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APRIL 30, 1976

Office of the White House Press Secretary

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THE WHITE HOUSE

TEXT OF A LETTER FROM THE  
PRESIDENT TO THE SPEAKER OF THE  
HOUSE OF REPRESENTATIVES  
AND THE PRESIDENT OF THE SENATE

April 30, 1976

Dear Mr. Speaker: (Dear Mr. President:)

There is transmitted herewith a bill containing the Administration's proposals for increasing the effectiveness of the criminal justice system in protecting the American people from trafficking in heroin and other narcotic drugs.

This legislation, which implements the recommendations contained in my special message to the Congress on drug abuse, would, if enacted, improve our ability to put the traffickers of hard drugs into prison. It would also improve our ability to take the easy profits out of drug trafficking as well as our capacity to detect and apprehend drug smugglers.

Considering the terrible toll that narcotic addiction takes, it is a matter of high priority that our laws be made more effective in curbing the narcotic traffic. If the law does not act as a deterrent, the risk of arrest and seizures becomes merely a cost of doing business for the narcotic traffickers. Unless there exists a reasonable certainty of punishment after conviction, traffickers have little reason to get out of the trafficking business. I therefore respectfully urge that these proposals receive consideration this session.

Sincerely,

GERALD R. FORD

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NARCOTIC SENTENCING AND SEIZURE ACT OF 1976

SECTION-BY-SECTION ANALYSIS

TITLE I: MANDATORY MINIMUM SENTENCES

TITLE II: CONDITIONS OF RELEASE

TITLE III: FORFEITURE OF PROCEEDS OF ILLEGAL  
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TITLE V: PROMPT REPORTING OF VESSELS

April 30, 1976

## SECTION-BY-SECTION ANALYSIS

Section 1 of the draft bill provides that the Act may be cited as the Narcotic Sentencing and Seizure Act of 1976.

### TITLE I. - MANDATORY MINIMUM SENTENCES

Title I of the draft bill provides mandatory minimum prison sentences for most persons convicted of an offense involving manufacturing, importing, or trafficking in opiates. The defendant could not be paroled until he had served the minimum sentence. The judge could not sentence the defendant to probation, suspend his sentence, or sentence him under the Youth Corrections Act. If, however, the judge found that, at the time of the offense, the defendant was under 18 years of age, that his mental capacity was substantially impaired, that he was under unusual and substantial duress, or that he was a minor participant in the offense, the judge could sentence the defendant to a lower term of imprisonment with a lower term of parole ineligibility, to probation, or to a suspended sentence; a mandatory minimum term of imprisonment under these provisions would be consecutive to any other term of imprisonment and a mandatory minimum term of parole ineligibility would be consecutive to any other term of parole ineligibility.

The provisions would apply only to offenses involving an opiate, which is defined as "a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance under schedule I or II, other than a narcotic drug consisting of (A) coca leaves; (B) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (C) a substance chemically identical thereto." The provisions are primarily aimed at heroin and morphine traffickers, importers, and manufacturers.

Section 101 of the draft bill contains the mandatory minimum sentence provisions for manufacturers and traffickers of opiates.

Section 101(a) would amend section 401 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841), pertaining to illegal manufacture, distribution, and dispensing of controlled substances, to provide a mandatory minimum term of imprisonment of three years and a mandatory minimum term of parole ineligibility of three years for a first offense relating to an opiate. If the offense followed a previous conviction for a federal, state, or foreign offense relating to an opiate which was punishable by over one year in prison, the minimum mandatory term of imprisonment and the minimum mandatory term of parole ineligibility would each be six years.

Section 101(b) would amend section 405 of the Act (21 U.S.C. 845) pertaining to distribution of controlled substances by a person at least 18 years of age to a person under 21, to provide a six-year mandatory minimum term of imprisonment and a six-year mandatory minimum term of parole ineligibility for a first offense of selling an opiate to a person under 21 years of age. If the offense is committed after a previous conviction for a federal, state, or foreign felony involving an opiate, the mandatory minimum term of imprisonment and mandatory term of parole ineligibility would be nine years.

