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EXHIBIT 305

91st Congress, 2d Session - - - House Report No. 91-1444 (Part 1)

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

REPORT

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

TOGETHER WITH

INDIVIDUAL VIEWS

TO ACCOMPANY

H.R. 18583

A BILL TO AMEND THE PUBLIC HEALTH SERVICE ACT AND OTHER LAWS TO PROVIDE INCREASED RESEARCH INTO, AND PREVENTION OF, DRUG ABUSE AND DRUG DEPENDENCE; TO PROVIDE FOR TREATMENT AND REHABILITATION OF DRUG ABUSERS AND DRUG DEPENDENT PERSONS; AND TO STRENGTHEN EXISTING LAW ENFORCEMENT AUTHORITY IN THE FIELD OF DRUG ABUSE

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SEPTEMBER 10, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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48-707 WASHINGTON : 1970

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91ST CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 91-1444
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COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

SEPTEMBER 10, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 18583]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 18583) to amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a new text, which is set forth in italic in the reported bill.

PRINCIPAL PURPOSE OF THE BILL

This legislation is designed to deal in a comprehensive fashion with the growing menace of drug abuse in the United States (1) through providing authority for increased efforts in drug abuse prevention and rehabilitation of users, (2) through providing more effective means for law enforcement aspects of drug abuse prevention and control, and (3) by providing for an overall balanced scheme of criminal penalties for offenses involving drugs.

BACKGROUND

Titles I and II of the reported bill were the subject of hearings before the Subcommittee on Public Health and Welfare on February 3, 4, 17, 18, 19, 20, 25, 26, and 27, and on March 2 and 3, 1970. Following the hearings, the subcommittee considered the legislative proposals

before it during a total of 37 executive sessions, as a result of which a clean bill (H.R. 18583) was introduced incorporating revisions in the legislation before the subcommittee.

The legislation was further considered in executive sessions before the full Interstate and Foreign Commerce Committee on 8 occasions, and titles I and II were ordered reported to the House unanimously on August 14, 1970, together with title III incorporated in the bill pursuant to action of the Ways and Means Committee (as indicated below).

Legislation providing increased law enforcement authority in the field of drug abuse was transmitted to the Congress by the President on July 14, 1969. Because the proposed legislation repeals the tax laws and other laws under the jurisdiction of the Committee on Ways and Means used to control narcotic drugs, the President's message was at first referred to the Committee on Ways and Means. However, because the proposed legislation also deals with drugs regulated under the Federal Food, Drug, and Cosmetic Act, the proposed legislation was divided into two bills, H.R. 13742 (referred to the Committee on Ways and Means) and H.R. 13743 (referred to the Committee on Interstate and Foreign Commerce). The two bills were, in general, identical, except with respect to the drugs covered by their provisions, with H.R. 13742 being limited to narcotic drugs and marihuana (regulated today under the Internal Revenue Code of 1954 and other Acts), and H.R. 13743 being limited to drugs today regulated under the Federal Food, Drug, and Cosmetic Act.

Hearings were held on H.R. 13742 and H.R. 17463 (a bill combining the provisions of H.R. 13742 and H.R. 13743) on July 20, 21, 22, 23, and 27. Thereafter the Committee on Ways and Means decided to consider only the provisions relating to imports and exports of narcotic drugs, marihuana, and depressant and stimulant drugs and recommended to the Interstate and Foreign Commerce Committee an amendment to H.R. 18583 which is incorporated in the bill as title III thereof. The reported bill is based upon the provisions of the legislation heretofore discussed, with the form in which the bill is reported being designed to preserve the jurisdiction of the Ways and Means Committee over future amendments to this legislation relating to imports and exports of drugs covered by the bill.

By agreement between the Interstate and Foreign Commerce Committee and the Ways and Means Committee, the former committee will handle and have jurisdiction over titles I and II of the reported bill, and the latter will handle and have jurisdiction over title III of the bill, as set forth in the following letter from Chairman Mills to Chairman Staggers:

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 12, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: In accordance with our prior understanding relative to committee jurisdiction over the subject of narcotic and dangerous drug legislation, this letter is to advise you that the Committee

on Ways and Means has completed action on its portion of the legislation to be reported to the House by the Committee on Interstate and Foreign Commerce.

I am authorized and directed by the Committee on Ways and Means to formally forward to you under cover of this letter the legislative language which is to be contained in title III of the comprehensive drug bill which will be reported by the Committee on Interstate and Foreign Commerce. This title III contains the matters over which the Committee on Ways and Means will have jurisdiction and is related to the subject of importation and exportation, and amendments and repeals of revenue laws. The short title for title III is the "Controlled Substances Import and Export Act."

There will also be forwarded to you appropriate report language relating to title III for you to include in the committee report which your committee will file on this legislation, in accordance with our understanding.[1]

Further, the Committee on Ways and Means will handle matters related to title III of the legislation before the Committee on Rules, and on the floor of the House of Representatives when the bill is considered by the House.

Sincerely yours,

WILBUR D. MILLS, *Chairman.*

SUMMARY OF THE BILL

H.R. 18583, as reported, consists of three titles. Title I establishes rehabilitation programs relating to drug abuse; title II provides authority for the Justice Department with respect to law enforcement aspects of control of drug abuse; and title III, as recommended by the Committee on Ways and Means, covers provisions relating to importation and exportation of drugs subject to abuse.

Title I: Rehabilitation.—The bill provides authority for the Department of Health, Education, and Welfare to increase its efforts in the rehabilitation, treatment, and prevention of drug abuse, through community mental health centers and through public health service hospitals and facilities. Over a 3-year period $75 million in increased authorizations are provided for community mental health center facilities to deal with narcotic addicts and drug dependent persons, $29 million is authorized for drug abuse education activities, and $60 million is authorized for special facilities in areas having percentages of narcotic addicts and drug dependent persons.

Increased research and training activities are authorized through the National Institute of Mental Health out of appropriations otherwise authorized for that institute. Section 4 of the bill would encourage treatment of narcotic addicts by individual physicians.

Title II: Control and Enforcement.—The bill provides for control by the Justice Department of problems related to drug abuse through registration of manufacturers, wholesalers, retailers, and all others in the legitimate distribution chain, and makes transactions outside the legitimate distribution chain illegal.

[1] Repot language referred to in this paragraph may be found on pages 71 through 80 of this report.

The drugs with respect to which these controls are enforced initially are those listed in the bill. These drugs are those which by law or regulation have been placed under control under existing law. This includes all hard narcotics and opiates, marihuana, all hallucinogens (such as LSD), amphetamines, barbiturates, and tranquilizers subject to abuse.

A procedure is established for classification of future drugs which create abuse problems. Under this procedure, if the Attorney General feels that a drug should be controlled, he will gather data, and request a scientific and medical evaluation by the Secretary of HEW. If the Secretary of HEW determines, on the basis of these and any other data, that the drug should not be controlled, the Attorney General may not control the drug; otherwise, the Attorney General may publish notice in the Federal Register and proceed in accordance with rulemaking procedures, which provide notice and opportunity for a hearing, to list the drug for control.

An exception is made in the case of treaty obligations of the United States. If a drug is required to be controlled pursuant to an international treaty, convention, or protocol in effect on the enactment of the bill, the drug will be controlled in conformity with the treaty or other international agreement obligations.

In the case of drugs providing serious addiction or abuse problems (those listed in schedules I and II) tighter controls are provided. These controls include the establishment of quotas for imports and for domestic manufacture. Transfers of these drugs may only be made through the use of officially prescribed order forms, with a copy furnished the Attorney General.

All persons in the distribution chain are required to be registered, and, with certain exceptions, must keep records with respect to all transfers of controlled drugs. Practicing physicians are required to keep records of schedule I substances; keep records of narcotic drugs in other schedules which they dispense (as distinguished from prescribing or administering) to patients; and if they charge for other controlled drugs regularly, keep records of these transactions. Researchers are not required to keep records with respect to controlled substances used by them at registered establishments that keep records.

Criminal Penalties.—The bill revises the entire structure of criminal penalties involving controlled drugs by providing a consistent method of treatment of all persons accused of violations. With one exception involving continuing criminal enterprises, hereafter discussed, all mandatory minimum sentences are eliminated.

Possession of controlled drugs is made a misdemeanor, except where the possession is for the purpose of distribution to others. In the case of a first offense of simple possession, the court may place the offender on probation for not more than 1 year. If at the end of the period of probation the offender has not violated the conditions of probation, the proceedings against him may be dismissed without a court adjudication of guilt.

If the offender is below the age of 21 when the offense occurs, he may obtain a court order expunging from all official records all recordation relating to his arrest, indictment, trial, and finding of guilt. The procedure described above for first offenders may only be utilized once by an individual, and a second offense of possession thereafter will be treated as a first offense.

