends that the district court erred in failing to grant a mistrial after Shannon's outburst in front of the jury. "We review a district court's denial of a motion for a mistrial and for a new trial for abuse of discretion." *See United States v. Saint Louis*, 889 F.3d 145, 155 (4th Cir. 2018). "An abuse of discretion exists if the defendant can show prejudice; no prejudice exists, however, if the jury could make individual guilt determinations by following the court's cautionary instructions. When cautionary instructions are given, we presume that juries follow such instructions." *Id.* (brackets, citation, and internal quotation marks omitted). In this case, the district court gave the jury curative instructions as soon as was feasible after Shannon's outburst and again during the final jury instructions. Accordingly, Shannon has not shown prejudice resulting from the court's denial of his motion for a mistrial.

Next, Shannon asserts that the district court erred in denying his pretrial motion to suppress communications and other evidence procured as a result of two Title III wiretaps placed on the phone of one of Shannon's coconspirators. Specifically, Shannon argues that the evidence should be excluded because the wiretap applications did not list him as a target of the investigation.

To obtain a Title III wiretap, government agents must specify, among other things, "the identity of the person, if known, committing the offense and whose communications are to be intercepted." 18 U.S.C. § 2518(1)(b)(iv) (2012). "[T]he Government is not required to identify an individual in the application unless it has probable cause to believe (i) that the individual is engaged in the criminal activity under investigation and (ii) that the individual's conversations will be intercepted over the target telephone." *United States v. Donovan*, 429 U.S. 413, 423 (1977); *see also* 18 U.S.C. § 2518(3)(a)-(b) (2012). The probable cause required for a wiretap order matches that required for a search warrant. *United States v. Talbert*, 706 F.2d 464, 467 (4th Cir. 1983). We conclude that, when the Government applied for the wiretaps, it did not have probable cause to believe that communications with Shannon would be intercepted and thus was not required to list Shannon as a target.

Finally, Shannon claims that the district court erred in denying his motion to suppress evidence seized following the execution of a search warrant because the warrant failed to establish a nexus between the residence searched and the illegal drug activity. Our review of the record convinces us that the district court correctly concluded that there was sufficient evidence to believe that the items to be seized would be found in the place

to be searched. We further agree with the district court that the errors in the affidavit were typographical and did not invalidate the warrant. *See United States v. Owens*, 848 F.2d 462, 463-64 (4th Cir. 1988); *Maryland v. Garrison*, 480 U.S. 79, 84-88 (1987).

We therefore affirm Shannon's convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: June 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4500
(2:13-cr-00977-DCN-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENNETH KENNEDY SHANNON, a/k/a James Smith, a/k/a Kevin Sanders

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

vs.

KENNETH KENNEDY SHANNON
a/k/a James Smith, a/k/a Kevin Sanders

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:13-cr-00977-DCN (8)

USM Number: 87416-071

Lucius Scott Harvin, CJA
Defendant's Attorney

THE DEFENDANT:

■ was found guilty on Count(s) 1, 2, 20, 32, 39, 40, and 47 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1), 841(b)(1)(A), 851	Please see second superseding indictment	2/28/14	1
21:841(a)(1), 841(b)(1)(C) , 851	Please see second superseding indictment	3/26/10	2
21:841(a)(1), 21:841(b)(1)(B), 851	Please see second superseding indictment	2/28/14	20
21:843(b), 21:843(d)(1) and 851	Please see second superseding indictment	11/11/13	32
21:843(b), 21:843(d)(1) and 851	Please see second superseding indictment	2/11/14	39
21:843(b), 21:843(d)(1) and 851	Please see second superseding indictment	2/13/14	40
21:843(b), 21:843(d)(1) and 851	Please see second superseding indictment	3/2/14	47

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material changes in economic circumstances.

July 28, 2017
Date of Imposition of Judgment

Signature of Judge

David C. Norton, U.S. District Judge
Name and Title of Judge

July 31, 2017
Date

DEFENDANT: KENNETH KENNEDY SHANNON
CASE NUMBER: 2:13-cr-00977-DCN-8

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of LIFE; said term consists of LIFE as to Count One; 188 months as to Counts Two and Twenty; and 96 months as to each of Counts Thirty-Two, Thirty-Nine, Forty, and Forty-Seven; all such terms to run concurrently. The defendant shall pay the mandatory $700.00 special assessment fee, due beginning immediately.

■ The court makes the following recommendations to the Bureau of Prisons: The defendant shall be designated to the facility closest to his home in Snellville, GA.

■ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____.
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: KENNETH KENNEDY SHANNON
CASE NUMBER: 2:13-cr-00977-DCN-8

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of ten (10) years; said term consists of 10 years as to Count One, 6 years as to Count Two, 8 years as to Count Twenty, and 3 years as to Counts Thirty-Two, Thirty-Nine, Forty, and Forty-Seven, all such terms to run concurrently. While on supervised release the defendant shall comply with the mandatory and standard conditions of release and the following special conditions: 1. He shall satisfactorily participate in and complete a Cognitive Behavioral Treatment Program as approved by the U.S. Probation Office. 2. He shall provide the U.S. Probation Officer access to any and all requested financial information, including but not limited to income tax returns. 3. He shall participate in a program of testing for substance abuse as approved by the U.S. Probation Officer. 4. He shall contribute to the costs of any treatment, drug testing and/or location monitoring not to exceed an amount determined reasonable by the U.S. Probation Office's sliding scale for services, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid
The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

■ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

■ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: KENNETH KENNEDY SHANNON
CASE NUMBER: 2:13-cr-00977-DCN-8

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

	Assessment	Fine	Restitution
TOTALS	**$ 700.00**	**$**	**$**

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case(AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea agreement **$**_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: KENNETH KENNEDY SHANNON
CASE NUMBER: 2:13-cr-00977-DCN-8

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ■ Lump sum payment of $700.00 special assessment fee due immediately.