Section 101(c) would amend section 406 of the Act (21 U.S.C. 846), relating to attempts and conspiracies to violate the drug laws, to provide that, if the offense was an offense under section 401 involving an opiate, the mandatory minimum term of imprisonment and mandatory minimum term of parole ineligibility would be three years for a first offense. If the offense followed a previous conviction for a federal, state, or foreign felony involving an opiate, the mandatory minimum term of imprisonment and mandatory minimum term of parole ineligibility would be six years.

Section 102 contains the mandatory minimum sentence provisions for persons who illegally import or export, or who manufacture or distribute for illegal importation, opiates.

Section 102(a) would amend section 1010 of the Act (21 U.S.C. 960), pertaining to illegal importation and exportation and to manufacture and distribution for illegal importation, of a controlled substance, to provide a mandatory minimum term of imprisonment of three years and a mandatory minimum term of parole ineligibility of three years, for a first offense relating to an opiate.

Section 102(b) would amend section 1012 of the Act (21 U.S.C. 962) to provide that, if an offense involving an opiate is committed after a previous conviction for a federal, state, or foreign felony relating to an opiate, the mandatory minimum term of imprisonment and mandatory minimum term of parole ineligibility is six years.

Section 102(c) would amend section 1013 of the Act (21 U.S.C. 963), pertaining to attempts and conspiracies to violate the laws concerning importation and exportation of controlled substances, to provide a mandatory minimum term of imprisonment and a mandatory minimum term of parole ineligibility of three years for a first offense of attempting or conspiring to violate section 1010(a) if the offense involves an opiate. If the offense is committed after a previous conviction of a federal, state, or foreign felony involving an opiate, the mandatory minimum term of imprisonment and the mandatory minimum term of parole ineligibility would be six years.

Section 103 would add a new Rule 32.1 to the Federal Rules of Criminal Procedure to provide for a sentencing hearing to those cases where the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 require a minimum term of imprisonment and parole ineligibility. The hearing would be held without a jury. Parties would have a right to counsel, to compulsory process, and to cross-examination of witnesses who appear at the hearing. If the defendant is found by a preponderance of the information, including information submitted during the sentencing hearing, to be subject to a mandatory minimum term of imprisonment and parole ineligibility, the judge would sentence him in accordance with the appropriate provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended.

## TITLE II. - CONDITIONS OF RELEASE

Release of defendants charged with or convicted of criminal offense is presently governed by the Bail Reform Act of 1966 (18 U.S.C. 3141-56). Title II would amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to provide standards of release and denial of release for defendants charged with trafficking in opiates or with illegally importing or exporting opiates, or with attempting or conspiring to commit one of these offenses.

Proposed section 412 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 would permit the judge, in setting pretrial release conditions under the Bail Reform Act for persons charged with opiate trafficking, exporting, and importing, and with attempts or conspiracies to commit those offenses, to consider the danger the person poses to the safety of any other person or to the community, or would revert to criminal activity of a nature similar to that constituting the basis on the pending charge.

Proposed section 413 of the Act permits the denial of release of certain persons charged with serious opiate offenses. Subsections (a)(1) through (a)(5) list the categories of opiate offenders who may be subject to denial of release. These include persons previously convicted of a federal, state or foreign opiate felony, persons on parole, probation, or other conditional release at the time of the offense, persons who



are nonresident aliens or in possession of illegal passports at the time of arrest, and persons convicted of having been fugitives or escaping from prison or willfully failing to appear before a court of judicial officer under federal or state law.

Subsection (b) requires that a hearing be held before a person may be denied release under the section, and that a person may be denied release only if the judge finds that there is clear and convincing evidence that the person charged with a serious opiate offense belongs in one of the categories of persons subject to denial of release, that no condition or conditions of release -- including the setting of a high bail -- will reasonably assure the safety of any other person or the community, and that there is a substantial probability that the person committed the offense with which he is charge. The judge must also issue an order denying release accompanied by written findings of fact and a statement of reasons for the order's entry.

Subsection (c) outlines the procedures and rights in the hearing. The defendant is entitled to representation of counsel, has the right to testify and to produce information by proffer or otherwise, and to present witnesses in his own behalf.

Under subsection (d), if a person is denied release prior to trial under the provisions of the section, his case must be placed on an expedited calendar.

TITLE III. - FORFEITURE OF PROCEEDS  
OF ILLEGAL DRUG TRANSACTIONS

Section 301(a) would amend Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) to permit the forfeiture of all proceeds, monies, negotiable instruments and securities used or intended to be used in violation of this Act.