Manufacture or distribution of illicit drugs is punishable by up to 15 years in prison in the case of schedule I or II narcotic drugs, and by up to 5 years in the case of non-narcotic schedule I or II drugs or any other controlled drugs in schedule III. Illegal sales or manufacture of schedule IV drugs (generally minor tranquilizers) would carry a 3-year sentence for a first offense and of schedule V drugs would carry a 1-year sentence.

Second offenses carry double the penalty for first offenses.

Where a person over 18 sells drugs to a person below 21, the first offense punishment is twice that otherwise prescribed.

Where an individual engages in a continuing criminal enterprise involving a continuing series of violations undertaken by him in concert with five or more other persons and from which he derives substantial income, he is punished by a mandatory minimum sentence of not less than 10 years and up to life imprisonment, together with a fine of up to $100,000 and forfeiture to the United States of all profits derived from the enterprise.

Administration.—The bill specifies a number of administrative authorities for the Attorney General, authorizing research and education programs relating to law enforcement aspects of drug abuse, cooperation with State and local law enforcement authorities, administrative inspections, forfeitures, and execution of search warrants, including authority to enter premises without giving notice of authority and purpose if a judge or U.S. magistrate has authorized such entry in the warrant after determining that there is probable cause to believe that—

(1) property sought may and, if notice is given, will be easily and quickly destroyed or disposed of, or

(2) the giving of such notice will immediately endanger the life or safety of the executing officer or another person.

Commission on Marihuana and Drug Abuse.—The bill establishes a Presidential commission on marhuana and drug abuse which will study and report to the Congress within 1 year on problems involved in marihuana use, and within 2 years on the causes of drug abuse and their relative significance.

Title III: Imports and exports.—Title III of the bill as recommended by the Committee on Ways and Means provides for control of imports and exports of drugs subject to abuse through a system of registration of importers and exporters, and permits for or notification to the Attorney General of transactions, with criminal penalties for transactions outside the legitimate chain.

Total Authorization

The bill authorizes $403 million in additional appropriations as follows:

(1) Increased authorization for community mental health centers: 1971, $10 million; 1972, $25 million; 1973, $40 million.

(2) Drug abuse education: 1971, $7 million; 1972, $10 million; 1973, $12 million.

(3) Special projects: 1971, $20 million; 1972, $20 million; 1973, $20 million.

(4) Commission on marihuana and drug abuse: $1 million.

(5) Department of Justice: 1972, $60 million; 1973, $70 million; 1974, $90 million, plus an additional amount for increased enforcement personnel of $6 million per fiscal year.

Control Provisions

The bill is designed to meet problems that have arisen under existing narcotic and dangerous drug laws due to recent governmental reorganization, court rulings, and the changing posture of the drug problem facing this country.

Since 1914 the Congress has enacted more than 50 pieces of legislation relating to control and diversion, from legitimate channels, of those drugs referred to as narcotics and dangerous drugs. This plethora of legislation has necessarily given rise to a confusing and often duplicative approach to control of the legitimate industry and to enforcement against the illicit drug traffic. This bill collects and conforms these diverse laws in one piece of legislation based upon new scientific information, the restructured Federal law enforcement efforts under Reorganization Plan No. 1 of 1968, and greater information concerning the scope of the problem. The bill classifies substances subject to control in five schedules according to their abuse potential, and psychological and physical effects. It sets forth penalties which are designed to correspond to violations involving substances contained in the respective schedules.

The bill is designed to improve the administration and regulation of the manufacturing, distribution, and dispensing of controlled substances by providing for a "closed" system of drug distribution for legitimate handlers of such drugs. Such a closed system should significantly reduce the widespread diversion of these drugs out of legitimate channels into the illicit market, while at the same time providing the legitimate drug industry with a unified approach to narcotic and dangerous drug control.

The bill also specifically recognizes our international obligations under the Single Convention of 1961 and will allow the United States to immediately control under the schedules of the bill drugs hereafter included under schedules of the Single Convention upon the recommendation of the World Health Organization.

Extent of the Problem

Drug abuse in the United States is a problem of ever-increasing concern, and appears to be approaching epidemic proportions. One indication of the upsurge in drug abuse in the last few years can be found in arrest statistics, although for every individual apprehended, countless others go undetected. For 1968, uniform crime reports indicate that 162,177 persons were arrested by State and local authorities for drug violations, constituting a 322-percent increase over the number of drug arrests made in 1960. Of the total number arrested in 1968, 43,200 were under the age of 18 and 6,243 were under the age of 15. Another indication of the growing seriousness of the problem is that, according to testimony presented to the committee, a leading cause of death among teenagers in the United States today in many major metropolitan areas is overdosage of heroin.

Since drug abuse involves illegal activities under both State and Federal law, reliable statistics cannot be obtained on the actual extent of drug abuse in the United States; however, it is apparent that the extent of drug abuse, particularly among the young, is increasing greatly. Estimates are that between 8 and 12 million persons have tried marihuana. Studies involving some colleges and graduate schools indicate that 50 percent or more of the students have abused drugs at one time or another; and testimony before the committee in hearings on this and other legislation has indicated that substantial numbers of high school students and in some cases grammar school students are involved in the abuse of drugs.

With regard to the stimulant and depressant drugs, now regulated under the Federal Food, Drug, and Cosmetic Act as amended by the Drug Abuse Control Amendments of 1965 and in 1968, it should be noted that as estimated in a report by this committee in March of 1965 on the Drug Abuse Control Amendments of 1965, almost 50 percent of the 9 billion amphetamines and barbiturates produced legitimately in this country were diverted into illicit channels. As of late 1969, when that diversion figure was rechecked, it was still accurate.

Testimony further indicated that hallucinogenics accounted for the greatest single increase in drug offenses in the United States. Probably the most widely abused drug in this class was marihuana, which accounted for most of the 64-percent increase in total narcotic and marihuana arrests between 1967 and 1968. The recent Federal Bureau of Investigation Uniform Crime Reports indicated that instances of marihuana violations had risen 200 percent between 1967 and 1969. It was also estimated that in certain high school and college environments, over 50 percent of all the students had had some experience with marihuana.

Consequences of Drug Abuse

The consequences of drug abuse are varied, depending upon the type of drug abused. In addition to the ever-present danger of arrest and imprisonment, the consensus among the medical profession is to the effect that the abuse of drugs by individuals has adverse effects upon the physical or mental health of the abusers.

Abuse of drugs can create in the abuser a dependency upon the drug itself. The dependence may be physical, in which case the abuser suffers pronounced discomfort in the absence of the drug upon which he has become dependent, with consequences ranging from illness through grand mal convulsions and death.

In addition to the dangers associated with the creation of physical dependence occurring in the case of abuse of certain of the drugs proposed to be controlled under the bill, all of the drugs covered can create psychological dependence in the abuser. In general, a person is considered as psychologically dependent upon drugs when the physical sensation or psychological state brought about through the use of the drug is of such a nature that he desires the repetition of the sensation or state, and feels more or less psychological disturbance or distress during periods of abstinence from the drug.

With respect to psychological dependence, the extent of dependence varies in accordance with the personality of the abuser. Some persons, having a drug-dependent personality, are extremely prone to the use

of drugs, and are likely to use a wide variety of them, in search of a psychic state different from their normal state because of their inherent dissatisfaction with themselves. In general, these persons appear to lack initiative and self-reliance, and are passive, inadequate, and immature.[1]

The extent of psychological dependence created also varies with the characteristics of the drugs themselves. In addition, the extent of psychological dependence created in the individual abuser depends upon the motivations underlying his abuse of drugs in the first instance. As was pointed out in the report of the President's Advisory Commission on Narcotic and Drug Abuse, known as the Prettyman Commission:

> Some use drugs to seek relief from the tedium of their jobs and their lives. Some talented, even brilliant, individuals take to drugs to escape the fear of failure, or the knowledge that they have not fulfilled their potential. Some become hooked accidentally when they find themselves unable to give up the drug after undergoing medical treatment with one or more of these drugs to relieve pain. A larger number take to certain drugs to offset fatigue, and this group includes truckdrivers, theatrical people, and even doctors and nurses facing the letdown that follows long hours of tension. A very much larger group try psychotoxic drugs for kicks, out of curiosity or bravado. They are usually juveniles who frequently find themselves unable to shake off the drug habit.
>
> There is great ignorance of the patterns of drug abuse. The practice of drug addiction appears to be spread by the users themselves. The immediate physiological craving associated with withdrawal from narcotic drugs can now be alleviated by medical treatment. Because the original underlying psychological causes persist, however, the relapse rate following withdrawal from drugs is very high.

Alternative Approaches to Drug Abuse

The reported bill combines both the punitive and rehabilitive approaches to the problem of drug abuse. It seeks, through appropriate regulation of the manufacture and distribution of drugs, to reduce the availability of drugs subject to abuse except through legitimate channels of trade and for legitimate uses. The bill provides criminal penalties, with sentencing provisions generally left to the discretion of the courts, for offenses involving the distribution, sale, and use of drugs subject to abuse, and provides for a greatly increased Federal effort in the fields of prevention and rehabilitation.