☐ not later than _____, or

☐ in accordance with ☐ C, ☐ D, or ☐ E, or ☐ F below: or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____(weekly, monthly, quarterly) installments of $_____over a period of _____(e.g., months or years), to commence _____ *(30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____(weekly, monthly, quarterly) installments of $_____over a period of _____(e.g., months or years), to commence _____ *(30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. VI

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 defense.

18 U.S.C.
United States Code, 2011 Edition
Title 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 119 - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS
Sec. 2516 - Authorization for interception of wire, oral, or electronic communications
From the U.S. Government Publishing Office, www.gpo.gov

§2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General,[1] or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons) [2] chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in

aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus) [2] section 956 (conspiracy to harm persons or property overseas),,[3] section [4] a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline,) [5] section

46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(*l*) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(*o*) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents, section 1028A (relating to aggravated identity theft)) [6] of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or [7]

(q) any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h [2] 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); or

(s) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

(Added Pub. L. 90–351, title III, §802, June 19, 1968, 82 Stat. 216; amended Pub. L. 91–452, title VIII, §810, title IX, §902(a), title XI, §1103, Oct. 15, 1970, 84 Stat. 940, 947, 959; Pub. L. 91–644, title IV, §16, Jan. 2, 1971, 84 Stat. 1891; Pub. L. 95–598, title III, §314(h), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 97–285, §§2(e), 4(e), Oct. 6, 1982, 96 Stat. 1220, 1221; Pub. L. 98–292, §8, May 21, 1984, 98 Stat. 206; Pub. L. 98–473, title II, §1203(c), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99–508,

title I, §§101(c)(1)(A), 104, 105, Oct. 21, 1986, 100 Stat. 1851, 1855; Pub. L. 99–570, title I, §1365(c), Oct. 27, 1986, 100 Stat. 3207–35; Pub. L. 100–690, title VI, §6461, title VII, §§7036, 7053(d), 7525, Nov. 18, 1988, 102 Stat. 4374, 4399, 4402, 4502; Pub. L. 101–298, §3(b), May 22, 1990, 104 Stat. 203; Pub. L. 101–647, title XXV, §2531, title XXXV, §3568, Nov. 29, 1990, 104 Stat. 4879, 4928; Pub. L. 103–272, §5(e)(11), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title XXXIII, §§330011(c)(1), (q)(1), (r), 330021(1), Sept. 13, 1994, 108 Stat. 2144, 2145, 2150; Pub. L. 103–414, title II, §208, Oct. 25, 1994, 108 Stat. 4292; Pub. L. 103–429, §7(a)(4)(A), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 104–132, title IV, §434, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104–208, div. C, title II, §201, Sept. 30, 1996, 110 Stat. 3009–564; Pub. L. 104–287, §6(a)(2), Oct. 11, 1996, 110 Stat. 3398; Pub. L. 104–294, title I, §102, title VI, §601(d), Oct. 11, 1996, 110 Stat. 3491, 3499; Pub. L. 105–318, §6(b), Oct. 30, 1998, 112 Stat. 3011; Pub. L. 106–181, title V, §506(c)(2)(B), Apr. 5, 2000, 114 Stat. 139; Pub. L. 107–56, title II, §§201, 202, Oct. 26, 2001, 115 Stat. 278; Pub. L. 107–197, title III, §301(a), June 25, 2002, 116 Stat. 728; Pub. L. 107–273, div. B, title IV, §§4002(c)(1), 4005(a)(1), Nov. 2, 2002, 116 Stat. 1808, 1812; Pub. L. 108–21, title II, §201, Apr. 30, 2003, 117 Stat. 659; Pub. L. 108–458, title VI, §6907, Dec. 17, 2004, 118 Stat. 3774; Pub. L. 109–162, title XI, §1171(b), Jan. 5, 2006, 119 Stat. 3123; Pub. L. 109–177, title I, §§110(b)(3)(C), 113, title V, §506(a)(6), Mar. 9, 2006, 120 Stat. 208, 209, 248.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (1)(a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Arms Export Control Act, referred to in par. (1)(k), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 5861 of the Internal Revenue Code of 1986, referred to in par. (1)(*o*), is classified to section 5861 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in par. (3), are set out in the Appendix to this title.

AMENDMENTS

2006—Par. (1). Pub. L. 109–177, §506(a)(6), inserted "or National Security Division" after "the Criminal Division" in introductory provisions.

Par. (1)(a). Pub. L. 109–177, §113(a), inserted "chapter 10 (relating to biological weapons)" after "under the following chapters of this title:".

Par. (1)(c). Pub. L. 109–177, §§110(b)(3)(C), 113(b), struck out "1992 (relating to wrecking trains)," before "a felony violation of section 1028" and inserted "section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction)," after "the following sections of this title:", "section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities)," after "section 751 (relating to escape),", "section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials)," after "section 1014 (relating to loans and credit applications generally; renewals and discounts),", "section 1992 (relating to terrorist attacks against mass transportation)," after "section 1344 (relating to bank fraud),", "section 2340A (relating to torture)," after "section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),", and "section 956 (conspiracy to harm persons or property overseas)," after "section 175c (relating to variola virus)".

