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CAPSULE SUMMARY OF MAJOR PROVISIONS
OF THE
ANTI-DRUG ABUSE ACT OF 1988

NCJRS
MAY 15 1989
ACQUISITIONS

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ANTI-DRUG ABUSE ACT OF 1988

Capsule Summary of Major Provisions

Title I -- Coordination of National Drug Policy

Subtitle A, the "National Narcotics Leadership Act of 1988"

- Establishes the Office of National Drug Control Policy, headed by a director with two deputies -- one for demand reduction and the other for supply reduction. A bureau of state and local affairs, headed by an associate director for drug-control policy, would also be established.

Subtitle B, the "Justice Department Organized Crime and Drug Enforcement Enhancement Act"

- Emphasizes the intent of Congress that DOJ make a priority of the use of civil statutes creating ancillary sanctions and remedies, such as forfeitures, civil penalties, fine collection, and injunctions.

Title II -- Treatment and Prevention Programs

Subtitle A, Programs relating to the Public Health Services Act

Chapter 1 -- Revision and Extension of the Alcohol and Drug Abuse and Mental Health Services Block Grants:

- Authorizes \$1.5 billion for Fiscal Year 1989; prohibits use of AIDs related funding for distribution of sterile needles or bleach;

Chapter 2 -- Programs of the Alcohol, Drug Abuse and Mental Health Administration:

- Authorizes \$95 million for Fiscal Year 1989;

Chapter 3 -- Reports and Studies:

- Authorizes HHS study on relationship between mental illness and substance abuse;

Chapter 4 -- Miscellaneous:

- Provides for use of military facilities for treatment purposes;

Subtitle B, Employee Assistance Programs (EAPs)

- Provides for Department of Labor grant program for employers to provide EAPs;

Subtitle C, Indian Alcohol and Substance Abuse Prevention and Treatment

Subtitle D, Native Hawaiian Health Care

Subtitle E, Provisions Relating to Certain Drugs

- Criminalize distribution or possession with intent to distribute of any anabolic steroid for use in humans, other than as directed by a physician, and provide for forfeiture related to steroid trafficking.
- Bans butyl nitrite except in cases where its use is approved under the Federal Food, Drug and Cosmetics Act.

Subtitle F, Veterans Administration Programs

Subtitle G, Miscellaneous Health Amendments

Title III -- Drug Abuse Education and Prevention

Subtitle A, Drug and Alcohol Abuse Education Programs

Chapter 1 -- Alcohol Abuse Education Programs

Chapter 2 -- Prevention Education for Participants in the Women, Infants and Children Supplemental Food Program

Chapter 3 -- Drug Free Schools and Communities Act Amendments

Chapter 4 -- ACTION Volunteer Demonstration Project

Subtitle B, Drug Abuse Education and Prevention

Chapter 1 -- Drug Education and Prevention Relating to Youth Gangs

- Authorizes \$15 million for FY 1989, and such sums as necessary for 1990 and 1991, for HHS grants to non-profit private and public organizations to prevent and reduce the youth participation in gangs that engage in drug-related activities.

Chapter 2 -- Program for Runaway and Homeless Youth

- Authorizes \$15 million for fiscal 1989, and such sums as are necessary for 1990 and 1991, for HHS grants to public and non-profit private agencies to provide individual counseling to runaway youths and their families, and to develop community-education activities and support research on drug use by runaway and homeless youths.

Chapter 3 -- Community Programs for Youth

- Authorizes \$40 million in fiscal 1989 to create HHS block grants for state community-youth-activity programs. The bill authorizes \$55 million for the programs in 1990 and \$60 million in 1991.

Title IV -- International Narcotics Control Act of 1988

Subtitles A through J

- Authorizes \$101 million in fiscal 1989 for international narcotics-control programs and makes numerous changes in other drug-related laws administered by the Department of State.
- Seeks to facilitate U.S. law enforcement access to foreign bank records by directing the Department of the Treasury to enter into international negotiation for access to cashflow information.
- Authorizes international sharing of forfeited property pursuant to agreement rather than requiring international treaty.

Title V -- User Accountability

Subtitle A, States Congressional Opposition to Legalization of Drugs

Subtitle B, National Commission on Drug Free Schools

Subtitle C, Preventing Drug Abuse in Public Housing

- Terminates the tenancy of any public-housing tenant who, while a resident of public housing, engages in criminal activity, including drug-related activity, on or near public-housing premises. Tenants would also lose their public housing if any member of their household, guest or

other person under their control also engaged in criminal activity, on or near public-housing premises.

Subtitle D, the "Drug Free Workplace Act of 1988"

- Requires that any individual or contractor procuring property or services valued at \$25,000 or more from any federal agency certify that he will provide a drug-free workplace by publishing a statement and giving it to all employees notifying them that the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the workplace and specifying what actions will be taken against violators.
- Establishes a similar drug-free workplace requirement for federal grant recipients.
- Requires that, within 30 days of receiving notice from an employee of the violation of drug-free workplace requirements, a federal grantee or contractor take appropriate personnel action, up to and including termination, or require that the employee satisfactorily participate in a drug-abuse assistance or rehabilitation program.

Subtitle E, President's Media Commission on Alcohol and Drug Abuse Prevention

Subtitle F, Drug Free America Policy

- Declares that it is the policy of the United States Government to create a drug-free America by 1995.

Subtitle G, Denial of Federal Benefits to Drug Traffickers and Possessors

- Denies certain federal benefits to anyone convicted of distributing illegal drugs, similar provision for possession.
- Allows the period of ineligibility to be suspended if the person completes a supervised drug-rehabilitation program, has otherwise been rehabilitated, or has made a good-faith effort to gain admission to a supervised rehabilitation program.
- Defines "federal benefit" to mean any grant, contract, loan or professional or commercial license provided by a U.S. Government agency or by appropriated government funds. The term does not include any retirement, welfare, Social

Security, health disability, veteran's benefit, public housing, or other similar benefit for which payment or services are required for eligibility.

Title VI -- Anti-Drug Abuse Amendments Act of 1988

Subtitle A, Chemical Diversion and Trafficking Act of 1988

- Requires those who manufacture, distribute, import or export certain chemicals, and who engage in regulated transactions involving specific chemicals that can be used in manufacturing a controlled substance, to keep a record for four years of any transaction involving a precursor chemical and for two years involving any essential chemical.
- Authorizes the Attorney General to order the suspension of any importation or exportation of a listed chemical or to disqualify any regular customer or supplier on the ground that the chemical may be diverted to the clandestine manufacturer of a controlled substance.
- Provides that any person who knowingly or intentionally imports or exports a listed chemical with intent to manufacture a controlled substance, or has reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance, will be fined or imprisoned not more than 10 years.

Subtitle B, The Asset Forfeiture Amendments Act of 1988

- Requires creation of "Innocent Owner" federal regulations for expedited administrative pre-cost and claim bond procedures for seizures of conveyances for violations involving personal-use quantities of a controlled substance. The regulations shall provide for final administrative determination of the case within 21 days of seizure and require return of the property if the owner had no knowledge and did not consent to the property being used in violation of law; or if the owner had knowledge or reason to believe the property would be used in violation of the law, he did what reasonably could be expected to prevent the violation and acted in a normal and customary manner to ascertain how the property would be used.
- Requires notice to persons whose property is seized at time of seizure.
- Provides a post-cost and claim bond innocent owner defense if the owner of a conveyance establishes that use of the

conveyance to transport a controlled substance was committed without his knowledge, consent, or willful blindness.

- Provides for joint regulations by the Attorney General, and the Secretaries of Treasury and Transportation, to permit "constructive seizure" of a commercial fishing vessel for violations involving the possession of personal-use quantities of drugs.
- Specifies that traces or sweepings or other evidence of greater than personal use amounts shall not be considered personal use amounts for purposes of this section.
- Authorizes equitable sharing of forfeited assets with state and local law enforcement agencies, and requires, effective October 1, 1989, that adoptive seizures not circumvent any requirement of state law that prohibits forfeiture or limits disposition or use of property forfeited.

Subtitle C, State and Local Narcotics Control and Assistance Improvements

- Reauthorizes the Bureau of Justice Assistance and encourages the targeting of state and local resources on efforts to reduce drug abuse, through a program of state and local law enforcement grants.
- Authorizes \$350 million and \$400 million for drug grants in FY 1989, 1990, and 1991, respectively.
- Continues RISS rules, authorities, proceedings, including grant and contract programs.
- Raises the PSOB benefit level from \$50,000 to \$100,000 and extends benefits to surviving family members.

Subtitle D, Authorizations of Appropriations for Department of Justice, Prisons and Related Law Enforcement Purposes

- Authorizes (but does not appropriate funds for) the following additional spending over levels already approved for fiscal 1989:
 - \$12.3 million for salaries and expenses for the Immigration and Naturalization Service (INS), including \$44 million to increase the number of INS inspectors by no fewer than 70.
 - \$10.7 million for salaries and expenses of the Bureau of Alcohol, Tobacco and Firearms (ATF) to be used to increase the number of Armed Career Criminal

Apprehension enforcement personnel by no fewer than 244 full-time equivalent positions.