In discussing the underlying philosophy involved in this dual approach to the problem, the Prettyman Commission report stated as follows:

> The abuse of drugs has aroused two extreme attitudes—the punitive and the permissive.
>
> Some people are concerned primarily with the effects of drug abuse on the community. They know that it can debilitate and destroy the inner fabric of a man, and that if it leads to addiction, the abuser becomes obsessed with his drug, living for nothing else. They also know that drug abusers usu-

[1] Meyer, A. S., "Social and Pyschological Factors in Opiate Addiction," Board of Applied Research, Columbia University, New York, 1952.

ally commit crimes against property because of their habit. They know that drug abuse is primarily spread by the drug abuser who persuades others to try the drug. Though they may not always consider drug abuse a crime, this school takes an essentially punitive approach. Because most serious drug abusers return to drugs if left to themselves; these people would shut the drug abuser away from society for as long as possible.

In contrast to this attitude, others hold that serious drug abuse is usually symptomatic of a mental disturbance and that the drug abuser is a sick person. They attribute his crimes to an inner compulsion for which he should not be held responsible under our code of criminal justice. They feel that the drug abuser must be treated for his sickness rather than punished. Some feel his disease is incurable and that he should be maintained on the drug.

This Commission does not accept either of these extreme attitudes, but it subscribes to certain aspects of each. Rehabilitation is the humanitarian ideal, to be sought wherever possible. But rehabilitation is not simple. It requires the skills of many disciplines and the efforts of many agencies. The drug abuser who steals or who sells drugs to finance his habit is guilty of a crime. Like any other citizen, he should face the consequences. Whether he can be held criminally responsible can only be decided in the courts, case by case. The Commission cannot assert a general rule that every confirmed drug abuser is so impelled by his habit that he is not accountable for his acts under criminal law.

If the abuser is to be penalized, he should not be penalized in the spirit of retribution. The modern concept of criminology should apply—that penalties fit offenders as well as offenses. Penalties should be designed to permit the offender's rehabilitation wherever possible. Although society must often be protected from the offender for a time, penalties in specific cases should recognize the need for reformation.

The deterrent effect of long sentences is vigorously debated. Some evidence indicates that the threat of long sentences may deter nonusing traffickers, but it does not necessarily deter the drug abuser. Deterrence is essentially an appeal to a normal sense of reason which the drug abuser has lost. The persistence of narcotic abuse, despite severe penalties for the possession of narcotics, is persuasive evidence that the abuser will risk a long sentence for his drug.

The general philosophy of this Commission can be stated in three parts:

(1) The illegal traffic in drugs should be attacked with the full power of the Federal Government. The price for participation in this traffic should be prohibitive. It should be made too dangerous to be attractive.

(2) The individual abuser should be rehabilitated. Every possible effort should be exerted by all governments—Federal, State, and local—and by every community toward this end. Where necessary to protect society, this may have to be done at times against the abuser's will. Pertinent to all, the causes of drug abuse must be found and eradicated.

(3) Drug users who violate the law by small purchases or sales should be made to recognize what society demands of them. In these instances, penalties should be applied according to the principles of our present code of justice. When the penalties involve imprisonment, however, the rehabilitation of the individual, rather than retributive punishment, should be the major objective.

Approach of the Bill

Criminal penalties

The reported bill provides severe criminal penalties for persons engaged in illicit manufacture or sale of controlled drugs primarily for the profits to be derived therefrom. Section 408 of the bill provides that persons engaged in continuing criminal enterprises involving violations of the bill, from which substantial profits are derived, shall, upon conviction, be sentenced to not less than 10 years in prison, and may be imprisoned up to life, with a fine of up to $100,000, plus forfeiture of all profits obtained in that enterprise. A second conviction under this section will lead to a mandatory sentence of not less than 20 years and up to life imprisonment, a fine up to $200,000, and forfeiture of all such profits.

This section 408 is the only provision of the bill providing minimum mandatory sentences, and is intended to serve as a strong deterrent to those who otherwise might wish to engage in the illicit traffic, while also providing a means for keeping those found guilty of violations out of circulation.

The penalties for other violations of the bill are, in general, less severe, depending upon whether the offense involves distribution to minors, other illicit transactions involving "pushing" or incidental thereto, more or less technical violations, or possession for personal use, which involves the least severe penalties of all.

Except when continuing criminal enterprises serve as the basis for an indictment, manufacture, sale, or other distribution of controlled drugs will carry penalties which vary, depending upon the danger of the drugs involved. If the drugs are narcotic drugs listed in schedules I or II, which have the highest probability of creating severe physical as well as psychological dependence, the penalties which may be imposed are up to 15 years imprisonment and a fine of up to $25,000 for a first offense. If the drug involves nonnarcotic substances listed in schedules I or II, or any substance (whether or not a narcotic) included in schedule III, the penalties for a first offense are up to 5 years imprisonment, plus a fine of not more than $15,000. If the drug is a schedule IV substance, the penalty is up to 3 years imprisonment and a fine of $10,000, and if a schedule V substance is involved, the penalty is up to 1 year imprisonment, plus a fine of not more than $5,000.

Where a violation of the bill involves distribution to a person below the age of 21 by a person who is 18 or more years of age, the penalty authorized is twice the penalty otherwise authorized for a first offense, with substantially increased penalties for second and subsequent violations.

More or less technical violations set forth in section 402 of the bill are punishable by less severe penalties. In case of knowing and in-

tentional violations of this provision, imprisonment up to 1 year for a first offense is provided for.

The foregoing sentencing procedures give maximum flexibility to judges, permitting them to tailor the period of imprisonment, as well as the fine, to the circumstances involved in the individual case.

The severity of existing penalties, involving in many instances minimum mandatory sentences, have led in many instances to reluctance on the part of prosecutors to prosecute some violations, where the penalties seem to be out of line with the seriousness of the offense. In addition, severe penalties, which do not take into account individual circumstances, and which treat casual violators as severely as they treat hardened criminals, tend to make convictions somewhat more difficult to obtain. The committee feels, therefore, that making the penalty structure in the law more flexible can actually serve to have a more deterrent effect than existing penalties, through eliminating some of the difficulties prosecutors and courts have had in the past arising out of minimum mandatory sentences.

ILLEGAL POSSESSION FOR PERSONAL USE

The bill also provides that illegal possession of controlled drugs by an individual for his own use is a misdemeanor, with a sentence of up to 1 year imprisonment and a fine of not more than $5,000 or both. The possession involved here is possession for one's own use; possession with intent to manufacture, distribute, or dispense controlled substances is subject to the penalties prescribed for the act of manufacture, distribution, or dispensing itself. The quantity of a drug found in the possession of a person, of course, bears upon the question of whether or not his possession is for his own use, or is for the purpose of illicit transactions involving others, for which much more severe penalties are provided.

In the case of a first prosecution for the offense of possession, the bill provides that if the defendant is found guilty or pleads guilty, the judge may, in lieu of entering a judgment of guilty place the accused person upon probation. The period of probation may not exceed 1 year and shall be subject to such conditions as the court may prescribe. After the defendant has completed his probation, the court shall discharge the defendant and dismiss the proceedings against him without entering a judgment of guilty. This procedure is only available to a defendant one time, and a nonpublic record is to be retained by the Department of Justice of this discharge or dismissal for the purpose of insuring that this lenient treatment is provided only once to a defendant.

The bill further provides that in the case of a person below the age of 21 years who is found guilty, or pleads guilty, to a charge of simple possession, the court may, after dismissal or discharge and upon application, issue an order expunging from all official records all recordation relating to the arrest, indictment, or information, trial, finding of guilty, and dismissal or discharge (except for the nonpublic record retained by the Department of Justice). This expunging of all records restores the defendant to the status he occupied before his arrest and he may not thereafter be held guilty of perjury or giving a false statement for failure to reveal or acknowledge his arrest, indictment, or trial in response to any inquiry made to him for any purpose.

MARIHUANA

The extent to which marihuana should be controlled is a subject upon which opinions diverge widely. There are some who not only advocate its legalization but would encourage its use; at the other extreme there are some States which have established the death penalty for distribution of marihuana to minors. During the hearings, Dr. Stanley F. Yolles, who was the Director of the National Institute of Mental Health, submitted a chart of fable and fact concerning marihuana. That chart is as follows:

MARIHUANA

FABLE	FACT
1. Marihuana is a narcotic.	1. Marihuana is not a narcotic except by statute. Narcotics are opium or its derivations (like some synthetic chemicals with opium-like activity).
2. Marihuana is addictive.	2. Marihuana does not cause physical addiction, since tolerance to its effects and symptoms on sudden withdrawals does not occur. It can produce habituation (psychological dependence).
3. Marihuana causes violence and crime.	3. Persons under the influence of marihuana tend to be passive. It is true that sometimes a crime may be committed by a person while under the influence of marihuana. However, any drug which loosens one's self-control is likely to do the same and relates primarily to the personality of the user.
4. Marihuana leads to increase in sexual activity.	4. Marihuana has no aphrodisiac property.
5. Marihuana is harmless.	5. Instances, of acute panic, depression, and psychotic states are known, although they are infrequent. Certain kinds of individuals can also become over-involved in marihuana use and can lose their drive. We do not know the effects of long-term use.
6. Occasional use of marihuana is less harmful than occasional use of alcohol.	6. We do not know. Research on the effects of various amounts of each drug for various periods is underway.
7. Marihuana use leads to heroin.	7. We know of nothing in the nature of marihuana that predisposes to heroin abuse. It is estimated that less than 5% of chronic users of marihuana go on to heroin use.