Par. (1)(g). Pub. L. 109–177, §113(c), inserted ", or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited)" before semicolon at end.

Par. (1)(j). Pub. L. 109–177, §113(d)(2), inserted ", the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft)" before "of title 49".

Pub. L. 109–177, §113(d)(1), which directed amendment of par. (1)(j) by inserting a comma after "section 60123(b) (relating to the destruction of a natural gas pipeline", was executed by making the insertion after "section 60123(b) (relating to destruction of a natural gas pipeline", to reflect the probable intent of Congress.

Pub. L. 109–177, §113(d)(1), struck out "or" before "section 46502 (relating to aircraft piracy)".

Par. (1)(p). Pub. L. 109–177, §113(e), inserted ", section 1028A (relating to aggravated identity theft)" after "other documents".

Par. (1)(q). Pub. L. 109–177, §113(f), inserted "2339" after "2332h" and substituted "2339C, or 2339D" for "or 2339C".

Pub. L. 109–162 struck out semicolon after "(relating to chemical weapons)" and substituted "section 2332" for "sections 2332".

Par. (1)(r), (s). Pub. L. 109–177, §113(g), added subpar. (r) and redesignated former subpar. (r) as (s).

2004—Par. (1)(a). Pub. L. 108–458, §6907(1), inserted "2122 and" after "sections".

Par. (1)(c). Pub. L. 108–458, §6907(2), inserted "section 175c (relating to variola virus)," after "section 175 (relating to biological weapons),".

Par. (1)(q). Pub. L. 108–458, §6907(3), inserted "2332g, 2332h," after "2332f,".

2003—Par. (1)(a). Pub. L. 108–21, §201(1), inserted "chapter 55 (relating to kidnapping)," after "chapter 37 (relating to espionage),".

Par. (1)(c). Pub. L. 108–21, §201(2), inserted "section 1591 (sex trafficking of children by force, fraud, or coercion)," after "section 1511 (obstruction of State or local law enforcement)," and "section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes)," after "sections 2251 and 2252 (sexual exploitation of children),".

2002—Par. (1)(n). Pub. L. 107–273, §4002(c)(1), repealed Pub. L. 104–294, §601(d)(2). See 1996 Amendment note below.

Par. (1)(q). Pub. L. 107–273, §4005(a)(1), realigned margins.

Pub. L. 107–197 inserted "2332f," after "2332d," and substituted "2339B, or 2339C" for "or 2339B".

2001—Par. (1)(c). Pub. L. 107–56, §202, substituted "section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse)," for "and section 1341 (relating to mail fraud),".

Par. (1)(p). Pub. L. 107–56, §201(1), redesignated subpar. (p), relating to conspiracy, as (r).

Par. (1)(q). Pub. L. 107–56, §201(2), added subpar. (q).

Par. (1)(r). Pub. L. 107–56, §201(1), redesignated subpar. (p), relating to conspiracy, as (r).

2000—Par. (1)(c). Pub. L. 106–181 inserted "section 38 (relating to aircraft parts fraud)," after "section 32 (relating to destruction of aircraft or aircraft facilities),".

1998—Par. (1)(a). Pub. L. 105–318 inserted "chapter 90 (relating to protection of trade secrets)," after "chapter 37 (relating to espionage),".

1996—Par. (1)(c). Pub. L. 104–294, §102, which directed amendment of par. 1(c) by inserting "chapter 90 (relating to protection of trade secrets)," after "chapter 37 (relating to espionage),", could not be executed because phrase "chapter 37 (relating to espionage)," did not appear.

Pub. L. 104–208, §201(1), substituted "section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents)" for "or section 1992 (relating to wrecking trains)" before semicolon at end.

Par. (1)(j). Pub. L. 104–287, §6(a)(2), amended directory language of Pub. L. 103–272, §5(e)(11) as amended by Pub. L. 103–429, §7(a)(4)(A). See 1994 Amendment note below.

Par. (1)(*l*). Pub. L. 104–208, §201(2), and Pub. L. 104–294, §601(d)(1), amended subpar. (*l*) identically, striking out "or" after semicolon at end.

Par. (1)(m). Pub. L. 104–208, §201(3), (4), added subpar. (m). Former subpar. (m) redesignated (n).

Par. (1)(n). Pub. L. 104–294, §601(d)(2), which could not be executed because of prior amendments by Pub. L. 104–132, §434(1) and Pub. L. 104–208, §201(3), was repealed by Pub. L. 107–273, §4002(c)(1). See

below.

Pub. L. 104–208, §201(3), redesignated subpar. (m) as (n). Former subpar. (n) redesignated (*o*).

Pub. L. 104–132, §434(1), struck out "and" at end.

Par. (1)(*o*). Pub. L. 104–208, §201(3), redesignated subpar. (n) as (*o*). Former subpar. (*o*) redesignated (p).

Pub. L. 104–132 added subpar. (*o*) and redesignated former subpar. (*o*) as (p).

Par. (1)(p). Pub. L. 104–208, §201(3), redesignated subpar. (*o*), relating to felony violation of section 1028, etc., as (p).