Since the purpose of this section is to reach only that which is used or intended to be used as consideration for receipt of controlled substances in violation of this Act, the descriptive terms of consideration are defined as follows: (1) "Monies" means officially issued coin and currency of the United States or any foreign country; (2) "Negotiable instruments" means that which can be legally transferred to another party by endorsement or delivery; and (3) "Securities" refers to any stocks, bonds, notes or other evidences of debt or property; and (4) "Proceeds" refers to any other property furnished in exchange for a controlled substance in violation of this Act.

Section 301(b) is simply a clarifying amendment.

Section 301(c) provides that property forfeited pursuant to Section 301(a) would be disposed of by the Attorney General in accordance with existing law and with due regard for the rights of any innocent persons involved. Subsection (h)(3) of Section 301 also provides that the Attorney General shall cause to be deposited in the general fund of the United States Treasury all

monies forfeited pursuant to Section 301(a) and all currency derived from the sale of forfeited negotiable instruments and securities.

#### TITLE IV. - ILLEGAL EXPORT OF CASH

Title IV of the proposed bill would amend the Currency and Foreign Transactions Reporting Act. Section 401 would amend section 231(a) of the Currency and Foreign Transactions Reporting Act to provide that a violation of the currency reporting requirement occurs when a person who intends to transport monetary instruments out of the United States in an amount exceeding \$5,000 on any one occasion does not file a report prior to departing from the United States.

Section 231(a) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101(a)) currently requires reports to be filed by persons transporting or causing to be transported monetary instruments in excess of \$5,000 into or out of the United States. However, on March 25, 1976, the United States District Court (S.D. Fla.) dismissed a criminal proceeding against Juan Manuel Centeno who was discovered departing the United States with \$250,000 of unreported currency. The district court reasoned that no violation had occurred because the law is violated only after a person has actually left the United States without filing the required report. As a consequence of this decision, effective enforcement of the reporting requirement was significantly impaired. To remedy this defect in the law, the proposed amendment would require a report to be filed prior to departure by any person who wishes to transport or have transported out of the United States any amount exceeding \$5,000. A person departing by

aircraft or vessel would have to file the report prior to boarding the outbound carrier. Failure to file the report would then be a detectable violation. The law pertaining to reports by persons entering the country would be unchanged.

The sale of narcotics and dangerous drugs in the United States produces vast sums of money much of which leaves the United States. By monitoring the flow of currency and monetary instruments, significant information is developed with respect to narcotics trafficking and the illegal exportation of arms and munitions. However, the gap in the enforcement authority of the Customs Service noted by the district court has reduced the effectiveness of this program. By closing a loop-hole in the reporting requirements and strengthening Customs search authority of departing persons, the programs to halt the flow out of the country of illicitly obtained currency and currency which will be used for the purchase of narcotics destined for the United States would be aided substantially.

Currently, section 235 of the Currency and Foreign Transactions Reporting Act requires a search warrant in order to seize monetary instruments being taken from the United States in violation of the reporting requirements of section 231 of the Act. Section 402 of the proposed bill would allow warrantless searches under exigent circumstances where there is probable cause to believe that monetary instruments are

in the process of transportation and with respect to which a report required under section 231 of this Act (31 U.S.C. 1101) has not been filed or contains material omissions or misstatements.

This proposal would have no effect on the current Customs authority which allows warrantless searches of persons entering the United States.

## TITLE V.- PROMPT REPORTING OF VESSELS

Title V of the draft bill would require the master of any vessel arriving from a foreign port or place, or of a foreign vessel arriving from a domestic port, or a vessel of the United States carrying bonded merchandise or foreign merchandise for which entry has not been made, to immediately report arrival of the vessel at the nearest customhouse or such other place as the Commissioner of Customs may prescribe in regulations.