FABLE	FACT
8. Marihuana enhances creativity.	8. Marihuana might bring *fantasies* of enhanced creativity but they are illusory, as are "instant insights" reported by marihuana users.
9. More severe penalties will solve the marihuana problem.	9. Marihuana use has increased enormously in spite of the most severely punitive laws.
10. It is safe to drive while under the influence of marihuana.	10. Driving under the influence of any intoxicant is hazardous.

In the bill as recommended by the administration and as reported by the committee, marihuana is listed under schedule I, as subject to the most stringent controls under the bill, except that criminal penalties applicable to marihuana offenses are those for offenses involving nonnarcotic controlled substances.

The committee requested recommendations from the Department of Health, Education, and Welfare concerning the appropriate location of marihuana in the schedules of the bill, and by letter of August 14, 1970 (printed in this report under the heading "Agency Reports"), the Assistant Secretary for Health and Scientific Affairs recommended "that marihuana be retained within schedule I at least until the completion of certain studies now underway."

In addition, section 601 of the bill provides for establishment of a Presidential Commission on Marihuana and Drug Abuse. The recommendations of this Commission will be of aid in determining the appropriate disposition of this question in the future.

Rehabilitation

The reported bill would provide increased authority for Federal agencies dealing with problems of drug abuse. Title I would provide increased research, training, education, and rehabilitation authority for the Secretary of Health, Education, and Welfare. That title would also provide increased authority for rehabilitation efforts through community mental health centers and through special projects in areas having more serious drug abuse problems for rehabilitation efforts directed to narcotic addicts and drug dependent persons. A total of $164 million in additional appropriations over a 3-year period is authorized in this title for these increased rehabilitation efforts and activities.

Community Mental Health Centers Amendments and Special Provisions for Narcotic Addicts

In 1963 the Congress enacted the Community Mental Health Centers Act, authorizing Federal matching grants for the construction of community mental health centers, designed to provide for the treatment of the mentally ill in facilities close to their homes, where through intensive care they could be returned to their families and jobs at an earlier date than generally is the case where patients are cared for in State institutions. In 1965 this legislation was amended to authorize Federal grants to pay a portion of the costs of staffing of these facilities.

In 1968, this legislation was further amended to authorize specially earmarked funds for the construction and staffing of facilities affiliated with community mental health centers for the treatment of alcoholics or narcotic addicts.

The reported bill would further expand the authority contained in the 1968 amendments to provide funds for construction or staffing of facilities for the treatment and rehabilitation of drug dependent persons, in addition to narcotic addicts. There are approximately 350 community mental health centers in operation in the United States today, and the purpose of the amendments made by the reported bill is to provide increased activities at these centers to provide for persons within the centers' catchment areas suffering from drug problems.

In 1966 the Congress enacted the Narcotic Addict Rehabilitation Act of 1966, providing increased Federal efforts in the rehabilitation of narcotic addicts through civil commitment procedures and increased efforts at rehabilitation. Some areas of the country, such as New York, Chicago, Detroit, Los Angeles, and other areas, have substantially greater percentages of narcotic addicts than do other areas of the United States. The reported bill, therefore, authorizes special assistance, through matching grants for the construction and staffing of facilities, for the treatment and rehabilitation of narcotic addicts in those areas.

Medical Treatment of Narcotic Addiction

Section 4 of the reported bill provides that the Secretary of Health, Education, and Welfare, after consultation with national organizations, shall determine appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and report thereon from time to time to the Congress. The purpose of this provision is to clarify for the medical profession in the United States the extent to which they may safely go in treating narcotic addicts as patients. There are relatively few practicing physicians in the United States today who treat narcotic addicts because of uncertainty as to the extent to which they may prescribe narcotic drugs for addict patients. This problem was discussed in the report of the Prettyman Commission (pp. 56 and 57) as follows:

> Since the passage of the Harrison Act of 1914, the Federal narcotics laws have expressly permitted a physician to prescribe narcotic drugs for a patient in the course of "professional practice only" and for "legitimate medical uses" and "legitimate medical purposes." Under this statutory language there is no doubt that a physician may prescribe narcotic drugs for a patient suffering acute pain or from a painful and incurable disease. But a controversy has existed for 50 years over the extent to which narcotic drugs may be administered to an addict solely because he is an addict.
>
> During the first 10 years following enactment of the Harrison Act, the Supreme Court affirmed several convictions under the act involving the indiscriminate prescribing of narcotic drugs for addicts. In 1925, however, in *Linder* v. *United States*, 268 U.S. 5, the Court indicated that the dispensing of

narcotic drugs by a physician for the purpose of relieving conditions incident to addiction was not in every instance a violation of the act. The case concerned a doctor who had given one tablet of morphine and three tablets of cocaine to an addict. The Harrison Act, said the Court, "says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment, and we cannot possibly conclude that a physician acted improperly or unwisely or for other than medical purpose solely because he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of conditions incident to addiction."

The regulations of the Bureau of Narcotics, however, do not seem to be in accord with that language. The current regulations state: "An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of the [Harrison] Act; and the person filling such an order, as well as the person issuing it, may be charged with violation of the law." [1]

The practicing physician has thus been confused as to when he may prescribe narcotic drugs for an addict. Out of a fear of prosecution many physicians refuse to use narcotics in the treatment of addicts except occasionally in a withdrawal regimen lasting no longer than a few weeks. In most instances they shun addicts as patients.

Drug abuse is not a uniform problem throughout the country, and even in the areas of highest incidence few medical practitioners come into contact with the afflicted. It is estimated that most medical practitioners never see a habitual drug abuser. Nevertheless, spokesmen for the profession have a responsibility to speak for the physicians who are concerned.

The committee expects that the determinations made by the Secretary of Health, Education, and Welfare will clarify for the medical profession the conditions under which narcotic drugs may be prescribed for the medical treatment of narcotic addicts. Although the committee is concerned about the appropriateness of having Federal officials determine the appropriate method of the practice of medicine, it is necessary to recognize that for the last 50 years this is precisely what has happened, through criminal prosecution of physicians whose methods of prescribing narcotic drugs have not conformed to the opinions of Federal prosecutors of what constitutes appropriate methods of professional practice. In view of this situation, this section will provide guidelines, determined by the principal health agency of the Federal Government, after consultation with appropriate national professional organizations. Those physicians who comply with the recommendations made by the Secretary will no longer jeopardize their professional careers by accepting narcotic addicts as patients.

[1] Code of Federal Regulations, title 26, sec. 151.392.

Presidential Commission Recommendations

On January 15, 1963, by Executive order President Kennedy established the President's Advisory Commission on Narcotic and Drug Abuse, which submitted its final report to the President in November of 1963. The membership of that Commission consisted of Judge E. Barrett Prettyman, Chairman, Dr. James Dixon, Harry M. Kimball, Dr. Roger Egeberg, Austin MacCormick, Dr. Raphael Sanchez-Ubeda, and James Dumpson. That Commission's final report made 25 recommendations, discussed hereafter in this report.

In 1966, President Johnson established the President's Commission on Law Enforcement and Administration of Justice, which submitted a general report "The Challenge of Crime in a Free Society" in February of 1967. Chapter 8 of that report made findings and recommendations with respect to narcotics and drug abuse. The members of that Commission were as follows:

Nicholas deB. Katzenbach, *Chairman*

Genevieve Blatt	James B. Parsons
Charles D. Breitel*	Lewis F. Powell, Jr.
Kingman Brewster	William P. Rogers
Garrett H. Byrne	Robert G. Storey
Thomas J. Cahill	Julia D. Stuart
Otis Chandler	Robert F. Wagner*
Leon Jaworski	Herbert Wechsler
Thomas C. Lynch*	Whitney M. Young, Jr.
Ross L. Malone	Luther W. Youngdahl

*Narcotics and Drug Abuse Task Force panel members.

The Katzenbach Commission made a number of additional recommendations with respect to drug abuse and its control, discussed hereafter.

With the enactment of this bill, virtually all of these recommendations of the Prettyman Commission and the Katzenbach Commission will have been implemented in whole or in part through legislation, reorganization plans, or administrative action, although certain of them have been modified. This report sets forth below the action taken on each of these recommendations.

Action on Prettyman Commission Recommendations

The 25 recommendations of the Prettyman Commission, and actions taken to carry them out, are as follows:

1. The Commission recommends that the President issue a directive to all Federal executives who can play a part in combating the problem of narcotic and drug abuse to initiate immediately more aggressive action in the national interest. This recommendation is basic to all that follow.