- \$60 million for salaries and expenses of the Drug Enforcement Administration (DEA), including \$4.9 million to increase DEA operations against criminals involved in youth gang-related organized crime. Also authorizes \$10.8 million for the DEA Airwing Facility.
- \$30 million for salaries and expenses of FBI drug-enforcement personnel.
- \$21.5 million for salaries and expenses for the U.S. Marshals Service to be used for asset seizure and forfeiture activities and for protection of the federal judiciary and court facilities needed as a result of increased numbers of drug-related trials.
- \$21.5 million for support of U.S. prisoners.
- \$36 million for salaries and expenses for U.S. Attorneys of the Justice Department, and \$16.4 million for salaries and expenses of the Border Patrol.
- \$200 million for the building and facilities account of the Federal Prison System.
- Appropriations not to exceed \$440 million for the salaries and expenses of the U.S. Customs Service incurred in non-commercial operations. At least \$26 million is to be used to increase the number of Customs inspectors.
- \$200 million in fiscal year 1989 for acquisition, construction and improvement of the Coast Guard.
- \$820,000 authorized for INTERPOL-United States National Central Bureau.

Subtitle E, the Money Laundering Prosecution Improvements Act
of 1988

- Clarifies that 18 U.S.C. 1957 forfeiture reaches to attorneys fees insofar as 6th Amendment right to counsel is not infringed.
- Requires that financial institutions may not issue or sell a bank check, cashier's check, traveler's check or money order in amounts of \$3,000 or more to any individual unless that person has an account with the financial institution, verifies that fact through a signature card or furnishes

such forms of identification as the Treasury Department may require.

- Authorizes the Treasury Secretary to require any domestic institution or institutions in a geographic area to maintain additional records.
- Provides for a \$10,000 civil penalty against any insured institution and director or employee who willfully or through gross negligence violates any regulation established by the Secretary.
- Amends the Right to Financial Privacy Act (RFPA) to authorize transfer of bank records without notice to the Attorney General for criminal investigative purposes and provides an exception to the requirement of actual presentation of voluminous financial records to a Grand Jury.

Subtitle F, Declares the Sense of Congress Opposing Drug Legalization

Subtitle G, Interdiction of Supply of Firearms to Traffickers

- Makes transfer of a firearm, knowing that it will be used to commit a crime of violence or drug trafficking, a 10-year felony.
- Expands definition of drug trafficking crimes in which use of or carrying of firearms and armor-piercing ammunition trigger a mandatory-minimum penalty.
- Automatically revokes probation for possessing a firearm.
- Makes possession of a firearm or other dangerous weapon (or causing it to be present) in a federal facility, or an attempt to do so, a federal misdemeanor and provides felony sanctions where accompanied by an intent to commit an offense.

Subtitle H, Investigative Powers of the Postal Service Personnel and National Forest System Drug Control

- Extends Postal Inspection Service law enforcement authorities with concurrence of the Attorney General.
- Gives Postal Inspection Service administrative forfeiture authority.
- Directs cooperation and authorizes cross-designation of Forest Service Personnel and limited Title 21 authority for offenses committed within the National Forest System.

Creates new authority for Forest Service drug investigations outside System Boundaries for offenses committed within System.

- Establishes new Title 18 offense and criminal penalties for placing hazardous or injurious devices on federal lands with intent of violating the Controlled Substances Act. Provides criminal penalties for anyone who, with the intent to violate the controlled-substances act, uses a hazardous or injurious device, on federal lands or an Indian reservation.
- Establishes a new Title 21 offense and penalties for pollution of federal land related to drug offenses.

Subtitle I, Authorization of Appropriations for Expenses of Department of Justice Personnel Serving Abroad

Subtitle J, Authorization of Drug Aftercare Program of the Administrative Office of the U.S. Courts and National Training Center for Prison Drug Rehabilitation Program Personnel for the National Institute of Corrections

- Requires study of alternative judicial system for prosecuting federal narcotics offenses.

Subtitle K, Manufacturing Offenses

- Establishes criminal penalties for endangering human life while illegally manufacturing a controlled substance.

Subtitle L, Serious Crack Possession Offenses

- Provides increased penalties for serious offenses involving the possession of "crack."

Subtitle M, Miscellaneous Drug Enforcement

- Authorizes payment of bonus of up to 25% of base pay for foreign language capabilities for DEA and FBI personnel.

Subtitle N, Sundry Criminal Provisions

- Provides for life terms without parole for three-time drug felony offenders.
- Establishes enhanced penalties for drug importation by aircraft and vessels.
- Provides enhanced penalties for drug offenses involving children.

- Eliminates exceptions to minimum mandatory penalties for second offenses involving five grams or less of marihuana.
- Provides enhanced penalties for "possession with intent to distribute" within 1,000 feet of school yard, or within 100 feet of playgrounds, youth centers, swimming pools, or video arcades.
- Provides mandatory minimum penalties for the purchase of controlled substances from minors.
- Provides a 20-year maximum penalty for drug offenses committed within federal prisons.
- Provides enhanced penalties for the use of certain weapons in connection with a crime of violence or a drug trafficking crime, and for certain other firearms offenses.
- Makes federal firearms violations a wiretap predicate.
- Provides for money laundering-related seizure and forfeitures, including forfeiture of substitute assets, subject to certain restrictions.
- Authorizes undercover sting operations in money laundering cases and provides 20 year sentence for attempting to launder money represented by a law enforcement officer to be drug proceeds.
- Authorizes Postal Service investigations of money laundering.
- Provides new civil penalties of up to \$10,000 for single possession of personal-use amounts of illegal drugs.
- Provides 10 year mandatory minimum term for trafficking in certain quantities of methamphetamine, expands mandatory minimum prison terms to encompass drug attempts and conspiracies and makes other changes in laws related to controlled substances.
- Increases to 15 years the maximum term for operating a locomotive while under the influence of drugs or alcohol.
- Strengthens federal laws related to explosives.
- Restarts Speedy Trial Act Time Period for defendants who abscond on the eve of trial.
- Amends Federal Rules of Criminal Procedure to require notice of defense based upon public authority.

- Provides for measuring marihuana based on number of plants, as well as weight.
- Enhances penalties for CCE offenses.
- Provides for protection of former federal officials and their families.

Title VII -- Death Penalty and Other Criminal and Law Enforcement Matters

Subtitle A, Death Penalty

- Authorizes imposition of the death penalty;
 - (a) for the killing of a law enforcement officer in connection with a drug felony or;
 - (b) for the killing of any person in connection with a Continuing Criminal Enterprise.

Subtitle B, Minor and Technical Criminal Law Amendments

- Provides for emergency pen register or trap and trace authority in cases of "immediate danger of death or serious bodily injury to any person; or conspiratorial activities characteristic of organized crime" for a 48 hour period.
- Adds new RICO predicates for use of interstate commerce facilities in the commission of murder for hire and sexual exploitation of children.
- Creates a new offense for the obstruction of a federal audit.
- Permits the aggregation for prosecution purposes of certain schemes to defraud multiple victims.
- Authorizes arrest warrants for foreign fugitives whose specific whereabouts are not known.
- Authorizes federal prison industries (UNICOR) to borrow and invest funds.

Subtitle C, Sentencing Amendments

- Provides for resentencing of prisoners convicted abroad.
- Establishes a clear Standard of Review for sentences under the Sentencing Reform Act of 1984.

Subtitle D, Victim Compensation and Assistance

- Reauthorizes and amends Victims of Crime Act (VOCA) to make the Director of the Department of Justice's Office for Victims of Crime a Presidential appointee.

Subtitle E, FAA Enforcement Assistance

- Seeks to deter aircraft-related narcotics offenses.

Subtitle F, Juvenile Justice and Delinquency Prevention

- Reauthorizes all titles of the Juvenile Justice and Delinquency Act for four additional years.

Subtitle G, Provisions Relating to Prisons, Probation, Parole, and Supervised Release

- Requires the revocation of probation, parole and supervised release of anyone found in possession of a controlled substance.
- Makes it a mandatory condition of probation for offenses occurring on or After January 1, 1989, in certain pilot districts, that a probationer refrain from any illegal use of drugs and submit to periodic drug tests at least once every 60 days.
- Provides for congressional action on the report of the Special Committee on Habeas Corpus Review of Capital Sentences.

Subtitle H, Provisions Relating to the Courts

Subtitle I, Provisions Relating to the FBI

- Authorizes FBI to investigate, upon request, felonious killings of state or local law enforcement officers.

Subtitle J, Deportation of Aliens who Commit Aggravated Felonies

- Seeks to facilitate deportation of aliens who commit drug offenses.

Subtitle N, Child Pornography and Obscenity Enforcement Act of 1988

- Criminalizes "buying and selling" of children.
- Expands reach of federal obscenity laws.

- Provides for limited forfeiture in obscenity cases.
- Strengthens federal child pornography laws.
- Seeks to curb "cable pornography," and "dial-a-porn" through criminal penalties for specified conduct.

Subtitle O, Miscellaneous

Section 7603, The Definition for Mail Fraud Chapter of Title 18, United States Code (McNally Fix)

- Restores coverage under the mail and wire fraud statutes for schemes to defraud that deprive the public of the "intangible right to honest services."

Section 7604, National Commission on Measured Responses to Achieve a Drug Free America by 1995 Authorization Act.

Section 7608, United States Marshals Service Act would Make USMS Director and U.S. Marshals Presidential appointees.

Title VIII -- Federal Alcohol Administration

Title IX -- Miscellaneous

Subtitle A, Alcohol and Drug Traffic Safety

Subtitle B, Truck and Bus Safety and Regulatory Reform

Subtitle C, Comptroller General Study

Subtitle D, Insular Area Drug Abuse Amendments of 1988

Title X -- Supplemental Appropriations

FY 1989 Supplemental outlays for Justice components are:

DEA	\$22,500,000
FBI	\$12,000,000
Prisons	
S&E
Buildings	\$ 9,560,000
INS	\$20,960,000
U.S. Attorneys	\$34,320,000*
U.S. Marshals	\$14,760,000

Prisoner Support	\$ 9,840,000
OJP	\$33,300,000
Criminal Division	\$ 870,000
INTERPOL-USNCB	\$ 696,000

* Plus a \$30,000,000 transfer from the Assets Forfeiture Fund.