Pub. L. 104–132, §434(2), redesignated subpar. (*o*), relating to conspiracy, as (p).

1994—Par. (1). Pub. L. 103–414 in introductory provisions inserted "or acting Deputy Assistant Attorney General" after "Deputy Assistant Attorney General".

Par. (1)(c). Pub. L. 103–322, §330021(1), substituted "kidnapping" for "kidnaping" in two places.

Pub. L. 103–322, §330011(c)(1), amended directory language of Pub. L. 101–298, §3(b). See 1990 Amendment note below.

Par. (1)(j). Pub. L. 103–322, §330011(r), amended directory language of Pub. L. 101–647, §2531(3). See 1990 Amendment note below.

Pub. L. 103–322, §330011(q)(1), repealed Pub. L. 101–647, §3568. See 1990 Amendment note below.

Pub. L. 103–272, §5(e)(11), as amended by Pub. L. 103–429, §7(a)(4)(A); Pub. L. 104–287, §6(a)(2), substituted "section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;" for "section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy);".

1990—Par. (1)(c). Pub. L. 101–647, §2531(1), inserted "section 215 (relating to bribery of bank officials)," before "section 224", "section 1032 (relating to concealment of assets)," before section 1084, "section 1014 (relating to loans and credit applications generally; renewals and discounts)," before "sections 1503," and "section 1344 (relating to bank fraud)," before "sections 2251 and 2252" and struck out "the section in chapter 65 relating to destruction of an energy facility," after "retaliating against a Federal official),".

Pub. L. 101–298, §3(b), as amended by Pub. L. 103–322, §330011(c)(1), inserted "section 175 (relating to biological weapons)," after "section 33 (relating to destruction of motor vehicles or motor vehicle facilities),".

Par. (1)(j). Pub. L. 101–647, §3568, which directed amendment of subsec. (j) by substituting "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or section 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)" for "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code", and which was probably intended as an amendment to par. (1)(j), was repealed by Pub. L. 103–322, §330011(q)(1).

Pub. L. 101–647, §2531(3), as amended by Pub. L. 103–322, §330011(r), substituted "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy)" for "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code".

Par. (1)(m). Pub. L. 101–647, §2531(2)(A), struck out subpar. (m) relating to conspiracy which read as follows: "any conspiracy to commit any of the foregoing offenses."

Par. (1)(*o*). Pub. L. 101–647, §2531(2)(B)–(D), added subpar. (*o*).

1988—Par. (1). Pub. L. 100–690, §7036(a)(1), inserted "or" after "Associate Attorney General," in introductory provisions.

Par. (1)(a). Pub. L. 100–690, §7036(c)(1), which directed the amendment of subpar. (a) by substituting "(relating to riots)," for "(relating to riots);" was executed by substituting "(relating to riots)," for "(relating to riots)" as the probable intent of Congress.

Par. (1)(c). Pub. L. 100–690, §7053(d), which directed the amendment of section 2516(c) by substituting "1958" for "1952A" and "1959" for "1952B" was executed by making the substitutions in par. (1)(c) as the probable intent of Congress.

Pub. L. 100–690, §7036(b), struck out "section 2252 or 2253 (sexual exploitation of children)," after "wire, radio, or television)," and substituted "section 2321" for "the second section 2320".

Pub. L. 100–690, §7036(a)(2), which directed the amendment of par. (1) by striking the comma that follows a comma was executed to subpar. (c) by striking out the second comma after "to mail fraud)".

Par. (1)(i). Pub. L. 100–690, §7525, added subpar. (i) and redesignated former subpar. (i) as (j).

Par. (1)(j). Pub. L. 100–690, §7525, redesignated former subpar. (i) as (j). Former subpar. (j) redesignated (k).

Pub. L. 100–690, §7036(c)(2), which directed amendment of subpar. (j) by striking "or;" was executed by striking "or" after "Export Control Act);" to reflect the probable intent of Congress.

Par. (1)(k). Pub. L. 100–690, §7525, redesignated former subpar. (j) as (k). Former subpar. (k) redesignated (*l*).

Pub. L. 100–690, §7036(c)(3), struck out "or" at end.

Par. (1)(*l*). Pub. L. 100–690, §7525, redesignated former subpar. (k) as (*l*). Former subpar. (*l*) redesignated (m).

Par. (1)(m). Pub. L. 100–690, §7525, redesignated former subpar. (*l*) relating to conspiracy as (m).

Pub. L. 100–690, §6461, added subpar. (m) relating to sections 922 and 924.

Par. (1)(n). Pub. L. 100–690, §6461, added subpar. (n).

1986—Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in section catchline.

Par. (1). Pub. L. 99–508, §104, substituted "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division" for "or any Assistant Attorney General" in introductory provisions.

Par. (1)(a). Pub. L. 99–508, §105(a)(5), inserted "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel)," struck out "or" after "(relating to treason)," and inserted "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

Par. (1)(c). Pub. L. 99–570, which directed the amendment of subpar. (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling)," was executed by inserting this phrase after "section 1955 (prohibition of business enterprises of gambling)," as the probable intent of Congress.

Pub. L. 99–508, §105(a)(1), inserted "section 751 (relating to escape)," "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," and "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," substituted "2312, 2313, 2314," for "2314", inserted ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," substituted ", section 351" for "or section 351", and inserted ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)".

Par. (1)(h) to (*l*). Pub. L. 99–508, §105(a)(2)–(4), added subpars. (h) to (k) and redesignated former subpar. (h) as (*l*).