Action. Both Presidents Johnson and Nixon have issued directives to Federal executives in this area.

2. The Commission recommends that the President appoint a Special Assistant for Narcotic and Drug Abuse from the White House staff to provide continuous advice and assistance in launching a coordinated attack. The Special Assistant will have general coordinating

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authority and the organizational responsibility to follow through on the evaluation and the implementation of the Commission's recommendations.

Action. An Interdepartmental Commission on Drug Abuse has been appointed on the staff of the White House in compliance with this recommendation.

3. The Commission recommends that a citizens' advisory committee be created for service from time to time. This committee should be composed of authorities from all facets of drug abuse and be drawn from all relevant disciplines and professions. It should critically review progress made toward the development and execution of a Federal policy and program. The Special Assistant would serve as liaison between the President and the advisory committee.

Action. The reported bill authorizes establishment of advisory committees with respect to the prevention and control of drug abuse.

4. The Commission recommends that a core of information and educational materials be prepared by the Secretary of Health, Education, and Welfare to provide the public and all professions involved with accurate knowledge on narcotic and drug abuse to combat the misinformation that is so prevalent today.

Action. Both the National Institute of Mental Health and the Bureau of Narcotics and Dangerous Drugs have prepared and are distributing such information. The National Institute of Mental Health also maintains the National Clearinghouse for mental health information, the world's largest computerized repository of mental health and related research findings.

5. The Commission recommends that the Federal Council for Science Technology, with the advice of an ad hoc committee of experts, design a comprehensive research plan covering all aspects of narcotic and drug abuse and that the National Institute of Mental Health earmark for narcotic and drug abuse research a specific amount from its extramural research budget for each fiscal year to finance the operation of the plan.

Action. The National Institute of Mental Health is responsible for the conduct of such a comprehensive research plan, and is in the process of carrying it out.

6. The Commission recommends that the Secretary of Health, Education, and Welfare establish a national reporting system to collect, collate, and analyze data on all forms of narcotic and drug abuse so as to obtain an accurate assessment of the problem. This should be set up on a cooperative basis with Federal, State, municipal, and private agencies participating.

Action. Both the National Institute of Mental Health and the Bureau of Narcotics and Dangerous Drugs are involved in conducting services regarding known or suspected drug abuse. In addition, section 503(a)(4) of the bill provides for maintenance in the Department of Justice of a unit to compile information and statistics, in cooperation with state and local agencies to aid in combatting drug abuse.

7. The Commission recommends that the functions of the Bureau of Narcotics relating to the investigation of the illicit manufacture, sale, or other distribution, or possession of narcotic drugs and marihuana be transferred from the Department of the Treasury to the Department of Justice.

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Action. This recommendation was carried out by Reorganization Plan No. 1 of 1968.

8. The Commission recommends that the responsibility for the investigation of the illicit traffic in dangerous drugs be transferred from the Department of Health, Education, and Welfare to the Department of Justice.

Action. This recommendation was carried out pursuant to Reorganization Plan No. 1 of 1968.

9. The Commission recommends that the functions of the Bureau of Narcotics relating to the regulation of the legitimate importation, exportation, manufacture, sale, and other transfer of narcotic drugs and marihuana be transferred from the Department of the Treasury to the Department of Health, Education, and Welfare. Narcotic drugs would be regulated under the power to regulate interstate and foreign commerce, not under the tax power; and the importation, production, sale, or other transfer of marihuana would be prohibited except where expressly licensed for legitimate scientific purposes or for the emergency production of hemp.

Action. This bill provides for regulation of all drugs under the interstate and foreign commerce power. The regulation of legitimate manufacture of drugs subject to abuse will be carried out under this bill by the Department of Justice, except that the functions of the Food and Drug Administration are not superseded by the authority of the Department of Justice.

10. The Commission recommends that a unit be established within the Department of Health, Education, and Welfare to determine the safety and efficacy of and to regulate all narcotic and dangerous drugs capable of producing severe psychotoxic effects which can lead to criminal or lawless behavior when abused. This unit would also regulate the legitimate importation, exportation, manufacture, sale and other transfer of narcotic and dangerous drugs.

Action. Under Reorganization Plan No. 1 of 1968, a Bureau of Narcotics and Dangerous Drugs has been established in the Department of Justice to regulate all these drugs (including legitimate importation, exportation, manufacture, and distribution) to prevent diversion from legitimate channels. Safety and efficacy will continue to be regulated under the Federal Food, Drug, and Cosmetic Act by the Department of Health, Education, and Welfare.

11. The Commission recommends a substantial increase in the number of Federal enforcement personnel assigned to the investigation of the illicit importation of and trafficking in narcotic drugs, marihuana, and dangerous drugs.

Action. At the end of June, 1968, the Bureau of Narcotics and Dangerous Drugs had 615 agents. By June, 1970, this number had increased to over 900. In addition, section 103 of the bill authorizes the addition of at least 300 more agents during fiscal 1971.

12. The Commission recommends that the penalty provisions of the Federal narcotics and marihuana laws which now prescribe mandatory minimum sentences and prohibit probation or parole be amended to fit the gravity of the particular offense so as to provide a greater incentive for rehabilitation.

Action. As discussed earlier in this report, elimination of almost all mandatory minimum sentences, as well as elimination of the prohibition against probation and parole of narcotic offenders, is accomplished by this bill.

13. The Commission recommends that all non-narcotic drugs capable of producing serious psychotoxic effects when abused be brought under strict control by Federal statute.

Action. This recommendation was accomplished by the enactment of the Drug Abuse Control Amendments of 1965.

14. The Commission recommends that the training school now conducted by the Bureau of Narcotics be more fully publicized among State and local law enforcement agencies, that in-service training sessions, workshops and seminars be conducted in the areas where drug abuse is most prevalent, and that the Federal Government provide field training courses for the dissemination of current Federal information on narcotics control to State and local law enforcement officers.

Action. Approximately twenty thousand state and local officers were provided training by the Bureau of Narcotics and Dangerous Drugs during fiscal year 1970, and the reported bill (section 503(a)(3)) authorizes continuation of this program.

15. The Commission recommends the enactment of legislation authorizing the use of wiretapping by Federal law enforcement officials in limited circumstances and under strict controls to detect and prevent the international smuggling of narcotics.

Action. The Omnibus Crime Control and Safe Streets Act of 1968 provides this authority.

16. The Commission recommends that the United States request the United Nations to establish a system of international control of the distribution of dangerous drugs. The Commission does not see the necessity of new Federal legislation to supplement the general smuggling law by expressly prohibiting the illegal importation of dangerous drugs into the United States.

Action. The Single Convention on Narcotic Drugs, 1961, ratified by the United States in 1967, and the Psychotropic Protocol, presently nearing final draft form, respond to this recommendation.

17. The Commission recommends that the United States invite the Mexican Government to assist in the establishment of a Joint United States-Mexico Commission for consultation on the development of better methods to curb the illegal flow of narcotics, marihuana, and dangerous drugs between Mexico and the United States.

Action. Negotiations are underway with the Mexican government to deal with problem areas of mutual concern in this area.

18. The Commission recommends that the United States oppose, in its present form, ratification of the Single Convention on Narcotic Drugs, 1961, until there is a correction of those sections which weaken the control and limitation of world opium cultivation and production as established in the Protocol of 1953.

Action. A five-ton limit per country on the production of crude opium was approved in 1967, and assurances have been given with regard to the enforcement of these provisions.

19. The Commission recommends that the Federal Government encourage and increase assistance to State and municipalities to develop

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and strengthen their own treatment programs and confine its activities in the immediate future to research instead of maintaining extensive public treatment programs.

Action. Provisions carrying out this recommendation have been established under Title IV of the Narcotic Addict Rehabilitation Act of 1966. In addition, the Community Mental Health Centers Act was amended in 1968 to provide Federal assistance for treatment programs, and this authority is expanded by amendments made in section 1 of the reported bill.

20. The Commission recommends that Federal regulations be amended to reflect the general principle that the definition of legitimate medical use of narcotic drugs and legitimate medical treatment of a narcotic addict are primarily to be determined by the medical profession.

Action. Section 4 of the reported bill, providing for determinations by the Secretary of Health, Education, and Welfare of appropriate methods of professional practice in the medical treatment of narcotic addicts, responds to this recommendation.

21. The Commission recommends that legislation be designed to provide authority for the Federal Government to render direct financial and technical assistance to State governments (singly or acting together on a regional basis), to local governments, and to private nonprofit organizations for the establishment, maintenance, and expansion of broad treatment and rehabilitation programs and the training of staff and personnel to staff and operate the programs.

Action. Such authority is contained in the Community Mental Health Centers Act, as amended by section 1 of the bill. In addition, the Narcotic Addict Rehabilitation Act of 1966 specifically recognizes and encourages State participation in such programs.