In recent years, the use of private yachts and pleasure vessels to smuggle narcotics and dangerous drugs has created a significant detection and interdiction problem for the Customs Service. The existing law contributes to this problem because, with the exception of vessels arriving from Canada or Mexico, the law permits twenty-four hours in which to report arrival of the vessel. Thus a narcotics smuggler using a small boat can land in the United States without facing the prospect of an immediate Customs inspection and discovery of contraband. This problem has become particularly acute in Florida where private yachts and pleasure yachts with easy access to nearby foreign islands and the U.S. inland waterways complicate detection. The proposed amendment, section 501, would authorize the Commissioner of Customs to require the master of a vessel to report immediately and would also afford greater flexibility in designating the places where arrival may

be reported. Customs would, thus, be in a position to concentrate enforcement activities on those vessels failing to report immediately, on the assumption that they are liable to be involved in smuggling. Section 502 contains a conforming amendment to section 459 of the Tariff Act (19 U.S.C. 1459) relating to the arrival of vessels from Canada and Mexico.



# A BILL

To protect the public from traffickers in heroin and other opiates and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the*  
2 *United States of America in Congress assembled,* That this Act may be cited as the "Narcotic Sentencing and Seizure Act of 1976".

## TITLE I - MANDATORY MINIMUM SENTENCES

SEC. 101. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 et seq.) is amended as follows:

(a) Section 401 (21 U.S.C. 841) is amended by:

(1) adding the following new subparagraph at the end of subsection (b)(1):

"(C)(i) Except as provided in clause (ii), the judge, in setting the sentence under paragraph (A) for an offense involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years. If the person committed such violation after he had been

convicted of a felony under federal, state, or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this paragraph shall be not less than 6 years and the mandatory minimum term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(ii) Notwithstanding the provisions of clause (i), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under clause (i), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(a) the defendant was less than eighteen years old;

"(b) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(c) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(d) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor."; and

(2) adding at the end thereof the following new subsection:

"(d) As used in subsection (b) (1) (C):

"(1) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (A) coca leaves; (B) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (C) a substance chemically identical thereto; and

"(2) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

(b) Section 405 (21 U.S.C. 845) is amended by adding at the end thereof the following:

"(c) (1) Except as provided in subparagraph (2), the judge, in setting the sentence under section 401(b) (1) (A) of a person at least eighteen years of age who violated section 401(a) (1) by distributing an opiate to a person under twenty-one years of age, shall not sentence the person to probation or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to:

"(A) except as provided in paragraph (B), a term of imprisonment of not less than 6 years

and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 6 years; or

"(B) a term of imprisonment of not less than 9 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 9 years, if the person committed such violation after he had been convicted of a felony under federal, state, or foreign law relating to an opiate.

A term of imprisonment under this subsection shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this subsection shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(A) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(B) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(C) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection:

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

(c) Section 406 (21 U.S.C. 846) is amended by designating the existing language as subsection (a) and adding the following new subsection (b):

"(b)(1) Except as provided in paragraph (2), the judge, in setting the sentence under subsection (a) for an attempt or conspiracy to commit an offense described in section 401 involving an opiate, may not sentence the person to probation or suspend imposition or execution of the sentence or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years.

If the person committed such violation after he had been convicted of a felony under federal, state, or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this subsection shall be not less than 6 years and the mandatory minimum term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection:

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

SEC. 102. Part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 951 et seq.) is amended as follows:

(a) Section 1010 (21 U.S.C. 960) is amended by adding the following new paragraph at the end of subsection (b):

"(3) (A) Except as provided in subparagraph (B), the judge, in setting the sentence under paragraph (A) for an offense involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the defendant to a term of imprisonment of not less than 3 years and shall designate a term of

parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years. A term of imprisonment under this subparagraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this subparagraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(B) Notwithstanding the provisions of paragraph (3)(A), the court may sentence the defendant to a shorter term of parole ineligibility than required under paragraph (3)(A), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(i) the defendant was less than eighteen years old;

"(ii) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(iii) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(iv) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.



"(C) As used in this paragraph:

"(i) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (a) coca leaves; (b) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (c) a substance chemically identical thereto, and

"(ii) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

(b) Section 1012 (21 U.S.C. 962) is amended by adding the following at the end thereof:

"(d)(1) Except as provided in paragraph (2), the judge, in setting the sentence for an offense under section 1010(b) involving an opiate, if the person committed such violation after he had been convicted of a felony under federal, state, or foreign law relating to an opiate, shall not sentence the person to probation or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 6 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection:

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

(c) Section 1013 (21 U.S.C. 963) is amended by designating the existing language as subsection (a) and adding the following new subsection (b):

"(b)(1) Except as provided in paragraph (2), the judge, in setting the sentence under subsection (a) for an attempt or conspiracy to commit an offense described in section 1010(a) involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years. If the person committed such violation after he had been convicted of a felony under federal, state, or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this subsection shall be not less than 6 years and the mandatory minimum term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant

to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection:

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized."