Par. (2). Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in two places.

Par. (3). Pub. L. 99–508, §105(b), added par. (3).

1984—Par. (1). Pub. L. 98–473, §1203(c)(4), which directed the amendment of the first par. of par. (1) by inserting "Deputy Attorney General, Associate Attorney General," after "Attorney General." was executed by making the insertion after the first reference to "Attorney General," to reflect the probable intent of Congress.

Par. (1)(c). Pub. L. 98–473, §1203(c)(2), inserted references to sections 1512 and 1513 after "1503".

Pub. L. 98–473, §1203(c)(1), inserted "section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Pub. L. 98–292 inserted "sections 2251 and 2252 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Par. (1)(g), (h). Pub. L. 98–473, §1203(c)(3), added par. (g) and redesignated former par. (g) as (h).

1982—Par. (1)(c). Pub. L. 97–285 substituted "(Presidential and Presidential staff assassination, kidnaping, and assault)" for "(Presidential assassinations, kidnapping, and assault)" after "section 1751" and substituted "(violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault)" for "(violations with respect to congressional assassination, kidnapping, and assault)" after "section 351".

1978—Par. (1)(e). Pub. L. 95–598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

1971—Par. (1)(c). Pub. L. 91–644 inserted reference to section 351 offense (violations with respect to congressional assassination, kidnaping, and assault).

1970—Par. (1)(c). Pub. L. 91–452 inserted reference to sections 844(d), (e), (f), (g), (h), or (i), 1511, 1955, and 1963 of this title.

Effective Date of 2002 Amendment

Pub. L. 107–273, div. B, title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of Title 49, Transportation.

Effective Date of 1996 Amendment

Section 6(a) of Pub. L. 104–287 provided that the amendment made by that section is effective July 5, 1994.

Effective Date of 1994 Amendments

Section 7(a) of Pub. L. 103–429 provided that the amendment made by section 7(a)(4)(A) of Pub. L. 103–429 is effective July 5, 1994.

Section 330011(c)(1) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3(b) of Pub. L. 101–298 took effect.

Section 330011(q)(1) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3568 of Pub. L. 101–647 took effect.

Section 330011(r) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 2531(3) of Pub. L. 101–647 took effect.

Effective Date of 1986 Amendment

Amendment by sections 101(c)(1)(A) and 105 of Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions pursuant to section 2516(2) of this title, and amendment by section 104 of Pub. L. 99–508 effective Oct. 21, 1986, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Savings Provision

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§151 et seq.), chapter 96 (§1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

[1] *See 1984 Amendment note below.*

[2] *So in original. Probably should be followed by a comma.*

[3] *So in original.*

[4] *So in original. The word "section" probably should not appear.*

[5] *So in original. The comma probably should follow the closing parenthesis.*

[6] *So in original. The second closing parenthesis probably should follow "other documents".*

[7] *So in original. The word "or" probably should not appear.*

18 U.S.C.
United States Code, 2010 Edition
Title 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 119 - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS
Sec. 2518 - Procedure for interception of wire, oral, or electronic communications
From the U.S. Government Publishing Office, www.gpo.gov

§2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant

that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in

any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall

be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other

official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

(a) in the case of an application with respect to the interception of an oral communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

(iii) the judge finds that such showing has been adequately made; and

(iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11)(a) shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(Added Pub. L. 90–351, title III, §802, June 19, 1968, 82 Stat. 218; amended Pub. L. 91–358, title II, §211(b), July 29, 1970, 84 Stat. 654; Pub. L. 95–511, title II, §201(d)–(g), Oct. 25, 1978, 92 Stat. 1797, 1798; Pub. L. 98–473, title II, §1203(a), (b), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99–508, title I, §§101(c)(1)(A), (8), (e), 106(a)–(d)(3), Oct. 21, 1986, 100 Stat. 1851–1853, 1856, 1857; Pub. L. 103–414, title II, §201(b)(1), Oct. 25, 1994, 108 Stat. 4290; Pub. L. 105–272, title VI, §604, Oct. 20, 1998, 112 Stat. 2413.)

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in par. (4), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§1001 et seq.) of chapter 9 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

AMENDMENTS

1998—Par. (11)(b)(ii). Pub. L. 105–272, §604(a)(1), substituted "that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;" for "of a purpose, on the part of that person, to thwart interception by changing facilities; and".

Par. (11)(b)(iii). Pub. L. 105–272, §604(a)(2), substituted "such showing has been adequately made; and" for "such purpose has been adequately shown."

Par. (11)(b)(iv). Pub. L. 105–272, §604(a)(3), added cl. (iv).

Par. (12). Pub. L. 105–272, §604(b), substituted "by reason of subsection (11)(a)" for "by reason of subsection (11)", struck out "the facilities from which, or" after "shall not begin until", and struck out comma after "the place where".

1994—Par. (4). Pub. L. 103–414 inserted at end of concluding provisions "Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act."

1986—Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in section catchline.

Par. (1). Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in introductory provisions.

Par. (1)(b)(ii). Pub. L. 99–508, §106(d)(1), inserted "except as provided in subsection (11),".

Par. (1)(e). Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral".

Par. (3). Pub. L. 99–508, §§101(c)(1)(A), 106(a), in introductory provisions, substituted "wire, oral, or electronic" for "wire or oral" and inserted "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)".