22. The Commission recommends Federal assistance to State governments, acting singly or on a regional basis, and to local governments for the construction of nonhospital treatment centers for narcotic and dangerous drug abusers and for new treatment units in existing State and local hospitals.

Action. The 1968 amendments to the Community Mental Health Centers Act and the further amendments made to that Act by the reported bill respond to this recommendation.

23. The Commission recommends that the Public Health Service hospitals in Lexington, Ky., and Fort Worth, Tex., accept voluntary patients only for purposes of research study in the future.

Action. Section 2 of the reported bill provides broader treatment authority in all Public Health Service hospitals for persons with drug abuse and other drug dependent problems. Until adequate numbers of community based facilities are available, this broadened authority will continue to be necessary.

24. The Commission recommends that the Bureau of Prisons establish a special treatment program for confirmed narcotic and drug abusers within the Federal prison system.

Action. Title II of the Narcotic Addict Rehabilitation Act of 1966 provides for special treatment of convicted narcotic addicts.

25. The Commission recommends that a Federal civil commitment statute be enacted to provide an alternative method of handling the federally convicted offender who is a confirmed narcotic or marihuana abuser.

Action. Title II of the Narcotic Addict Rehabilitation Act of 1966 provides such treatment for narcotic addicts but not for marihuana users. Persons with drug abuse problems may be treated in Federal facilities under amendments made by the reported bill, and additional facilities under the Community Mental Health Centers Act are also provided for under the bill.

Action on Katzenbach Commission Recommendations

The Katzenbach Commission made the following recommendations, in addition to those already made by the Prettyman Commission. These recommendations, and action to carry them out are set forth below:

(1) *Recommendation.* Research should be undertaken devoted to early action on the further development of a sound and effective framework of regulatory and criminal laws with respect to dangerous drugs. In addition, research and educational programs concerning the effects of such drugs should be undertaken.

Action. The reported bill responds to this recommendation of development of regulatory and criminal laws. The legislation also authorizes substantial research and educational programs.

(2) *Recommendation.* The enforcement and related staff of the Bureau of Customs should be materially increased.

Action. The 1971 Appropriation Act for the Treasury Department, as passed by the House, contains funds for a substantial increase in the enforcement and related staff of the Bureau of Customs.

(3) *Recommendation.* State and Federal drug laws should give a large enough measure of discretion to the courts and correctional authorities to enable them to deal flexibly with violators, taking account of the nature and seriousness of the offense, the prior record of the offender and other relevant circumstances.

Action. The penalty structure set forth in the reported bill provides a flexible system of penalties for Federal offenses, in accordance with both this recommendation and recommendation No. 12 of the Prettyman Commission. The recommended Model State law also contains similar provisions.

(4) *Recommendation.* The National Institute of Mental Health should devise and execute a plan of research, to be carried on both on an intramural and extramural basis, covering all aspects of marihuana use.

Action. In addition to recent research activities of the Institute, public law 91–296 provides for the conduct of such research by the Secretary of Health, Education, and Welfare and section 601 of the reported bill provides for the establishment of a Commission on Marihuana and Drug Abuse.

(5) *Recommendation.* The enforcement staff of the Bureau of Narcotics should be materially increased. Some part of the added personnel should be used to design and execute a long-range intelligence effort aimed at the upper echelons of the illicit drug traffic.

Action. As was pointed out with respect to recommendation No. 11 of the Prettyman Commission, the enforcement staff of the Bureau of Narcotics and Dangerous Drugs has been substantially increased, and section 103 of the reported bill provides for a further increase in personnel. In addition, mobile strike forces have been established by the Bureau to concentrate on upper echelons of the illicit drug traffic.

(6) *Recommendation.* Those States which do not already have adequate legislation should adopt a model State drug abuse control act similar to the Federal Drug Abuse Control Amendments of 1965.

Action. A model State Drug Abuse Act has been developed and recommended to the States. Revisions will, of course, be necessary to conform that model act to this act, since the reported bill and State laws are designed to be mutually supporting.

(7) *Recommendation.* The recordkeeping provisions of the 1965 amendments should be amended to require that records must be segregated or kept in some other manner that enables them to be promptly identified and inspected.

Action. The recordkeeping provisions of the reported bill will provide more ready accessibility of records with respect to controlled substances, under section 307 of the reported bill.

(8) *Recommendation.* A core of educational and informational materials should be developed by the National Institute of Mental Health.

Action. Much information has been prepared both by the National Institute of Mental Health and the Bureau of Narcotics and Dangerous Drugs. In addition, the proposed section 253 of the Community Mental Health Centers Act contained in section 1(c) of the reported bill provides specific authority for preparation of educational and informational materials, and for training of professional and other personnel to work in the area of drug abuse education.

Law Enforcement

Titles II and III of the bill deal with law enforcement aspects of drug abuse, and provide authority for the Department of Justice to keep track of all drugs subject to abuse manufactured or distributed in the United States in order to prevent diversion of these drugs from legitimate channels of commerce. The legislation would accomplish this result through a variety of approaches depending upon the type of activities engaged in which are proposed to be regulated.

Control Determinations

Part B of the bill (sections 201 and 202) lists the drugs initially subject to control under the legislation, and establishes a procedure for future determinations as to drugs to be subject to the controls of the bill.

Considerable controversy arose during the hearings over this provision of the bill, with respect to the proper role of the Attorney General and the Secretary of Health, Education, and Welfare in making determinations concerning which drugs should be controlled. The reported bill strikes a balance between the extent to which control decisions should be based upon law enforcement criteria, and the extent to which such decisions should be based on medical and scientific determinations. The bill provides that the ultimate authority for decision as to whether or not drugs should be controlled, and the schedule in which they are to be placed, shall rest with the Attorney General, based upon all the evidence, with all scientific and medical

determinations being made by the Secretary of Health, Education, and Welfare, and these determinations being made binding upon the Attorney General.

The procedure which the Attorney General must then follow to control a drug involves rulemaking proceedings on the record after opportunity for a hearing. This provides opportunity for consideration of the views of persons who would be adversely affected by control of a drug, with judicial review available thereafter; however, this administrative proceeding is more streamlined in its operation than the existing procedures under section 701(e) of the Federal Food, Drug, and Cosmetic Act, so that controls may be established expeditiously where necessary, with full consideration of all factors involved in the decision—law enforcement problems, medical, and scientific determinations, and the interests of parties affected by the decision to control.

Registration Requirements

The legislation provides that all persons engaged in the legitimate distribution chain involving drugs included in one of the schedules under the bill must be registered with the Attorney General. Registration requirements vary according to the type of activity engaged in, with registration being permitted for the manufacture of more dangerous drugs only where the Attorney General determines that such registration is *consistent* with the public interest and with United States obligations under treaties existing on the effective date of this part of the bill, and where he determines that adequate safeguards against diversions exist. Registration of distributors of such drugs and of manufacturers and distributors of less dangerous drugs would be permitted unless the Attorney General determines that registration would be *inconsistent* with the public interest. Practitioners (including pharmacies and hospitals) engaged in the distribution chain would be required to be registered, but registration would be as a matter of right where the individual or firm is engaged in activities involving these drugs which are authorized or permitted under State law, except that in the case of registration for research with Schedule I substances (i.e., substances that have no accepted medical use in treatment in the United States), registration is conditioned on certification of the qualifications of the researcher (after review of the project) by the Secretary of HEW to the Attorney General.

Quotas

Existing law relating to the regulation of narcotics provides a closed system, with limitations upon quantities of basic ingredients such as opium and coca leaves, which may be imported with quotas thereafter established for the total domestic production of basic classes of narcotic drugs.

Through control of the quantities of the basic ingredients needed for the manufacture of narcotics, and the requirement of order forms for all transfers of these drugs, it has been possible to keep diversions of narcotic drugs from legitimate channels of trade to an almost irreducible minimum.

The bill continues this system for controlled substances in Schedules I and II, extending the coverage of the existing quota provisions to include the hallucinogens and other drugs included in Schedule I of the bill.

RECORDS AND REPORTS

Existing law provides for inventories and recordkeeping with respect to all drugs subject to control under the Drug Abuse Control Amendments of 1965 and under the laws regulating narcotic drugs. The bill continues, and strengthens these requirements, as recommended by both the Prettyman Commission and the Katzenbach Commission, and requires that records be maintained either separately of all other records of the registrant or alternatively, in the case of nonnarcotic substances, be in such form that information required is readily retrievable from the ordinary business records of the registrant. As pointed out in a letter to the committee from the Office of the Deputy Attorney General, set forth hereafter in this report under the heading "agency reports", ordinary business records will frequently serve the purposes of this section, so long as the information required is readily retrievable through the use of red-line, asterisk, or other types of identification of items on invoices or other records.

Practicing physicians will be required to continue the recordkeeping required under existing laws, under which a physician is required to keep records of all narcotic drugs which are dispensed to a patient (except by prescribing or administration) and, in case the physician is regularly engaged in charging his patients for nonnarcotic controlled substances he must keep records of all such substances dispense to them.