SEC. 103. The Federal Rules of Criminal Procedure are amended by adding the following new Rule after Rule 32:

"Rule 32.1 - Sentence to a Mandatory Sentence of Imprisonment

"If a defendant is convicted of an offense for which he may be sentenced to a mandatory term of imprisonment or a mandatory term of parole ineligibility under section 401(b)(1)(C), 405(c), 406(b), 1010(b)(3), 1012(d), or 1013(b) of the Comprehensive Drug Abuse Prevention and Control Act, as amended (21 U.S.C. 841(b)(1)(C), 845(c), 846(b), 960(b)(3), 962(d), or 963(b)), the court, prior to imposition of sentence shall hold a hearing to determine whether a term of imprisonment and parole ineligibility is mandatory. The hearing shall be held before the court sitting without a jury, and the defendant and the government shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that the defendant is subject to a mandatory term of imprisonment and parole ineligibility, the court shall sentence the defendant in accordance with the appropriate provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as

amended. The court shall place in the record its findings, including an identification of the information relied upon in making its findings."

TITLE II - CONDITIONS OF RELEASE

SEC. 201. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) is amended by adding at the end thereof the following new sections:

"RELEASE CONDITIONS

"Sec. 412. In setting conditions of release under section 3146(a) of title 18, United States Code, for any person charged with an offense under section 401(a) of this title or section 1010(a) of title III with respect to an opiate, or charged under section 406 of this title with attempting or conspiring to commit an offense under section 401(a) of this title relating to an opiate, or charged under section 1013 of title III with attempting or conspiring to commit an offense under section 1010(a) of title III relating to an opiate, the judicial officer shall, in addition to determining which conditions will reasonably assure the appearance of the person for trial, consider which conditions will reasonably assure the safety of the community, the personal safety of persons in the community including witnesses to the offense, and the avoidance of future similar offenses by the person charged.

"DENIAL OF RELEASE PRIOR TO TRIAL

"Sec. 413. (a) Subject to the provisions of this section and notwithstanding the provisions of section 3146 of title 18, United States Code, a judicial officer may deny release of a person charged with a violation

of section 401(a) of this title or section 1010(a) of title III with respect to an opiate, or charged under section 406 of this title with attempting or conspiring to commit an offense under section 401(a) relating to an opiate, or charged under section 1013 of title III with attempting or conspiring to commit an offense under section 1010(a) of title III relating to an opiate, who --

"(1) has previously been convicted of an offense under any provision of federal, state, or foreign law, relating to an opiate, which is punishable by more than one year's imprisonment;

"(2) at the time of the offense, was on parole, probation, or other conditional release in connection with a conviction for or a pending charge of an offense under federal or state law that is punishable by more than one year's imprisonment;

"(3) is a nonresident alien;

"(4) was arrested while in possession of a passport or other documentation necessary for international travel incorrectly identifying him or belonging to some other person; or

"(5) has been convicted of having been a fugitive from justice, an escapee, or for willfully failing to appear before any court or judicial officer under federal or state law.

"(b) No person described in subsection (a) of this section shall be denied release unless the judicial officer --

"(1) holds a hearing in accordance with the provisions of subsection (c) of this section;

"(2) finds --

"(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section;

"(B) that there are no conditions of release which will reasonably assure the appearance of the person charged, the safety of the community, the personal safety of persons in the community including witnesses to the offense, or the avoidance of future similar offenses by the person charged; and

"(C) that on the basis of information presented by proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is present before the officer, and

"(3) issues an order denying release accompanied by written findings of fact and the reasons for its entry.

"(c) The following procedures shall apply to hearings held pursuant to this section:

"(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States Attorney.

"(2) Whenever the person has been released pursuant to section 3146 of title 18, United States Code, and it subsequently appears that such person may be subject to an order denying release under



this section, the United States Attorney may initiate a hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person.

"(3) The hearing shall be held immediately upon the person's being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance or motion of the United States Attorney shall be granted upon good cause shown and not exceed three calendar days. The person may be held pending the hearing.