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SECTION-BY-SECTION ANALYSIS

OF THE

ANTI-DRUG ABUSE ACT OF 1988

(IN ORDER OF U.S. CODE TITLE AMENDED)

TITLE 8

- 8 U.S.C. §1101(a)(43) - (new subsection) - Defines "aggravated felony" to mean murder, drug trafficking, illicit trafficking in firearms or destructive devices, or any attempt or conspiracy to commit any such act. Sec. 7342
- 8 U.S.C. §1182(a)(17) - (amendment) - Raises time period to "within ten years" in the case of an alien convicted of an aggravated felony, which applies to any alien who seeks admission to the United States on or after the date of enactment of this Act. Sec. 7349
- 8 U.S.C. §1251(a)(4) - (amendment) - Adds a conviction for an aggravated felony as a grounds for deportation. Sec. 7344
- 8 U.S.C. §1251(a)(14) - (amendment) - Inserts after "law" the words "any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, United States Code, or any revolver or" and such language shall be applicable to any alien convicted on or after the effective date of this Act. Sec. 7348
- 8 U.S.C. §1252 - (amendment and new subsection) - Requires that the Attorney General take into custody any alien convicted of committing an aggravated felony after completion of the alien's sentence for such conviction, and provides that such alien shall not be released from custody. Sec. 7343(a)
- 8 U.S.C. §1252A - (new section) - Establishes expedited deportation proceedings for aliens convicted of aggravated felonies, which shall apply to any alien convicted of such offense on or after the date of the enactment of this Act. Sec. 7347
- 8 U.S.C. §1254(e) - (amendment) - Makes voluntary departure unavailable to an alien who is deportable because of a conviction for an aggravated felony. Sec. 7343(b)
- 8 U.S.C. §1326 - (amendment) - Adds a criminal penalty of 15 years in prison, a fine pursuant to Title 18, or both for an alien who, after conviction for an aggravated felony and subsequent deportation, illegally enters the United States. Sec. 7345
- 8 U.S.C. §1327 - (amendment) - Proscribes aiding or assisting an alien convicted of an aggravated felony to enter the United States. Sec. 7345

TITLE 12

- 12 U.S.C. §1120(1) - (amendment) - Provides that grand jury subpoena records need not be physically transported to the grand jury where actual presentation is impractical. In the case of no actual presentation, the grand jury shall be provided with a description of the contents of the records. Sec. 6186(e)
- 12 U.S.C. §3412(f) - (new subsection) - Amends the Right to Financial Privacy Act to provide that Bank Supervisory Agencies may transfer to the Attorney General financial records upon certification by the Bank Supervisory Agency official that "(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and (B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions." Sec. 6186(b)
- 12 U.S.C. §3413(1) - (new subsection) - Amends the RFPA to add new section 1 which provides that the RFPA does not prohibit transfer of financial records to the Attorney General (of any officer, director, employee, controlling shareholder or any major borrower of the institution acting in concert with any of the above persons) if there is reason to believe that such person may be violating the Bank Secrecy Act or any law relating to crimes against financial institutions. Sec. 6186(c)

TITLE 14

- 14 U.S.C. §2 - (amendment) - Strikes "United States" in first place it occurs and replaces it with "United States; shall engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of the laws of the United States;" Sec. 7403
- 14 U.S.C. §637 - (amendment) - Provides for civil immunity to Coast Guard or U.S. Navy personnel for firing into a vessel when, after a warning shot has first been fired, the vessel or craft refuses to stop. Sec. 7401

TITLE 15

- 15 U.S.C. §1245 - (amendment) - Rewritten to include a jurisdictional requirement of interstate commerce nexus or special territorial nexus for certain operative acts of the Ballistic Knife Act. Sec. 6472

TITLE 16

16 U.S.C. § 559c - (amendment) - Strikes "500 officers and employees" and adds instead "1,000 special agents and law enforcement officers"; amends the authority of National Forest System officers to extend beyond the boundaries of the National Forest for offenses committed within or which affect the administration of the National Forest, including the pursuit of fleeing suspects. Sec. 6254(b)

TITLE 18

- 18 U.S.C. §13(b) - (new subsection) - Expands penal sanctions available under state law for drunk driving, but limits such application to the special maritime and territorial jurisdiction of the United States. Sec. 6477
- 18 U.S.C. §19 - (amendment) - Limits fines for federal offenses to be treated as petty offenses to \$5,000 for individuals and \$10,000 for organizations. Sec. 7089
- 18 U.S.C. §111 - (amendment) - Extends coverage of the crime of assault on a federal officer to persons who formerly served as federal law enforcement officials who suffer subsequent forcible assaults or intimidations based upon prior performance of duty. Provides enhanced penalty of not more than ten (10) years in prison for using a deadly or dangerous weapon in the commission of an offense under this section. Sec. 6487(a)
- 18 U.S.C. §115 - (amendment) - Extends coverage of this section to family members of certain former federal officials. Sec. 6487(f)
- 18 U.S.C. §241 - (amendment) - Strikes "citizen" and inserts "inhabitant of any State, Territory, or District" Sec. 7018
- 18 U.S.C. §242 - (amendment) - Inserts "and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both;" after "both" Sec. 7019
- 18 U.S.C. §245(a) (1) - (amendment) - Adds the Associate Attorney General and any Assistant Attorney General designated by the Attorney General as an official who may authorize certain civil rights prosecutions. Sec. 7020(a)
- 18 U.S.C. §342 - (amendment) - Raises maximum penalty for operating a common carrier under the influence to fifteen (15) years. Sentencing Commission is directed to raise offense level to level 21 if serious injury results and level 26 if death results. Reference to specific fine

- level deleted and other clarifications.
Sec. 6473 and 6482
- 18 U.S.C. §343 - (amendment) - Strikes ".10" and inserts ".10 percent" and strikes "conclusively" in paragraph (2). Sec. 6473
- 18 U.S.C. §553b(2) - (amendment) - Rewritten to clarify the exemptions for off-highway mobile equipment. Sec. 7021
- 18 U.S.C. §709 - (amendment) - Similar to the provisions in this section regarding the FBI, a new undesignated paragraph is included relating to unauthorized use of the words "Secret Service", "U.S.S.S.", or "Secret Service Uniformed Division", or "U.D." Sec. 7079
- 18 U.S.C. §751(a) - (amendment) - Makes escape from immigration custody a misdemeanor. Sec. 7055
- 18 U.S.C. §752(a) - (amendment) - Makes instigating or assisting the escape of an alien in immigration custody a misdemeanor. Sec. 7055
- 18 U.S.C. §844(g) - (amendment) - Changes penalty for possession of explosives in a government building to not more than five years in prison, a fine up to the maximum allowed under Title 18, or both; extends application of statute to airports subject to FAA regulation. Sec. 6474(a)
- 18 U.S.C. §844(h) - (amendment) - Expands mandatory punishment for use or carrying of explosives during a federal felony to those offenses which provide for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device. Mandatory additional penalty is five years imprisonment, ten years in the case of a second or subsequent conviction under this subsection, all of which is not subject to suspension nor to probation, nor shall the term of imprisonment imposed run concurrent to any other term of imprisonment including that imposed for the felony in which the explosive was used or carried. Sec. 6474(b)
- 18 U.S.C. §924(a) - (amendment and new subsection (a)(2)) - Makes violations of (d), (g), (h), (i), (j), and (o) of section 922 punishable by fine as provided in Title 18, up to ten years imprisonment, or both. Sec. 6462
- 18 U.S.C. §924(c)(1) - (amendment) - Penalty for using or carrying a machine gun or silencer-equipped firearm during a crime of violence or drug trafficking crime is raised from ten (10) to thirty (30) years; penalty for second offense using any firearm is raised from ten (10) to twenty (20) years, and, if the firearm is a machine gun or is silencer-equipped, to life imprisonment without release. Sec. 6460

- 18 U.S.C. §924(c)(2) - (amendment) - Amends the term "drug trafficking crime" to mean any drug felony in Title 21 and Title 46 Appendix. Sec. 6212
- 18 U.S.C. §924(e)(1) - (amendment) - Clarifies that the enhanced penalty for persons who violate 18 U.S.C. §922(g) after having three previous felony convictions is only applicable if the previous convictions relate to offenses committed on separate occasions. Sec. 7056
- 18 U.S.C. §924(e)(2)(B) and (e)(2)(C) - (amendment) - Adds to the definition of "violent felony" any "act of juvenile delinquency involving use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment . . . if the act had been committed by an adult"; and defines "conviction" as including a finding of juvenile delinquency involving a violent felony. Sec. 6451
- 18 U.S.C. §924(f) and (g) - (new subsections) - Provides for two new offenses with punishment of up to ten (10) years in prison, a maximum fine as provided in Title 18, or both, for anyone who either (1) travels in interstate commerce or into the United States from a foreign country and acquires, transfers, or attempts to acquire or transfer a firearm with the intent to engage in the commission of a RICO predicate offense, a controlled substance offense (state or federal), or a "crime of violence" or (2) transfers a firearm knowing that it will be used to commit a crime of violence or drug trafficking crime. Sec. 6211
- 18 U.S.C. §929(a)(2) - (amendment) - Defines "drug trafficking crime" as any drug felony in Title 21 and Title 46 Appendix. Sec. 6212.
- 18 U.S.C. §930 - (new section) - Prohibits possession of firearms and dangerous weapons in a Federal facility. Simple possession is a misdemeanor and possession with the intent that the weapon be used in a felony is punishable with up to 5 years imprisonment, a fine according to Title 18, or both. Sec. 6215
- 18 U.S.C. §981(a)(1)(B) - (amendment) - Provides clarifying language in this provision concerning the civil forfeiture of proceeds of foreign drug offenses by adding "real or personal" after "property" and substituting "[property] constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from [an offense against a foreign nation]" for "[property] which represents the proceeds of [an offense against . . .]" Also strikes "or activity" the first place it appears,