Researchers engaged in clinical investigations, or in preclinical research or in teaching, at an institution which maintains required records, will not be required to keep records in addition to those kept by the institution.

ADMINISTRATIVE PROVISIONS

Part E of title II of the bill (sections 501 through 516) sets forth a number of administrative provisions necessary to carry out the legislation, such as authority for cooperative arrangements with State and local governments, advisory committees, administrative hearings, subpenas, standards for judicial review, arrest and other powers of enforcement personnel, administrative inspections, forfeitures, injunctions, enforcement proceedings, grants of immunity from prosecution, burden of proof, and payments and advances.

The Attorney General is authorized under this part to engage in education and research programs in the area of enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this legislation. The Attorney General is granted authority under section 502(c) which is the same as that granted to the Secretary of Health, Education, and Welfare under section 3 of title I. The Attorney General or the Secretary may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. In addition, the Attorney General is authorized to permit persons engaged in research to possess, distribute, and dispense controlled substances, and he may exempt such persons from State or

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Federal prosecution for such possession, distribution, and dispensing. The purpose is to encourage further research involving controlled substances, with restrictions designed to prevent the occurrence under this authorization of illicit activities masquerading as research.

"No-Knock" Search Warrants

One of the more controversial provisions of the bill is subsection (b) of section 509 which would permit an officer executing a warrant relating to controlled dangerous substances to enter without giving notice of his authority and purpose if so authorized in the warrant. The warrant could authorize such entry on a finding of probable cause to believe the property sought may, and, if such notice is given, will, be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another will result from announcement.

The purpose of this provision, as explained in the hearings, is to provide law enforcement officials with a tool to aid in combatting the illicit traffic in drugs which has proved helpful in all of the 29 States where this authority exists either by statute or common law.

General "no-knock" provisions, not limited to narcotics, have been previously considered by the Department of Justice and the view has been expressed that they are constitutional in concept even though constitutional challenge as to their application to specific fact situations is likely.

The conclusion that "no-knock" legislation even broader than subsection (b) is constitutional is based on the decision in *Ker* v. *California*, 374 U.S. 23 (1963). That case upheld unannounced entry and seizure of narcotics without a warrant primarily on the basis of the officer's need to prevent destruction of the evidence. The judgment of the exigency of the circumstances was that of the police officers, not an independent judicial officer, and yet the court upheld the search as coming within one of the permissible exceptions of the announcement of authority and purpose requirements. Among the objections of the four dissenters was reliance on the subjective judgment of the police officers.

While decided by a closely divided court 6 years ago, *Ker* has not been overruled or limited with respect to unannounced entry in subsequent cases. In *La Peluso* v. *California*, 385 U.S. 829 (1966), the Supreme Court refused to reconsider it. *Sabbath* v. *United States*, 391 U.S. 585 (1968), while holding unannounced entry by Federal officers invalid on the basis of 18 U.S.C. 3109, did not disturb the constitutional holdings in *Ker*. (See footnote 8, 391 U.S. at 591).

In a somewhat related area, the Court has very recently recognized the valid governmental interest in preventing harm to the officer or destruction or concealment of evidence. *Chimel* v. *California*, 395 U.S. 752 (1969), involved the permissible scope of searches incident to the execution of an arrest warrant. It held that such "contemporaneous searches" must be limited to the person of the arrested individual and the immediate area under his control. The holding is premised on the concept that warrantless searches are permissible under the Fourth Amendment only for certain limited purposes. As in unannounced entry cases, one of these purposes is the prevention of the destruction of evidence. (See 395 U.S. at 763.)

Ker is still controlling law with respect to the constitutionality of unannounced entry and is reinforced by the rationale of *Chimel*. On the basis of *Ker*, it is the view that subsection (b) is constitutional.

Section-by-Section Analysis of H.R. 18583

The bill, to be known as the "Comprehensive Drug Abuse Prevention and Control Act of 1970", is in three titles, title I relating to rehabilitation (including prevention and treatment) of drug abusers and of drug dependent persons, and titles II and III dealing with law enforcement aspects of drug abuse.

Provisions of the Bill

Title I—Rehabilitation

Section 1 of title I broadens the provisions of the Community Mental Health Centers Act relating to grants for construction and staffing of facilities for treatment of narcotic addiction and for special projects in the field of narcotic addiction, so as to cover other problems of drug abuse and drug dependence, and accordingly increases the existing combined appropriation authorizations under that Act in the drug and alcoholism fields from the present $30 million for fiscal year 1971, $35 million for fiscal year 1972, and $40 million for fiscal year 1973 by $10 million, $25 million, and $40 million, respectively. It likewise broadens present authority for special staffing grants for consultation services.

This section of the bill further adds two new sections to part D of the Community Mental Health Centers Act: A section (sec. 253) on drug abuse education and a section (sec. 256) on special projects for narcotic addicts and drug dependent persons. (Present sections 253 and 254 are redesignated as sections 254 and 255, respectively.)

The new section 256 of the Community Mental Health Centers Act authorizes annual appropriations of $20 million each for the fiscal years 1971, 1972, and 1973 for grants by the Secretary of Health, Education, and Welfare to public or nonprofit private agencies and organizations for projects for the treatment and rehabilitation of narcotic addicts or other drug dependent persons, which include detoxification services, institutional services (including medical, psychological, educational, and counseling services), and community-based aftercare services. The duration of Federal support, and the cost-percentage of Federal support (including higher Federal percentages in urban or rural poverty areas), for any such project follow the pattern set for staffing grants by the Community Mental Health Centers Amendments of 1970 (P.L. 91–211). Priority is to be given to projects in States, and areas within States, having the higher percentages of narcotic addicts or other drug dependent persons. Applications for grants under this section from applicants in any State must be forwarded through the State agency responsible for administering the State's mental health center plan submitted under section 204 of the act or, where there is a separate State agency designated by the Governor as responsible for planning, coordinating, and executing the State's efforts in the treatment and rehabilitation of narcotic addicts and drug dependent persons, then through that agency.

The new section 253 of the Community Mental Health Centers Act proposed by the bill authorizes grants and contracts by the Secretary of Health, Education, and Welfare (1) for the collection, preparation, and dissemination of educational materials on drug use and abuse and the prevention of such abuse, and (2) for the development and evaluation of programs of drug abuse education directed at the general public, schoolage children, and special high-risk groups. This section further directs the Secretary, acting through the National Institute of Mental Health, to (1) serve as a focal point for collection and dissemination of information related to drug abuse; (2) collect, prepare, and disseminate materials (including films and other educational devices) dealing with drug abuse and its prevention; (3) provide for preparation, production, and conduct of programs of public education (including those using films and other educational devices) in this field; (4) train persons to organize and participate in programs of public drug abuse education; (5) coordinate activities with respect to health education aspects of drug abuse carried on by Federal departments and agencies designated by the Secretary; (6) provide technical assistance to State and local health and educational agencies with respect to the establishment and implementation of programs and procedures for public education on drug abuse; and (7) undertake other activities essential to a national program for drug abuse education. Finally, this section authorizes the Secretary, acting through the National Institute of Mental Health, to develop and conduct workshops, institutes, and other activities for the training of professional and other personnel to work in the area of drug abuse education. For carrying out this section 253, the bill authorizes appropriations of $7 million for fiscal year 1971, $10 million for fiscal year 1972, and $12 million for fiscal year 1973.

The committee is aware that nonspecific authority for drug abuse education and training, and grants therefor, can be found in, and is utilized under, existing broad authority in the Public Health Service Act and other statutes administered by the Department of Health, Education, and Welfare, and it is by no means intended by the present bill to negate or narrow such authority by implication. There are, however, reasons why the committee recommends the more specific authority above outlined. It gives statutory emphasis to the overriding importance of these activities. It makes the National Institute of Mental Health a focal point for drug abuse information; it sets forth those educational, training, and informational activities which the Secretary is to conduct through the National Institute of Mental Health; and it authorizes the Secretary to coordinate, through the Institute, activities with respect to the health education aspects of drug abuse carried on by Federal agencies.

Drug abuse and narcotic addiction and other drug dependence are clearly health, as well as social, problems and require health and medical approaches to provide a single base of knowledge on which to mount the multiple preventive-educational programs needed. The National Institute of Mental Health, as a health agency closely allied with the scientific community in medical and social science areas, is particularly well-suited to provide such a base.

Section 2(a) of this title expands significantly the direct patient care authorities of the Department of Health, Education, and Welfare under part E of title III of the Public Health Service Act to include,

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in addition to narcotic addicts, other persons with "drug abuse and drug dependence problems." This reflects the committee's concern that the Federal direct patient care activities be broadened to include not only those physically addicted but those who have psychological problems related to their repetitive use or desire to use drugs of abuse. This does not, however, expand authority under other laws to commit persons for treatment.