"(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

"(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 3150 and 3151 of title 18, United States Code in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

"(7) Appeals from orders denying release may be taken pursuant to section 3147 of title 18, United States Code. The United States may appeal from orders granting release under this section.

"(d) The case of a person denied release pursuant to this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

#### "DEFINITIONS

"Sec. 414. As used in sections 412 and 413 of this title, the term:

"(a) 'judicial officer' means any person or court authorized pursuant to section 3041 of title 18, United States Code, or the Federal Rules of Criminal Procedure, to admit to bail or otherwise to release a person before trial or sentencing or pending appeal, in a court of the United States and any judge of the Superior Court of the District of Columbia; and

"(b) 'opiate' has the meaning set forth in section 401(d) of this title."

SEC. 202. The table of contents at the beginning of the Drug Abuse Prevention and Control Act of 1970 is amended by adding the following new items after the item relating to section 411:

"Sec. 412. Release conditions.

"Sec. 413. Denial of release prior to trial.

"Sec. 414. Definitions."

TITLE III -- FORFEITURE OF PROCEEDS  
OF ILLEGAL DRUG TRANSACTIONS

SEC. 301. Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) is amended by:

(a) adding at the end of subsection (a) the following new paragraph:

"(6) All proceeds of an offense described in this title or title III and all monies, negotiable instruments, and securities used or intended to be used by any person, directly or indirectly, in connection with a violation of this title or title III.";

and

(b) adding after the words "Whenever property" in subsection (e) the words "described in subsections (a)(1) through (a)(5)"; and

(c) adding a new subsection (h) at the end thereof as follows:

"(h) Whenever property described in subsection (a)(6) is forfeited for violation of this title or title III, the Attorney General, making due provision for the rights of any innocent person;

"(1) may dispose of property other than monies, negotiable instruments and securities in the manner set forth in subsection (e);

"(2) may dispose of negotiable instruments and securities in the manner prescribed in subsection (e)(2); and

"(3) shall forward currency obtained from sales pursuant to paragraph (2) and monies forfeited under subsection (a)(6) to the Treasurer of the United States for deposit in the general fund of the United States Treasury.".

TITLE IV -- ILLEGAL EXPORT OF CASH

SEC. 401. Section 231(a) of the Currency and Foreign Transactions Reporting Act is amended to read as follows:

"(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee:

(1) intends to transport, or have transported, monetary instruments from any place within the United States to or through any place outside the United States in an amount exceeding \$5,000 on any one occasion shall file a report or reports in accordance with subsection (b) prior to departing from the United States;

(2) knowingly transports, or causes to be transported, monetary instruments from any place outside the United States to or through any place within the United States in an amount exceeding \$5,000 on any one occasion shall file a report or reports prior to or at the time of arrival in accordance with subsection (b); or

(3) receives monetary instruments at the termination of their transportation by common carrier to the United States from or through any place outside the United States in an amount exceeding \$5,000 on any one occasion shall file a report or reports in accordance with subsection (b)."

SEC. 402. Section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by adding a new subsection (b) as follows:

"(b) When because of exigent circumstances a warrant cannot be obtained, any officer of Customs may search without a warrant any of the individuals or objects included in subsection (a) of this section if he has probable cause to

believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 of this Act (31 U.S.C. 1101) has not been filed or contains material omissions or misstatements."

TITLE V - PROMPT REPORTING OF VESSELS

SEC. 501. Section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), is amended to read as follows:

"The master of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, arriving at any port or place within the United States, shall immediately report the arrival of the vessel at the nearest customhouse or such other place as the Secretary of the Treasury may prescribe in regulations. The Secretary may by regulation extend the time, not to exceed twenty-four hours after the arrival of the vessel, in which to report arrival."

SEC. 502. Section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), is amended by substituting a comma for the word "or" wherever it appears between the words "entry" and "customhouse", and inserting after the word "customhouse" the phrase "or other places as the Secretary of the Treasury may prescribe in regulations."

SEC. 601. For the purposes of Sections 607, 610 and 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1607, 1610 and 1612), are amended by substituting "\$10,000" for "\$2,500" wherever it appears, when the property subject to forfeiture was used or intended for use in violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (12 U.S.C. 801, et seq.).