Par. (3)(d). Pub. L. 99–508, §§101(c)(1)(A), 106(d)(2), inserted "except as provided in subsection (11)," and substituted "wire, oral, or electronic" for "wire or oral".

Par. (4). Pub. L. 99–508, §§101(c)(1)(A), (8), 106(b), substituted "wire, oral, or electronic" for "wire or oral" wherever appearing and, in closing provisions, substituted "provider of wire or electronic communication service" for "communication common carrier" wherever appearing, "such service provider" for "such carrier", and "for reasonable expenses incurred in providing such facilities or assistance" for "at the prevailing rates".

Par. (5). Pub. L. 99–508, §§101(c)(1)(A), 106(c), substituted "wire, oral, or electronic" for "wire or oral" and inserted provisions which related to beginning of thirty-day period, minimization where intercepted communication is in code or foreign language and expert in that code or foreign language is not immediately available, and conduct of interception by Government personnel or by individual operating under Government contract, acting under supervision of investigative or law enforcement officer authorized to conduct interception.

Pars. (7), (8)(a), (d)(3), (9). Pub. L. 99–508, §101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" wherever appearing.

Par. (10)(c). Pub. L. 99–508, §101(e), added subpar. (c).

Pars. (11), (12). Pub. L. 99–508, §106(d)(3), added pars. (11) and (12).

1984—Par. (7). Pub. L. 98–473, §1203(a), inserted ", the Deputy Attorney General, the Associate Attorney General," after "Attorney General" in provisions preceding subpar. (a).

Par. (7)(a). Pub. L. 98–473, §1203(b), amended subpar. (a) generally, adding cl. (i) and designated existing provisions as cls. (ii) and (iii).

1978—Par. (1). Pub. L. 95–511, §201(d), inserted "under this chapter" after "communication".

Par. (4). Pub. L. 95–511, §201(e), inserted "under this chapter" after "wire or oral communication" wherever appearing.

Par. (9). Pub. L. 95–511, §201(e), substituted "any wire or oral communication intercepted pursuant to this chapter" for "any intercepted wire or oral communication".

Par. (10). Pub. L. 95–511, §201(g), substituted "any wire or oral communication intercepted pursuant to this chapter," for "any intercepted wire or oral communication,".

1970—Par. (4). Pub. L. 91–358 inserted the provision that, upon the request of the applicant, an order authorizing the interception of a wire or oral communication direct that a communication common carrier, landlord, custodian, or other person furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services provided.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–511 effective Oct. 25, 1978, except as specifically provided, see section 401 of Pub. L. 95–511, formerly set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 901(a) of Pub. L. 91–358.

18 U.S.C.
United States Code, 2015 Edition
Title 18 - CRIMES AND CRIMINAL PROCEDURE
PART II - CRIMINAL PROCEDURE
CHAPTER 206 - PEN REGISTERS AND TRAP AND TRACE DEVICES
Sec. 3123 - Issuance of an order for a pen register or a trap and trace device
From the U.S. Government Publishing Office, www.gpo.gov

§3123. Issuance of an order for a pen register or a trap and trace device

(a) IN GENERAL.—

(1) ATTORNEY FOR THE GOVERNMENT.—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served.

(2) STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(3)(A) Where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify—

(i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;

(ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;

(iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and

(iv) any information which has been collected by the device.

To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device.

(B) The record maintained under subparagraph (A) shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof).

(b) CONTENTS OF ORDER.—An order issued under this section—

(1) shall specify—

(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

(B) the identity, if known, of the person who is the subject of the criminal investigation;

(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and

(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

(1) the order be sealed until otherwise ordered by the court; and

(2) the person owning or leasing the line or other facility to which the pen register or a trap and trace device is attached or applied, or who is obligated by the order to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

(Added Pub. L. 99–508, title III, §301(a), Oct. 21, 1986, 100 Stat. 1869; amended Pub. L. 107–56, title II, §216(b), Oct. 26, 2001, 115 Stat. 288.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–56, §216(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation."

Subsec. (b)(1)(A). Pub. L. 107–56, §216(b)(2)(A), inserted "or other facility" after "telephone line" and "or applied" before semicolon at end.

Subsec. (b)(1)(C). Pub. L. 107–56, §216(b)(2)(B), added subpar. (C) and struck out former subpar (C) which read as follows: "the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and".

Subsec. (d)(2). Pub. L. 107–56, §216(b)(3), inserted "or other facility" after "leasing the line" and substituted "or applied, or who is obligated by the order" for ", or who has been ordered by the court".

21 U.S.C.
United States Code, 2011 Edition
Title 21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT
Part D - Offenses and Penalties
Sec. 841 - Prohibited acts A
From the U.S. Government Publishing Office, www.gpo.gov

§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 violation 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 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) 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.)

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 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)(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.

[1] *So in original. Probably should be "health".*

[2] *So in original. Probably should be "section".*

21 U.S.C.
United States Code, 2011 Edition
Title 21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT
Part D - Offenses and Penalties
Sec. 843 - Prohibited acts C
From the U.S. Government Publishing Office, www.gpo.gov

§843. Prohibited acts C

(a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II of this chapter, or (B) to present false or fraudulent identification where the person is receiving or purchasing a listed chemical and the person is required to present identification under section 830(a) of this title;

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance;

(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II of this chapter;

(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II of this chapter or, in the case of an exportation, in violation of this subchapter or subchapter II of this chapter or of the laws of the country to which it is exported;

(8) to create a chemical mixture for the purpose of evading a requirement of section 830 of this title or to receive a chemical mixture created for that purpose; or

(9) to distribute, import, or export a list I chemical without the registration required by this subchapter or subchapter II of this chapter.