- inserts "under the laws of the United States" after "punishable" the second place it appears, and inserts "constituting the offense against the foreign nation" after "such event or activity." Sec. 6470(b)
- 18 U.S.C. §981(a)(1)(A) - (amendment) - Removes "gross receipts" language and replaces it with "Any property, real or personal, involved in a transaction or attempted transaction in violation of [31 U.S.C. §§5313(a) or 5324] or [18 U.S.C. §§1956 or 1957], or any property traceable to such property.". Deletes 18 U.S.C. §981(a)(1)(C). Sec. 6463(a)
- 18 U.S.C. §981(g) - (amendment) - Clarifies that "law" means Federal, state, or local law. It now reads: "The filing of an indictment or information alleging a violation of law, Federal, State or local, which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding." Sec. 6471(c)
- 18 U.S.C. §982(a) - (amendment) - Extends the reach of §982 criminal forfeiture to include the substitute assets provisions of 21 U.S.C. §853(p). However, this reach is qualified by the newly added sentence prohibiting the use of substitute assets in the place of the actual property laundered where the defendant "acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense." Sec. 6464
- 18 U.S.C. §1028(a)(6) - (amendment) - Inserts "knowingly" before "possesses", "lawful" before "authority" the first time it appears, and "such" before "authority" the second place it appears. Sec. 7023
- 18 U.S.C. §1073 - (amendment) - Adds the Deputy and Associate Attorneys General as approving officials regarding prosecutions for flight to avoid prosecution or giving testimony. Sec. 7020(b)
- 18 U.S.C. §1084(b) - (amendment and new subsection) - Inserts "or foreign country" after "State" each place it appears and adds new subsection (e): "As used in this section, the term 'State' means a State of the United States, the District of Columbia; the Commonwealth of Puerto Rico, or a territory or possession of the United States." Also strikes similar language from 18 U.S.C. §1084(c). Sec. 7024
- 18 U.S.C. §1113 - (amendment) - Increases maximum penalty for attempted murder from three (3) years to twenty (20) years; attempted manslaughter remains a three (3) year offense; the fine

- for both crimes is as provided for in Title 18. Sec. 7058(c)
- 18 U.S.C. §1153 (amendment) - Strikes "maiming" and all that follows through "incest" and inserts "maiming, a felony under chapter 109A, incest . . ." Sec. 7027
- 18 U.S.C. §1346 - (new section) - Provides definition of "scheme or artifice to defraud": "For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." This language deals with the result in the McNally case. Sec. 7603
- 18 U.S.C. §1460 - (new section) - Adds felony offense of selling or possessing with intent to sell an obscene visual depiction or a visual depiction of child pornography on federally owned or occupied land or in Indian country. Provides maximum punishment of two years imprisonment, a fine in accordance with Title 18, or both. Sec. 7526
- 18 U.S.C. §1465 - (amendment) - Adds ", or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce," to the proscription against the transportation in commerce of an obscene matters for the purpose of sale or distribution. Repeals the last paragraph of this section concerning confiscation and disposal of obscene matters. Sec. 7521(c) and 7522(b)
- 18 U.S.C. §1466 - (new section) - Provides maximum punishment of five years imprisonment, a fine in accordance with Title 18, or both for receipt or possession with intent to distribute obscene matter by a person "engaged in the business of selling or transferring obscene matter" where the matter has been shipped or transported in interstate or foreign commerce. Defines "engaged in the business" and provides a rebuttable presumption that a person offering for sale, or transferring, at one time two or more copies of any obscene publication, or two or more of any obscene article, or a total of five or more such publications and articles is "engaged in the business." Sec. 7521(a)
- 18 U.S.C. §1467 - (new section) - Provides for the criminal forfeiture of:
- obscene material
 - gross profits or proceeds obtained from such offenses under Chapter 71

- real or personal property used or intended to facilitate the offense if the court so determines, after considering the nature, scope, and proportionality of the use of the property in facilitating the offense. Such property may be forfeited only if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture, and with respect to facilitating property, if the Court exercises its discretion to determine nature, scope and proportionality of the use of that property. Sec. 7522(a)
- 18 U.S.C. §1468 - (new section) - Provides imprisonment for two years, a fine in accordance with Title 18, or both for knowingly uttering any obscene language or distributing any obscene matter by means of cable television or subscription services on television. Sec. 7523
- 18 U.S.C. §1469 - (new section) - Provides a rebuttable presumption that obscene material produced in one state and subsequently located in another has travelled in interstate commerce. Similar language applied to material produced in a foreign country. Sec. 7521(d)
- 18 U.S.C. §1512(b) - (amendment) - Strikes "or threatens" and inserts "threatens, or corruptly persuades" Sec. 7029(c)
- 18 U.S.C. §1512(h) - (new subsection) - Expands venue regarding certain obstruction of justice offenses: "A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred." Sec. 7029(a)
- 18 U.S.C. §1515(a) (6) - (new subsection) - Adds the following new definition: "the term 'corruptly persuades' does not include conduct which would be misleading conduct but for a lack of a state of mind." Sec. 7029(d)
- 18 U.S.C. §1516 - (new section) - "Obstruction of Federal Audit":
"(a) Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of \$100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract, shall be fined under this title, or imprisoned not more than 5 years, or both.

- "(b) For purposes of this section the term 'Federal auditor' means any person employed on a full- or part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States." Sec. 7078
- 18 U.S.C. §1716A - (amendment and new subsection) - Adds "locksmithing devices" to first paragraph of section 1716A. Establishes a new subsection (b) prohibiting the mailing or interstate transportation of locksmithing devices to entities not authorized by new 39 U.S.C. §3002a to receive them. Sec. 7090
- 18 U.S.C. §1791(b) - (amendment) - Adds new subsection (b)(1) to punish narcotics possession by inmates in violation of section (c)(1)(C) [now called (d)(1)(C)], which is a twenty (20) year offense, and adds a new section (c) stating that all imprisonment under subsection (b) shall run consecutively to the sentence being served. Sentencing guidelines directed to be changed to have such offense set at no less than level 26. Sec. 6468
- 18 U.S.C. §1855 - (amendment) - Deletes specified fine amount, allowing fine to be up to maximum allowable in Title 18. Sec. 6254(j)
- 18 U.S.C. §1864 - (new section) - Makes it a crime to use a hazardous or injurious device on federal land with intent to violate the Controlled Substances Act or to obstruct or harass the harvesting of timber, or with reckless disregard to risk to others; penalties are Title 18 fines and/or up to life imprisonment if death results, up to twenty (20) years if serious bodily injury results, up to ten (10) years if bodily injury or property damage in excess of \$10,000 results, and up to one year for all other violations. Sec. 6254(f)
- 18 U.S.C. §1952A - (amendment) - Increases lowest penalty from five (5) years to ten (10) years for new §1958 (formerly §1952A). Sec. 7058(b)
- 18 U.S.C. §1952A - (new section) - Re-designates 18 U.S.C. §1952A as new 18 U.S.C. §1958. Sec. 7053
- 18 U.S.C. §1952B - (new section) - Re-designates 18 U.S.C. §1952B as new 18 U.S.C. §1959. Sec. 7053
- 18 U.S.C. §1956(a)(1)(A) - (new subsection) - Section 1956(a)(1) is rewritten to read: "Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity - (A)(i) with the intent to promote the

carrying on of specified unlawful activity; or (ii) with intent to engage in conduct constituting a violation of [26 U.S.C. §7201 (attempt to evade or defeat tax) or 26 U.S.C. §7206 (tax fraud and false statements)]...." Sec. 6471(a)

18 U.S.C. §1956(a)(2) - (amendment) - Strikes "transports or attempts to transport [a monetary instrument into or out of the United States]" and inserts "transports, transmits, or transfers, or attempts to transport, transmit, or transfer" Sec. 6471(b)

18 U.S.C. §1956(a)(3) - (new subsection) - Creates a "sting" provision: whoever conducts or attempts to conduct a financial transaction with the requisite intent (same as subsections (a)(1) and (a)(2)) involving property "represented by a law enforcement officer to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity" shall be fined up to the maximum provided in Title 18, imprisoned up to twenty (20) years, or both. Sec. 6465

18 U.S.C. §1956(c)(7)(D) - (amendment) - Substitutes in definition of "specific unlawful activity" correct references to Title 18 provisions relating to securities of states and private entities (18 U.S.C. §513) and smuggling goods into the United States (18 U.S.C. §545) - deleting incorrect references to 18 U.S.C. §§511 and 543; and adding new predicate offenses 18 U.S.C. §542 (relating to entry of goods by means of false statements), 18 U.S.C. §549 (relating to removing goods from Customs custody), 18 U.S.C. §657 (relating to lending, credit, and insurance institutions), 18 U.S.C. §658 (relating to property mortgaged or pledged to farm credit agencies), 18 U.S.C. §2319 (relating to copyright infringement), 19 U.S.C. §1590 (relating to aviation smuggling), 21 U.S.C. §830 (relating to precursor and essential chemicals), and 21 U.S.C. §857 (relating to transportation of drug paraphernalia). Sec. 6466 and 7031

18 U.S.C. §§1956(e) and 1957(e) - (amendment) - United States Postal Service given investigative authority over 1956 and 1957 within its jurisdiction in accordance with an agreement to be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Sec. 6469