(b) Communication facility

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

(c) Advertisement

(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule [1] I controlled substance. As used in this section the term "advertisement" includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule [1] I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule [1] I controlled substance. The term "advertisement" does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule [1] I controlled substance.

(2)(A) It shall be unlawful for any person to knowingly or intentionally use the Internet, or cause the Internet to be used, to advertise the sale of, or to offer to sell, distribute, or dispense, a controlled substance where such sale, distribution, or dispensing is not authorized by this subchapter or by the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.].

(B) Examples of activities that violate subparagraph (A) include, but are not limited to, knowingly or intentionally causing the placement on the Internet of an advertisement that refers to or directs prospective buyers to Internet sellers of controlled substances who are not registered with a modification under section 823(f) of this title.

(C) Subparagraph (A) does not apply to material that either—

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

(ii) merely advocates the use of a controlled substance or includes pricing information without attempting to facilitate an actual transaction involving a controlled substance.

(d) Penalties

(1) Except as provided in paragraph (2), any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine under title 18, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States 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 8 years, a fine under title 18, or both.

(2) Any person who, with the intent to manufacture or to facilitate the manufacture of methamphetamine, violates paragraph (6) or (7) of subsection (a) of this section, shall be sentenced to a term of imprisonment of not more than 10 years, a fine under title 18, or both; except that if any person commits such a violation after one or more prior convictions of that person—

(A) for a violation of paragraph (6) or (7) of subsection (a) of this section;

(B) for a felony under any other provision of this subchapter or subchapter II of this chapter; or

(C) under any other law of the United States or any State relating to controlled substances or listed chemicals,

has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine under title 18, or both.

(e) Additional penalties

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) Injunctions

(1) In addition to any penalty provided in this section, the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to violations of this section, section 842 of this title, or 856 [2] of this title.

(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 842 of this title.

(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Pub. L. 91–513, title II, §403, Oct. 27, 1970, 84 Stat. 1263; Pub. L. 95–633, title II, §202(b)(3), Nov. 10, 1978, 92 Stat. 3776; Pub. L. 98–473, title II, §516, Oct. 12, 1984, 98 Stat. 2074; Pub. L. 99–570, title I, §1866(a), Oct. 27, 1986, 100 Stat. 3207–54; Pub. L. 100–690, title VI, §6057, Nov. 18, 1988, 102 Stat. 4319; Pub. L. 103–200, §3(g), Dec. 17, 1993, 107 Stat. 2337; Pub. L. 103–322, title IX, §90106, Sept. 13, 1994, 108 Stat. 1988; Pub. L. 104–237, title II, §§203(a), 206(b), Oct. 3, 1996, 110 Stat. 3102, 3103; Pub. L. 107–273, div. B, title IV, §4002(d)(2)(C), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 108–21, title VI, §608(d), Apr. 30, 2003, 117 Stat. 691; Pub. L. 110–425, §3(g), Oct. 15, 2008, 122 Stat. 4830.)

REFERENCES IN TEXT

Schedules I and II, referred to in subsecs. (a)(1) and (c)(1), are set out in section 812(c) of this title.

This subchapter, referred to in subsec. (c)(2)(A), (C)(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.

The Controlled Substances Import and Export Act, referred to in subsec. (c)(2)(A), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, which is classified principally to subchapter II (§951 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–425 designated existing provisions as par. (1) and added par. (2).

2003—Subsec. (f)(1). Pub. L. 108–21 substituted "this section, section 842 of this title, or 856 of this title" for "this section or section 842 of this title".

2002—Subsec. (d). Pub. L. 107–273 substituted "under title 18, or both;" for "of not more than $30,000, or both;" in two places and "under title 18, or both." for "of not more than $60,000, or both." in two places.

1996—Subsec. (d). Pub. L. 104–237, §203(a), inserted par. (1) designation, substituted "Except as provided in paragraph (2), any person" for "Any person", and added par. (2).

Subsec. (e). Pub. L. 104–237, §206(b)(1), inserted "manufacture, exportation," after "distribution," and struck out "regulated" after "engaging in any".

Subsec. (f). Pub. L. 104–237, §206(b)(2), added subsec. (f).

1994—Subsecs. (c) to (e). Pub. L. 103–322 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Subsec. (a)(6), (7). Pub. L. 103–200, §3(g)(1), amended pars. (6) and (7) generally. Prior to amendment, pars. (6) and (7) read as follows:

"(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, with intent to manufacture a controlled substance except as authorized by this subchapter;

"(7) to manufacture, distribute, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this subchapter; or".

Subsec. (a)(9). Pub. L. 103–200, §3(g)(2), (3), added par. (9).

1988—Subsec. (a)(4)(B). Pub. L. 100–690, §6057(a)(1), substituted "a listed chemical" for "piperidine".

Subsec. (a)(6) to (8). Pub. L. 100–690, §6057(a)(2)–(4), added pars. (6) to (8).

Subsec. (d). Pub. L. 100–690, §6057(b), added subsec. (d).

1986—Subsec. (a)(2). Pub. L. 99–570 substituted a semicolon for the period at end.

1984—Subsec. (a)(2). Pub. L. 98–473 added applicability to dispensing, acquiring, or obtaining a controlled substance, and applicability to an expired number.

1978—Subsec. (a)(4). Pub. L. 95–633, §202(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

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 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 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 1978 Amendment

Amendment by Pub. L. 95–633 effective Nov. 10, 1978, except as otherwise provided, 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. (a)(4)(B) of this section effective Jan. 1, 1981.

[1] *So in original. Probably should not be capitalized.*

[2] *So in original. Probably should be preceded by "section".*

21 U.S.C.
United States Code, 2010 Edition
Title 21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT
Part D - Offenses and Penalties
Sec. 851 - Proceedings to establish prior convictions
From the U.S. Government Publishing Office, www.gpo.gov

§851. Proceedings to establish prior convictions

(a) Information filed by United States Attorney

(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a

preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

(Pub. L. 91–513, title II, §411, Oct. 27, 1970, 84 Stat. 1269.)

28 U.S.C.
United States Code, 2011 Edition
Title 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART IV - JURISDICTION AND VENUE
CHAPTER 83 - COURTS OF APPEALS
Sec. 1291 - Final decisions of district courts
From the U.S. Government Publishing Office, www.gpo.gov

§1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, §48, 65 Stat. 726; Pub. L. 85–508, §12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97–164, title I, §124, Apr. 2, 1982, 96 Stat. 36.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§225(a), 933(a)(1), and section 1356 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and sections 61 and 62 of title 7 of the Canal Zone Code (Mar. 3, 1911, ch. 231, §128, 36 Stat. 1133; Aug. 24, 1912, ch. 390, §9, 37 Stat. 566; Jan. 28, 1915, ch. 22, §2, 38 Stat. 804; Feb. 7, 1925, ch. 150, 43 Stat. 813; Sept. 21, 1922, ch. 370, §3, 42 Stat. 1006; Feb. 13, 1925, ch. 229, §1, 43 Stat. 936; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; May 17, 1932, ch. 190, 47 Stat. 158; Feb. 16, 1933, ch. 91, §3, 47 Stat. 817; May 31, 1935, ch. 160, 49 Stat. 313; June 20, 1938, ch. 526, 52 Stat. 779; Aug. 2, 1946, ch. 753, §412(a)(1), 60 Stat. 844).

This section rephrases and simplifies paragraphs “First”, “Second”, and “Third” of section 225(a) of title 28, U.S.C., 1940 ed., which referred to each Territory and Possession separately, and to sections 61 and 62 of the Canal Zone Code, section 933(a)(1) of said title relating to jurisdiction of appeals in tort claims cases, and the provisions of section 1356 of title 48, U.S.C., 1940 ed., relating to jurisdiction of appeals from final judgments of the district court for the Canal Zone.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term “district courts of the United States.” (See definitive section 451 of this title.)

Paragraph “Fourth” of section 225(a) of title 28, U.S.C., 1940 ed., is incorporated in section 1293 of this title.

Words “Fifth. In the United States Court for China, in all cases” in said section 225(a) were omitted. (See reviser's note under section 411 of this title.)

Venue provisions of section 1356 of title 48, U.S.C., 1940 ed., are incorporated in section 1295 of this title.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1295 of this title.

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review:

(1) Orders of the Secretary of the Treasury denying an application for, suspending, revoking, or annulling a basic permit under chapter 8 of title 27;

(2) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(3) Orders of the Secretary of the Army under sections 504, 505 and 516 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters;

(4) Orders of the Civil Aeronautics Board under chapter 9 of title 49, except orders as to foreign air carriers which are subject to the President's approval;

(5) Orders under chapter 1 of title 7, refusing to designate boards of trade as contract markets or suspending or revoking such designations, or excluding persons from trading in contract markets;

(6) Orders of the Federal Power Commission under chapter 12 of title 16;

(7) Orders of the Federal Security Administrator under section 371(e) of title 21, in a case of actual controversy as to the validity of any such order, by any person adversely affected thereby;

(8) Orders of the Federal Power Commission under chapter 15B of title 15;

(9) Final orders of the National Labor Relations Board;

(10) Cease and desist orders under section 193 of title 7;

(11) Orders of the Securities and Exchange Commission;

(12) Orders to cease and desist from violating section 1599 of title 7;

(13) Wage orders of the Administrator of the Wage and Hour Division of the Department of Labor under section 208 of title 29;

(14) Orders under sections 81r and 1641 of title 19, U.S.C., 1940 ed., Customs Duties.

The courts of appeals also have jurisdiction to enforce:

(1) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(2) Final orders of the National Labor Relations Board;

(3) Orders to cease and desist from violating section 1599 of title 7.

The Court of Appeals for the District of Columbia also has jurisdiction to review orders of the Post Office Department under section 576 of title 39 relating to discriminations in sending second-class publications by freight; Maritime Commission orders denying transfer to foreign registry of vessels under subsidy contract; sugar allotment orders; decisions of the Federal Communications Commission granting or refusing applications for construction permits for radio stations, or for radio station licenses, or for renewal or modification of radio station licenses, or suspending any radio operator's license.

Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–164, §124, inserted "(other than the United States Court of Appeals for the Federal Circuit)" after "The court of appeals" and inserted provision that the jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

1958—Pub. L. 85–508 struck out provisions which gave courts of appeals jurisdiction of appeals from District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted reference to District Court of Guam.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c.16 as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.