18 U.S.C. §1957(f)(1) - (amendment) - Redefines the term "monetary transaction" to exclude "any

- transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution" Deletes reference to "subchapter II of chapter 53 of title 31" and inserts "in section 1956(c)(5) of this title" Sec. 6182 and 6184
- 18 U.S.C. §1958 - former 18 U.S.C. §1952A (see supra) Sec. 7053
- 18 U.S.C. §1959 - former 18 U.S.C. §1952B (see supra) Sec. 7053
- 18 U.S.C. §1961(1)(B) - (amendment) - Adds new RICO predicate offenses including 18 U.S.C. §1029 (relative to fraud and related activity in connection with access devices), 18 U.S.C. §1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), and 18 U.S.C. §§2251, 2251A, and 2252 (relating to sexual exploitation of children). Sec. 7054 and 7514
- 18 U.S.C. §1963(a) - (amendment) - Provides that if RICO predicate offense carries life imprisonment, then life is maximum RICO penalty, with the maximum fine as provided in Title 18. The Criminal Division views this change as applicable to life sentences under either state or federal law. Sec. 7058(d)
- 18 U.S.C. §2244(a) - (amendment) - Increases maximum imprisonment for abusive sexual contact in subsection (a)(1) from five (5) years to ten (10) years, and in subsection (a)(3) from one (1) year to two (2) years. Sec. 7058(a)
- 18 U.S.C. §2251(c)(2) - (amendment) - Specifies computers as a means of interstate or foreign commerce by which child pornography and related information may not travel. Sec. 7511(a)
- 18 U.S.C. §2251A - (new section) - Provides mandatory punishment of imprisonment for not less than twenty (20) years, up to life imprisonment, and a fine in accordance with Title 18 if a parent, legal guardian, or other person having custody or control of a minor sells or otherwise transfers, offers to sell or otherwise transfer custody or control of that child for use in the production of pornography, where the conduct took place in any territory or possession of the United States, the minor or actor travelled in interstate or foreign commerce, or the offer was communicated or transported in interstate or foreign commerce, including by computer or mail. Provides similar punishment for whomever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control, for the above purposes. Sec. 7512(a)
- 18 U.S.C. §2252(a) - (amendment) - Specifies computers as a means

- of interstate or foreign commerce by which child pornography and related information may not travel. Sec. 7511(b)
- 18 U.S.C. §2253 - (amendment) - Provides criminal forfeiture similar to that provided in 18 U.S.C. §1467 (criminal forfeiture related to obscenity) for violation of child pornography laws. Sec. 7522(c)
- 18 U.S.C. §2254 - (amendment) - Provides civil forfeiture for violation of child pornography laws. Sec. 7522
- 18 U.S.C. §2256 - (amendment) - Adds definition of "custody or control" for purposes of 18 U.S.C. §§2251(c) and 2252(a): "includes temporary supervision over or responsibility for a minor whether legally or illegally obtained." Sec. 7512(b)
- 18 U.S.C. §2257 - (new section) - Mandates the keeping of verifiable records as to the actual age and identity of each performer appearing in visual depictions made after February 6, 1978, of actual sexually explicit conduct where there is any interstate or foreign nexus. If a producer fails to keep such records, or if a distributor sells the material without it containing a statement as to where such records may be found, a rebuttable presumption exists that the performer was a minor for purposes of a prosecution of an offense under 18 U.S.C. §§2251(a) or 2252. These recordkeeping provisions take effect 180 days after the effective date of the Act, except that 18 U.S.C. §2257(e) (requiring a statement to be placed upon every copy of such material as to where the records are located) shall take effect 270 days after the effective date of the Act. Sec. 7513
- 18 U.S.C. §2314 - (amendment) - In the first paragraph, strikes "transports" and inserts "transports, transmits, or transfers" In the second paragraph, inserts "or persons" after "person" the first place it appears, and inserts "or those persons" after "person" the second time it appears. The final paragraph is amended by striking "or by a bank or corporation of any foreign country" and adding a new final sentence: "This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money." Sec. 7057 and 7080

- 18 U.S.C. §2315 (amendment) - Strikes from the second paragraph "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken" and inserts "moving as, or which are a part of, or which constitute interstate or foreign commerce" and modifies the final paragraph of this section in the same manner as noted supra regarding the final paragraph of 18 U.S.C. §2314. Sec. 7048 and 7057(b)
- 18 U.S.C. §2516(1)(i), (j), and (k) - (amendment and new subsection) - Redesignates subsections (i) and (j) as subsections (j) and (k) and adds to predicate offenses for wire or oral interception new subsection (i): "any felony violation of chapter 71 (relating to obscenity) of this title; . . ." Sec. 7525
- 18 U.S.C. §2516(1)(m) and (n) - (new subsections) - Includes new predicate offenses for wire or oral interception: violations of 18 U.S.C. §§922 and 924 (relating to firearms) and Internal Revenue Code §5861 (relating to firearms). Sec. 6461
- 18 U.S.C. §2703(b)(1)(B)(i) and (c)(1)(B)(i) - (amendment) - Adds "or trial" after "grand jury" Sec. 7038
- 18 U.S.C. §3013(a) (amendment) - Sets out special assessments for misdemeanors/infractions: if the defendant is an individual - \$5 for an infraction or a class C misdemeanor, \$10 for a class B misdemeanor, \$25 for a class A misdemeanor; if the defendant is an organization - \$25 for an infraction or a class C misdemeanor, \$50 for a class B misdemeanor, \$125 for a class A misdemeanor. Sec. 7085
- 18 U.S.C. §3013(c) - Applies section to all fines and assessments irrespective of the date of imposition. Sec. 7082(b)
- 18 U.S.C. §3061 - (amendment) - Expands the authority of Postal Inspectors and other designated agents of the Postal Service to carry firearms, make seizures of property, and investigate criminal matters related to the Postal Service where in the enforcement of laws regarding property of the USPS or in its custody, or involving use of the mails, or other postal offense, and where, in the enforcement of other laws of the United States, as authorized by the Attorney General, provided such violations have a detrimental effect upon the operations of the Postal Service. Sec. 6251
- 18 U.S.C. 3077(4) - (amendment) - Deletes subparagraph (B). Sec. 7051
- 18 U.S.C. §3125 - (amendment) - Former sections 3125 and 3126

become sections 3126 and 3127 respectively.
Sec. 7092

18 U.S.C. §3125 - (new section) - Provides for the emergency installation of pen registers and trap and trace devices. Under this provision, any investigative or law enforcement officer who has been specially designated by the Attorney General, Deputy Attorney General, Associate Attorney General, any Assistant Attorney General, any Acting Assistant Attorney General, or any Deputy Assistant Attorney General, as well as certain state officials acting pursuant to state statute, may, under circumstances set forth in this section, have a pen register or trap and trace device installed and may use it for no more than 48 hours, during which period application must be made for the issuance of an order under §3123. In the event the information sought is obtained during the 48-hour period, or in the event an application for an order is denied during that period, the use of the device must terminate immediately.

This provision may be used if the investigative or law enforcement officer reasonably determines that an emergency situation exists that involves (A) immediate danger of death or serious bodily injury to any person, or (B) conspiratorial activities characteristic of organized crime, either of which would require the installation and use of such a device before an order authorizing such action could, with due diligence, be obtained, and there exist grounds upon which such an order could be entered. Sec. 7092(a)

18 U.S.C. §3143(b) - (amendment) - Inserts new paragraph (2) outlining circumstances permitting release pending approval: "that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in --
(A) reversal,
(B) an order for a new trial,
(C) a sentence that does not include a term of imprisonment, or
(D) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process."

Also inserts before final period:
"except that in the circumstance described in paragraph (b) (2) (D), the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence."
Sec. 7091

- 18 U.S.C. §3151 - (new section) - "Refund of Forfeited Bail" - "Appropriations available to refund money erroneously received and deposited in the Treasury are available to refund any part of forfeited bail deposited into the Treasury and ordered remitted under the Federal Rules of Criminal Procedure." Sec. 7084
- 18 U.S.C. §3161(k)(1) - (new subsection) - Speedy Trial Act time period is restarted (as in §3161(c)(1)) if defendant is absent on date of trial and comes before the court more than twenty-one days later. If within twenty-one days, then the time limit will be extended twenty-one days. Sec. 6476
- 18 U.S.C. §3288 - (amendment) - Inserts after "within six calendar months of the date of the dismissal of the indictment or information" the following: ", or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final"; strikes "Whenever" through "for any cause" and inserts "Whenever an indictment or information charging a felony is dismissed for any reason. . ."
- Adds at the end: "This section does not permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution." Sec. 7081(a)
- 18 U.S.C. §3289 - (amendment) - Makes same changes as those in 18 U.S.C. §3288, supra. Sec 7081(b)
- 18 U.S.C. §3508 - (new section) - Allows the Attorney General to request custody and return of foreign witnesses who are incarcerated without immigration or extradition procedures. Sec. 6484
- 18 U.S.C. §3559 - (amendment) - Class B felony is now twenty-five years, instead of twenty. Sec. 7041
- 18 U.S.C. §3563 and 3583(g) - (amendment and new subsection) - Establishes demonstration program requiring drug testing as a condition of probation or supervised release every sixty (60) days, which may be suspended after one (1) year of passing all tests. Includes mandatory imprisonment and drug treatment for failure of two (2) tests, a third failure requires revocation and sentence of no less than one-third of original sentence. Note: Litigation involving laboratory analysis and admission of urine samples should be anticipated. Sec. 7304

- 18 U.S.C. §§3563(a) and 3565 - (amendment) - Makes it a mandatory condition of probation that the defendant not possess illegal controlled substances. If the court finds that the person was in possession of a controlled substance, the court must revoke probation and impose a prison sentence of not less than one-third of the original sentence. Effective for probation that begins after December 31, 1988. Sec. 7303
- 18 U.S.C. §3563(b) - (amendment) - Provides for "house probation" restrictions for federal probation, supervised release, and parole. Sec. 7305
- 18 U.S.C. 3565 - (amendment) - Subsection (b) becomes (c); new (b) calls for mandatory revocation of probation following Rule 32.1 hearing of any probationer found in possession of a firearm. Also allows court discretion to impose any other sentence available under subchapter A at time of initial sentencing. Sec. 6214
- 18 U.S.C. §3565(a) - (amendment) - Mandatory revocation of probation for a defendant found to be in possession of illegal controlled substances. Sentence should be imposed at not less than one-third of the original sentence. Effective after December 31, 1988. Sec. 7303
- 18 U.S.C. §3573 - (amendment) - Section now applies to all fines and assessments irrespective of the date of imposition. Sec 7082
- 18 U.S.C. §3583(d) - (amendment) - Makes it a condition of supervised release that defendant not be found in possession of illegal controlled substances. Effective after December 31, 1988. Sec. 7303
- 18 U.S.C. 3583(e) - (amendment) Provides for "house arrest" restrictions and conditions for federal convictions subject to supervised release. Sec. 7305
- 18 U.S.C. 3583(g) - (new subsection) - Mandatory termination of supervised release if defendant found in possession of illegal controlled substances. Defendant required to serve not less than one-third of supervised release term in prison. Effective for supervised release that begins after December 31, 1988. Sec. 7303
- 18 U.S.C. §3663(h) - (amendment) - Allows for collection of restitution in same manner as collection of fines, and by the victim, the same manner as a judgment in a civil action. Sec. 7042
- 18 U.S.C. § 4209(a) - (amendment) - Makes it a specific condition of parole that parolee not be in possession of illegal controlled substances. Effective after December 31, 1988. Sec. 7303

- 18 U.S.C. §4209(c) - (amendment) - Allows for "house arrest" restrictions and conditions for federal parolees. Sec. 7305
- 18 U.S.C. §4209(f) - (new subsection) - Mandatory revocation of parole if parolee is found in possession of illegal controlled substance. Effective for paroles that begin after December 31, 1988. Sec. 7303
- 18 U.S.C. §4243(h) - (new subsection) - Provides limitations on furloughs for persons committed after being found not guilty by reason of insanity where commitment was for offense involving bodily injury or serious property damage. Such person may leave the facility temporarily only --
- (1) with approval of committing court, and notice to attorney for government;
 - (2) in emergencies; or
 - (3) when accompanied by Federal law enforcement officer. Sec. 7043
- 18 U.S.C. §4247(b) - (amendment) - Strikes "clinical psychologist" and inserts "psychologist" Sec. 7047
- 18 U.S.C. App. III - (new section) - (Interstate Agreement on Detainers Act - 84 Stat. 1397) Adds a new section 9 providing special procedures where the United States is a receiving state under the agreement. Sec. 7059

TITLE 19

- 19 U.S.C. §1305(b) - (new subsection) - Amends the Tariff Act to coordinate forfeiture proceedings with criminal proceedings to deal with a time problem that can prevent forfeiture of material if held too long while a decision is being made whether to proceed with criminal prosecution for importing the material. Sec. 7522
- 19 U.S.C. §1497 - (amendment) - Strikes out "200 percent" and inserts "1000 percent." Sec. 7367
- 19 U.S.C. §1603 - (amendment) - Provides authority for obtaining seizure warrant for forfeitable property in the same manner as for obtaining a search warrant. Sec. 7365
- 19 U.S.C. §1608 - (amendment) - Establishes the maximum amount of a cost bond under this section at \$5,000 (removes former question posed in a footnote to this section). Sec. 7367
- 19 U.S.C. §1609 - (amendment) - Clarifies that a declaration of administrative forfeiture has the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a U.S. district court, and

- authorizes the issuance of new title documents and removal of liens and encumbrances on property forfeited administratively. Sec. 7367
- 19 U.S.C. §1610 - (amendment) - The purported amendment does not change the statute. Sec. 7367
- 19 U.S.C. §1612 - (amendment) - The purported amendment does not change the statute. Sec. 7367
- 19 U.S.C. §1616a(c) - (amendment) - Provides authority for the equitable transfer of forfeited personal property or the proceeds of the sale of real or personal property to any foreign country which participated in the seizure or forfeiture provided (1) the Secretary of State agrees, (2) the transfer is authorized in an international agreement, and (3) the country has been certified under section 481(h) of the Foreign Assistance Act of 1961 (see 21 U.S.C. §881(e)(1)(D)). Sec. 7366
- 19 U.S.C. §1627 - (repeal) - Section 627 of the Tariff Act of 1930 (19 U.S.C. §1629) added by section 302 of the Motor Vehicle Theft Law Enforcement Act of 1984 is repealed. (Other section 627 of Tariff Act remains.) Sec. 7367(c)(6)

TITLE 21

- 21 U.S.C. 333 - (new section) - Adds after (d):
"(e)(1) Except as provided in paragraph (2), any person who distributes or possesses with the intent to distribute any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than three years or fined under title 18, United States Code, or both.
"(2) Any person who distributes or possesses with the intent to distribute to an individual under 18 years of age, any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than six years or fined under title 18, United States Code, or both." Sec. 2403
- 21 U.S.C. §802(8), (11), (33)-(40) - (amendment and new subsections) - Adds definitions relating to essential chemicals and precursors and expands others to incorporate those concepts. Sec. 6054
- 21 U.S.C. §813 - (amendment) - Applies definition of Controlled Substance Analogue in this section to "any federal law." Sec. 6470(c)
- 21 U.S.C. §830 - (amendment) - Substitutes new section regarding regulation of listed chemicals and tableting

- and encapsulating machines in place of former piperidine-reporting language. Sec. 6052
[See note at 21 U.S.C. §876(a).]
- 21 U.S.C. §841(b)(1)(A) - (amendment) - Adds mandatory life imprisonment without release for commission of specified drug felonies (21 U.S.C. §§841, 845, 845a, or 845b) after two previous convictions for any state, federal, or foreign drug felony. Sec. 6452
- 21 U.S.C. §841(b)(1)(A)(vii) - (amendment) - Adds ", or 1,000 or more marihuana plants regardless of weight" Sec. 6479
- 21 U.S.C. §841(b)(1)(A)(viii) - (new section) - Adds "(viii) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers." Sec. 6470(g)
- 21 U.S.C. §841(b)(1)(B)(vii) - (amendment) - Adds ", or 100 or more marihuana plants regardless of weight" Sec. 6479
- 21 U.S.C. §841(b)(1)(B)(viii) - (new section) - Adds "(viii) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;" Sec. 6470(h)
- 21 U.S.C. §841(b)(1)(D) - (amendment) - Changes 100 or more marihuana plants to 50 or more marihuana plants. Sec. 6479
- 21 U.S.C. § 841(b)(6) - (new section) - Provides up to five years in prison for knowingly or intentionally using a poison, chemical, or other hazardous substance on federal land in the commission of a federal drug offense. Sec. 6254(h)
- 21 U.S.C. 841(d) - (amendment) -
"(d) 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], 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, United States Code, or imprisoned not more than 10 years, or both." Sec. 6055

21 U.S.C. §841(f) and (g) - (new subsections) - Adds:

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

"(g)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section [830]) shall be fined under title 18, United States Code, 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] 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, United States Code, or imprisoned not more than one year, or both." Sec. 6055

21 U.S.C. §842(a)(8) - (amendment) - After "protection" adds ", or to use to his own advantage or reveal (other than as authorized by section [830]) any information that is confidential under such section." Sec. 6056(a)

21 U.S.C. §842(a)(8), (9), (10) - (amendment and new subsection) - In paragraph (8) strikes "or" at the end of the paragraph, adds "or" at the end of paragraph (9), and adds the following new paragraph: "(10) to fail to keep a record or make a report under section [830]." Sec. 6056(d)

21 U.S.C. §842(a)(9) - (amendment) - Modifies the language to read: "who is a regulated person to engage in a regulated transaction required by [830](a)(3)." Sec. 6056(b)

21 U.S.C. §843(a)(4)(B) - (amendment) - Deletes word "piperidine" and inserts "a listed chemical." Sec. 6057(a)

21 U.S.C. §843(a)(6), (7), (8) - (new subsections) - Adds after subsection (5) the following language: "(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 title;

"(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 title; or

"(8) to create a chemical mixture for the purpose of evading a requirement of section [830] or to receive a chemical mixture created for that purpose." Sec. 6057(a)

21 U.S.C. §843(d) - (new subsection) - Provides additional penalty of injunction for up to ten (10) years prohibiting continued business activity from which the conviction arose relating to the receipt, distribution, or importation of a listed chemical. Sec. 6057(b)

21 U.S.C. §844(a) - (amendment) - Inserts after second sentence new sentence which calls for new penalties for possession of a mixture or substance containing cocaine, including imprisonment for not less than 5 nor more than 20 years and a fine under Title 18 if:

1st conviction under this subsection and amount exceeds 5 grams;

2nd conviction for possession of such a mixture or substance under this subsection and amount exceeds 3 grams;

3rd conviction or more for possession of such a mixture or substance under this subsection and amount exceeds 1 gram. Removes maximum fine references, allowing imposition of maximum fines provided in Title 18.

Sec. 6371 and 6480

21 U.S.C. §§845, 845a, and 845b - (amendment) - Directs that sentencing guidelines be increased 2 levels above substantive offense and in no event less than level 26 where offense involves persons under 18 years of age, but limiting multiple enhancement. Sec. 6454

21 U.S.C. §845(a) - (amendment) - Eliminates mandatory sentencing requirements where offense involves five (5) grams or less of marihuana. Sec. 6455

21 U.S.C. §845(b) - (amendment) - Deletes last sentence concerning restrictions on five (5) grams or less of marihuana. Sec. 6456

21 U.S.C. §845a(a) and (b) - (amendment) - Adds after "university," "or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade

- facility." Sec. 6458(a)
- 21 U.S.C. §845a(d) - (new subsection) - Adds definitions of playground, youth center, video arcade facility, and swimming pool:
- (d) For purposes of this section --
- "(1) The term 'playground' means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.
- "(2) The term 'youth center' means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.
- "(3) The term 'video arcade facility' means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.
- "(4) The term 'swimming pool' includes any parking lot appurtenant thereto." Sec. 6458
- 21 U.S.C. §845b(a) - (amendment) - Adds "(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this [subchapter or subchapter II of this chapter]." Sec. 6459
- 21 U.S.C. §845b(e) - (amendment) - Deletes "required by section [841(b)]" in referring to determination of enhanced maximum term of imprisonment. Sec. 6470(d)
- 21 U.S.C. §846 - (amendment) - Penalties will be the same as the substantive offense - now the minimum penalties will apply. Sec. 6470(a)
- 21 U.S.C. §848 - (amendment) - Sets penalty minimum in subsection (a) at twenty (20) years for the first offense and thirty (30) years for the second offense. Changes letters for subsection (d) and (e) to (c) and (d). Sec. 6481
- 21 U.S.C. §848(e) - (new subsection) - Provides an additional penalty of at least twenty (20) years to life imprisonment, or the death penalty, applicable to any person engaging in or working in

furtherance of a continuing criminal enterprise or engaging in an offense punishable under 21 U.S.C. §841(b)(1)(A) or §960(b)(1) "who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing actually results" (21 U.S.C. §848(e)(1)(A))

Such punishment is also made applicable to any person who, "during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of [21 U.S.C. §§801 et seq. and 951 et seq.] who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, such officer's official duties and such killing results" (21 U.S.C. §848(e)(1)(B))

21 U.S.C. §848(g)-(r) - (new subsections) - Sets out the procedures by which the death penalty may be imposed. In brief, in any case in which the decision is made to seek the death penalty, notice must be provided to the defendant in advance of trial or guilty plea. The defendant must also be informed, subject to subsequent good faith revision, of which aggravating factors (listed in new subsection (n)) the government intends to prove at a separate sentencing hearing after the defendant pleads, or is found, guilty. At this hearing, which under subsection (i) may be before the original or new jury, or before the court alone, the government must prove at least two aggravating factors, one listed in 848(n)(1) - factors which involve the intent to kill and which are really elements of the offense - and at least one other from those listed in 848(n)(2) - (12). These latter factors include: the defendant's prior convictions for which the death penalty or life imprisonment was imposed, two or more prior state or Federal convictions for felonies involving drugs or the infliction or attempted infliction of serious bodily injury. Also included as aggravating factors are specific aspects of the murder for which the defendant has been convicted, such as that it was for hire or involved torture. If the government fails to prove at least two aggravating factors beyond a reasonable doubt, the death penalty cannot be imposed. If the finder of fact at the

sentencing hearing finds the required degree of aggravating factors, it must also consider whether any mitigating factors have been established by a preponderance of the evidence and outweigh the aggravating factors. A finding as to aggravating factors must be unanimous, while one or more jurors are allowed to find the existence of a mitigating factor. The defendant is not limited as to what may constitute a mitigating factor, but several possible mitigating factors are set out in subsection 848(m). Even if no mitigating factors are found, the fact finder must still determine that the aggravating factors, standing alone, justify the death penalty. In other words, the failure to find a mitigating factor does not necessarily mean that the death penalty must be imposed.

In the usual case, where the fact finder at the sentencing hearing is a jury, if the jury unanimously determines that the death sentence should be imposed, subsection (k) states that the jury is to "recommend" the sentence of death. However, subsection (l) states that on receiving a recommendation of death the court "shall sentence the defendant to death" unless the defendant was under age 18 at the time of the offense, is mentally retarded, or suffers from certain mental disabilities. The legislative history pertaining to these sections indicates that the court is not free to spare the defendant the death penalty if the jury, after considering the aggravating and mitigating factors, has recommended such a sentence, unless any of the above statutory exceptions is applicable.

As passed, the bill contains no provision for carrying out a sentence of death. Former 18 U.S.C. §3566, which authorized executions pursuant to the law of the state in which the trial was held, or if that state does not have capital punishment in another state designated by the court, was repealed effective November 1, 1987, by the Sentencing Reform Act of 1984. It would have been preferable to reenact that provision, but the same result can be accomplished through 18 U.S.C. §4007, which will allow the Attorney General to contract with a state for the execution of a death sentence.

It should be carefully noted that the United States Attorneys' Manual, at 9-2.148 and 9-10.020, provides that the death penalty

shall not be sought without the approval of the Attorney General. That provision also states that requests for approval should be processed through the Criminal Division section having jurisdiction over the offense. It is strongly recommended that any United States Attorney's Office considering the death penalty for one of the above drug offenses contact the Narcotic and Dangerous Drug Section of the Criminal Division as early as possible. Further policy guidance concerning the death penalty should be forthcoming. Sec. 7001

- 21 U.S.C. §856(a)* - (new section) - Provides maximum punishment of 10 years in prison, fine as provided in Title 18, or both, for whomever creates a "substantial risk of harm to human life while manufacturing a controlled substance in violation of this [subchapter], or attempting to do so, or transporting or causing to be transported materials, including chemicals to do so" Sec. 6301 [* pending codification]
- 21 U.S.C. §857 - (amendment) - Changes "primarily intended for use with" to "traditionally intended for use with" in subsection (f)(2), and provides other clarifications in subsection (d). Sec. 6485
- 21 U.S.C. §876(a) - (amendment) - Add after "with respect to controlled substances;" the following "listed chemicals, tableting machines, or encapsulating machines," Sec. 6058
Note: Sec. 6061 of the Act - effective date of the Chemical Diversion and Trafficking Act of 1988 (related to precursor and essential chemicals, encapsulating and tableting machines) is 120 days after the enactment of the Act to allow reporting forms to be drafted and distributed. Sec. 6061
- 21 U.S.C. §881(a)(7) - (amendment) - Add after "right, title, and interest" the following: "(including any leasehold interest)," thereby enabling the government to seek the forfeiture of a leasehold interest under the Controlled Substances Act. Sec. 5105
- 21 U.S.C. §881(a)(4) - (amendment) - Adds an "innocent owner" exception to the civil forfeiture of conveyances used to facilitate drug violations. Sec. 6075
- 21 U.S.C. §881(e) - (amendment) - Adds new subparagraph (3)(A) requiring that forfeited property transferred to a state or local law enforcement agency should have a value reasonably proportionate to the agency's direct participation in the effort resulting in the forfeiture, and subparagraph (3)(B) prohibiting such

transfers for the purpose of circumventing state laws prohibiting forfeiture or limiting the use or disposition of forfeited property. Sec. 6077

21 U.S.C. §881(e) - (amendment) - Restores Attorney General's equitable sharing authority under this statute. The Attorney General previously had such authority by virtue of 19 U.S.C. §1616 as incorporated into 21 U.S.C. §881(d). Sec. 6077

21 U.S.C. §881(e)(1)(D) - (new subsection) - Allows the transfer of personal property forfeited for drug violations to any foreign country which participated directly or indirectly in its seizure or forfeiture, provided that the Secretary of State agrees, the transfer is authorized by international agreement, and the transfer is to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961. Sec. 6074

21 U.S.C. §887 - (new section) - Adds a duplicative and somewhat contradictory section (because enacted in two separate sections of the Act) which require the Attorney General and the Secretary of the Treasury to establish regulations for expedited administrative procedures for seizures under 21 U.S.C. §881(a)(4), (6), and (7), 19 U.S.C. §1595a(a), and 49 U.S.C. App. 782 for violations involving the possession of "personal use" quantities of a controlled substance. Sec. 6079 and 6080

21 U.S.C. §960 - (new subsection) - Adds the following:
"(d) Any person who knowingly or intentionally --
"(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this [subchapter] or, in the case of an exportation, in violation of the law of the country to which the chemical is exported; or
"(2) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance in violation of this [subchapter] or in the case of an exportation, in violation of the law of the country to which the chemical is exported; shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both." Sec. 6053(c)

21 U.S.C. §960(a) - (amendment) - Directs change in sentencing guidelines to at least level 26 for violations of this section by air crews of

- non-commercial flights. Sec. 6453
- 21 U.S.C. §960(a)(3) - (amendment) - Adds possession with intent to distribute. Sec. 6475
- 21 U.S.C. §961 - (amendment) - Adds after "section 954" the following: "or fails to notify the Attorney General of an importation or exportation under section [971 - pending codification]" This is a provision relating to importation or exportation of listed precursor or essential chemicals.
- "The term 'listed precursor chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this [subchapter] and is critical to the creation of the controlled substance [including examples of covered substances]." (21 U.S.C. §802(34)) "The term 'listed essential chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this [subchapter] [including examples]" (21 U.S.C. §802(35)) Sec. 6053 and 6054
- 21 U.S.C. §963 - (amendment) - Penalty will be the same as the substantive offense - mandatory minimum will apply. Sec. 6470(a)
- 21 U.S.C. §971* - (new section) - Provides for notification to the Attorney General of the importation or exportation of listed chemicals, with delayed effective date. Sec. 6053 [* pending codification]

TITLE 26

- 26 U.S.C. §6050I - (amendment) - Add a new subsection (p)(1) which mirrors the language of Title 31 by providing that anyone who causes or attempts to cause a trade or business, to fail to file a Form 8300 or a false Form 8300, or structures transactions to evade the reporting requirement, shall be guilty of a 5-year felony if the non-filing or false filing was willful. It also adds new subsection (i)(8) to the tax disclosure statute, 26 U.S.C. §6103, which allows the Secretary of the Treasury, upon written request, to disclose Form 8300 to officers and employees of any Federal agency whose official duties require such disclosure for the administration of Federal criminal statutes not related to tax administration. Sec. 7601

TITLE 28

- 28 U.S.C. §524(c) - (amendment) - (Department of Justice Assets Forfeiture Fund) More clearly divides forfeiture-related expenses listed in subparagraph (c)(1)(A) into (i) asset-specific expenses and (ii) program-related expenses; clarifies which expenses shall be specified in appropriation acts; adds authorization for Fund payments for employment of attorneys and other personnel skilled in state real estate law as necessary; adds authorization for the Attorney General to exempt the procurement of contract services for seized and forfeited property from 41 U.S.C. §§5, 251 et seq., and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations; raises the maximum award for information or assistance leading to drug-related or racketeering-related forfeitures from \$150,000 to the lesser of \$250,000 or one-fourth of the amount realized from the forfeiture; specifies detailed requirements for reports of the Attorney General to Congress regarding the Fund; requires that unobligated amounts in the Fund up to \$150,000,000 shall be deposited in the Special Forfeiture Fund at the end of fiscal years 1990, 1991, and 1992; and establishes the Special Forfeiture Fund to be available to the Director of National Drug Control Policy. Sec. 6072 and 6073
- 28 U.S.C. §540 - (new section) - Authorizes the FBI to investigate the felonious killing of state and local law enforcement officials if requested by the head of that state/local agency. Sec. 7331
- 28 U.S.C. §636(a) - (amendment) - Authorizes magistrates to enter a sentence for any misdemeanor if parties consent. Sec. 7322

TITLE 31

- 31 U.S.C. §5312(a)(2) - (amendment) - Adds new types of business entities to the definition of a financial institution, including: businesses engaged in vehicle sales including cars, planes, and boats; persons involved in real estate closings; any business or agency which engages in an activity which the Secretary of the Treasury defines by regulation to be an activity which is similar to, related to, or a substitute for an activity in which any

business described in this section is authorized to engage; and, any business designated by the Secretary of the Treasury whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters. Sec. 6185(a)

31 U.S.C. §5325 - (new section) - Provides that no financial institution may sell a bank check, cashiers check, travellers check, or money order totalling \$3,000 or more (or a group of contemporaneous transactions totalling \$3,000 or more) unless:

(1) the individual has a transaction account with such financial institution and the financial institution-- (a) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and (b) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe. Transaction account is defined in 12 U.S.C.

§461(b)(1)(A). Sec. 6185(b)

31 U.S.C. §5326 - (new section) - Allows the Secretary of the Treasury to target certain geographic areas for increased reporting requirements (for 60 days) to require that certain financial institutions obtain information and maintain a record about transactions in which the institution is engaged generally or specifically engaged in with any person participating in the transaction. Sec. 6185(c)

TITLE 39

39 U.S.C. §3002a - (new section) - Makes a locksmithing device non-mailable, unless mailed to a manufacturer, distributor, bona fide locksmith or motor vehicle manufacturer or dealer. A "locksmithing device" is something that aids making keys, circumvents need of key, or bypasses lock. Sec. 7090

TITLE 46 APPENDIX

46 U.S.C. App. §1903(b)(2) - (amendment) - Limits exception in definition of "vessel of the United States" where vessel has been granted the nationality of a foreign nation to those instances where "claims of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of the United States law"
Sec. 7402

46 U.S.C. App. §1905(a) - (amendment) - Extends coverage of the proscription to anyone "who is a citizen of the United States or a resident alien of the United States on board any vessel."
Sec. 7402

TITLE 47

47 U.S.C. §223(b) - (amendment) - Raises penalty to a maximum of two years imprisonment, a fine in accordance with Title 18, or both for the making of an obscene telephone communication for commercial purposes, or to permit any telephone facility under such person's control to be used for such activity. Provides maximum punishment of six months imprisonment, a fine not to exceed \$50,000, or both for the making of an indecent communication for commercial purposes. Both offenses require that the call be in interstate or foreign communication or in the District of Columbia. Sec. 7524

TITLE 49 APPENDIX

49 U.S.C. App. §1472(b) - (amendment) - Makes it unlawful for any person to intentionally (1) alter or forge a certificate issued for aircraft registration; (2) obtain a certificate of registration by false pretense; (3) for the owner of an aircraft to operate aircraft or allow a craft to be operated if certificate of registration is suspended or revoked or if person operating craft does not have proper authorization to operate craft with owner's knowledge of that fact; (4) to knowingly operate an aircraft which should be registered but is not; (5) to serve or attempt to serve as an "airman" without certification; (6) to knowingly employ an "airman" who is not certified; (7) to operate an aircraft with a modified fuel system when such modification is not in

accord with applicable rules and regulations of the FAA; (8) to knowingly display false or misleading marks as to nationality or registration of any aircraft.

Penalties: a) imprisonment for a term of not more than 3 years, or a \$15,000 fine, or both; b) imprisonment for a term of not more than 5 years, or a fine of \$25,000, or both, if aircraft was being used to violate or facilitate a violation of a controlled substance offense. This fine and penalty shall be in addition to any other fine and penalty associated with controlled substance offense and cannot be served concurrently with controlled substance offense sentence. This amendment also calls for seizure in accordance with U.S. Customs laws of an aircraft in violation of this section. Amendment also includes certain conditions which create presumptions of violations of 49 U.S.C. App. §1472(b). Sec. 7209

49 U.S.C. App. §1472(q) - (amendment) - Amends language to make it unlawful to knowingly operate an aircraft in violation of any FAA regulation with respect to navigation or anticollision lights. Sec. 7209(c)

FEDERAL RULES

Fed. R. Crim. P. 11(c)(1) - (amendment) - Adds "or term of supervised release," after "special parole term" Sec. 7076

Fed. R. Crim. P. 12.3 - (new rule) - Notice of Defense Based Upon Public Authority. ("CIA defense.") Notice by defendant requires the law enforcement or federal intelligence agency and any member of such agency, for time period concerned, be identified, under seal. Government response to admit or deny within 10 days. Government can request names and addresses of witnesses. Sec. 6483

F.R. Civ. P. 54 - (amendment) - The term "petty offense" is said to have the meaning set forth in 18 U.S.C. §19 for that term. Sec. 7089

F.R. Civ. P. 17(a) - (amendment) - Deletes "with him" Sec. 7049

F.R. Civ. P. 35 - (amendment) - Allows a psychologist to make certain examinations. 18 U.S.C. §4247(b) has been changed to delete "clinical" from "clinical psychologist." Sec. 7047

Fed. R. Ev. 412 - (amendment) - Removes specific references to "rape" and replaces with "an offense under chapter 109A of title 18, United States Code" and later references to "rape or assault" are

replaced by "such offense" Sec. 7046
Fed. R. P. for Trial of Misdemeanors, Rule 9 - (amendment) - The
definition of the term "petty offense" is
stated to be the same as set forth in 18 U.S.C.
§19. Sec. 7089(b)

UNCODIFIED PROVISIONS

Section 6486 - (presently uncodified) - (new section) - Civil
penalty for possession of personal-use
amounts set at a maximum civil fine of
\$10,000. Because this section requires the
promulgation of regulations, it cannot be
used until such regulations issue. Sec. 6486

Section 1051 - Justice Department Organized Crime and Drug
Enforcement Enhancement Act. Provides for an
additional 6 million dollars for increasing
field attorney and related support staff
positions to work exclusively on asset
forfeiture and civil enforcement. Such
additional positions to be assigned to Strike
Force and OCDETF field offices.

Section 5301 - Denial of Federal Benefits to Drug Traffickers and
Possessors.

(a) Upon conviction of any Federal or
state offense for distribution of controlled
substances such person shall, at the
discretion of the court, be ineligible for
any or all Federal benefits for a period up
to five (5) years after first conviction, up
to ten (10) years for second conviction; be
permanently ineligible following a third or
subsequent conviction involving distribution
of a controlled substance.

(b) Upon conviction of any Federal or
state offense involving possession of a
controlled substance such person shall, at
the discretion of the court, be ineligible
for any or all Federal benefits for up to one
(1) year, be required to undergo drug
treatment including testing, be required to
perform community service, or any combination
of the three. For a second or subsequent
conviction for possession, the above applies
with the time limit extended to five (5)
years. The court may make the reinstatement
of benefits conditional upon completion of
the drug treatment program and/or community
service.

The court may waive the penalties and
conditions where there is a "reasonable body
of evidence" to support the waiver. The
period of ineligibility may be suspended for
completion of a drug rehabilitation program,

for one otherwise rehabilitated, or where a drug rehabilitation program is unavailable or the individual cannot pay for such treatment.

Definitions:

"(1) the term 'Federal benefit' --

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated fund of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(2) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States."

It should be noted that under subsection (e), the restrictions do not apply to a person who cooperates with the government, testifies for the government, or is in a government witness protection program.

Effective Date of Section: The denial of Federal benefits set forth in this section shall take effect for convictions occurring after September 1, 1989.

Section 7304 - Creates a demonstration program for two years in 8 districts to require drug testing of all defendants and to impose a mandatory condition of release that defendants submit to periodic drug tests. Sec. 7304.