Section 2(b) adds to the Public Health Service Act a definition of "drug dependent person". The term is defined (in a way similar to the World Health Organization's definition) as a person who is using a controlled substance (as defined in title II of the bill) and is in a state of psychic or physical dependence, or both, resulting from such use on a continuous basis. Drug dependence, the bill states, is characterized by behaviorial and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or avoid the discomfort caused by its absence.

Section 3(a) of this title grants the Secretary of Health, Education, and Welfare a much needed authority to protect the privacy of drug research subjects by nondisclosure of identification data of such individuals. It enables the researcher, when authorized by the Secretary, to assure research subjects complete anonymity, with immunity from prosecution for withholding this identifying information. This authority is not limited to research conducted or supported by the Federal Government.

Subsection (b) of this section amends section 507 of the Public Health Service Act to permit funds that are available (1) under the Public Health Service Act or (2) under the Community Mental Health Centers Act, for programs relating to drug dependence, drug abuse, and alcoholism, to be used for 100 percent grants to Veterans' Administration hospitals, Saint Elizabeths Hospital, and hospitals of the Public Health Service and the Bureau of Prisons, for such purposes.

Section 4. Existing narcotic laws permit the administration of narcotics in the professional practice of medicine but relatively few physicians treat narcotic addiction as such because of uncertainties as to the possibility of prosecution. Section 4 authorizes the Secretary of Health, Education, and Welfare, after consultation with the Attorney General and organizations representative of persons who are knowledgeable and experienced in the treatment of narcotic addicts, to determine and report to Congress on appropriate methods of professional practice in the medical treatment of narcotic addicts. The section does not supersede the existing procedures of the Federal Food, Drug, and Cosmetic Act for investigation and approval of new drugs.

Title II—Control and Enforcement

This title is divided into 7 parts as follows:

Part A—Short Title; Findings and Declaration; Definitions.

Part B—Authority to Control; Standards and Schedules.

Part C—Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances.

Part D—Offenses and Penalties.

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Part E—Administrative and Enforcement Provisions.
Part F—Advisory Commission.
Part G—Conforming, Transitional and Effective Date, and General Provisions.

Part A—Short Title, etc.—This part contains the short title, findings, definitions, and provision for increased numbers of personnel of the Bureau of Narcotics and Dangerous Drugs.

Section 100—Short title

This section provides that title II of this legislation may be cited as the "Controlled Substances Act".

Section 101—Findings and declarations

This section states the principal reasons why it is necessary to make the controls of title II applicable to all controlled substances regardless of whether they or their components have ever been outside the State in which they are found. It is not intended, however, to preempt the field to the exclusion of the States. See section 708, below.

This section thus contains a finding and declaration by Congress that—

(1) Many of the drugs included within this title have a presently accepted medical purpose.

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial detrimental effect on the public's health and general welfare.

(3) Controlled substances either flow through interstate or foreign commerce or they have a substantial and direct effect upon interstate commerce; because they have moved in such commerce after manufacture or when distributed locally have usually been transported in such commerce immediately before distribution or they are substances which commonly flow through interstate commerce prior to possession.

(4) Those substances manufactured or distributed on a purely intrastate basis cannot be differentiated from those manufactured or distributed for interstate commerce, so that it is not feasible to distinguish controls over each type.

(5) Federal control over intrastate traffic in controlled substances is essential to control over incidents of interstate traffic.

(6) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective controls over international and domestic traffic in controlled substances.

Section 102—Definitions

These definitions apply for the purposes of title II of the bill.

Paragraph (1) defines "addict" to mean any individual who habitually uses any narcotic drug as defined by this act so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction.

Paragraph (2) defines "administer" to mean the direct application of a controlled substance to the body of a patient or research subject by a practitioner, or in his presence by his authorized agent, or by the

patient or research subject's own application in the presence of a practitioner. This paragraph further defines application to include application by injection, inhalation, ingestion, or any other means. The definition of "administer" is intended to include administration to an animal, and the term "patient" is to be read as including an animal patient.

Paragraph (3) defines "agent" to mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee thereof, when acting in the usual course of the carrier's or warehouseman's business.

Paragraph (4) defines "Bureau of Narcotics and Dangerous Drugs" to mean the Bureau of Narcotics and Dangerous Drugs, Department of Justice.

Paragraph (5) defines the term "control" to mean the addition of a drug or other substance or immediate precursor to a schedule under part B of title II either directly or by rescheduling such substance.

Paragraph (6) defines "controlled substance" to mean a drug, other susbtance, or immediate precursor in schedules I through V under part B of title II of this Act. Distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Internal Revenue Code of 1954 may not be included in any schedule.

Paragraph (7) defines "counterfeit substance" to mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance, and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

Paragraph (8) defines "deliver" or "delivery" to mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

Paragraph (9) defines "depressant or stimulant substance" to mean (1) a drug which contains any quantity of (A) barbituric acid or any of the salts of barbituric acid, or (B) any derivative of barbituric acid which has been designated by the Secretary of Health, Education, and Welfare as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act; (2) a drug which contains any quantity of (A) amphetamine or any of its optical isomers, (B) any salt of amphetamine or any salt of an optical isomer of amphetamine, or (C) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; (3) lysergic acid diethylamide; or (4) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

Paragraph (10) defines "dispense" to mean to deliver a controlled substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the labeling,

prescribing, or administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" is a practitioner who so delivers a controlled substance to the ultimate user or human research subject.

Paragraph (11) defines "distribute" to mean to deliver a controlled substance other than by administering or dispensing. "Distributor" means a person who so distributes.

Paragraph (12) defines "drug" as having the same meaning given to it by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act which reads as follows:

"(g)(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3) of this paragraph; but does not include devices or their components, parts, or accessories."

Paragraph (13) defines "felony" to mean any Federal or State offense classified by applicable Federal or State law as a felony.

Paragraph (14) defines "manufacture" to mean the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. The term also includes the packaging, repackaging, or labeling of any container of any controlled substance, except when done by practitioners who prepare, compound, package, or label prescription orders as an incident to their administration or dispensing of such drug or substance in the course of their professional practice. "Manufacturer" is defined as a person who manufactures a drug or other substance.

Paragraph (15) defines "marihuana" to mean all parts of the plant Cannabis sativa L., whether growing or not, including its seeds. It also includes the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the extracted resin), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Paragraph (16) defines "narcotic drug" to mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (1) opium, coca leaves, and opiates; (2) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; and (3) a substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (1) or (2), except that the term "narcotic drug" shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

Paragraph (17) defines "opiate" to mean any drug or other substance having an addiction forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction forming or addiction sustaining liability.

Paragraph (18) defines the term "opium poppy" to mean the plant of the species *Papaver somniferum L.*, but not its seeds.

Paragraph (19) defines "poppy straw" to mean all parts, except the seeds, of the opium poppy, after mowing.

Paragraph (20) defines "practitioner" to mean a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

Paragraph (21) defines "production" to include the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

Paragraph (22) defines "immediate precursor" to mean a substance which the Attorney General has found to be and by regulation designated as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance, and the control of which is necessary to prevent, curtail, or limit such manufacture.

Paragraph (23) defines "Secretary" to mean the Secretary of Health, Education, and Welfare unless the context otherwise indicates.

Paragraph (24) defines "State" to mean any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

Paragraph (25) defines "ultimate user" to mean a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

Paragraph (26) defines "United States," when used in a geographic sense, to mean all places and waters, continental or insular, subject to the jurisdiction of the United States, and is intended to include the Canal Zone and the Trust Territory of the Pacific Islands.

Section 103. Increased number of enforcement personnel

This section authorizes the Bureau of Narcotics and Dangerous Drugs to add at least 300 agents, together with necessary supporting personnel, to its present number and for that purpose authorizes an annual appropriation of $6,000,000 beginning with the fiscal year 1971.

(See also, the authorizations in section 709, in addition to these sums, for other purposes.)

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

Section 201. Authority and criteria for classification of substances

Subsection (a) of this section authorizes the Attorney General, pursuant to the rulemaking provisions of the Administrative Procedure Act (now subchapter II of 5 U.S.C.), to by rule add a substance to a schedule or transfer a substance between schedules. This

subsection further permits the Attorney General to remove a substance entirely from the schedules by rule if he finds that the substance no longer meets the requirements for inclusion in any of the schedules. Except as noted below, such rules are to be made on the record after opportunity for hearing. The Attorney General may initiate proceedings to control a substance on his own motion, or he may initiate proceedings at the request of the Secretary of Health, Education, and Welfare or on the petition of an interested party.

Subsection (b) requires that, before initiating proceedings to add a drug or other substance to one of the schedules of the bill, or to reschedule it or remove it entirely from the schedules, and "after gathering the necessary data", the Attorney General shall request from the Secretary of Health, Education, and Welfare a scientific and medical evaluation and his recommendation as to whether or not the substance should be added, deleted, or rescheduled as a controlled substance. The phrase "after gathering the necessary data" is not intended to authorize the Attorney General to undertake or support medical and scientific research for that purpose, which is within the competence of the Department of Health, Education, and Welfare, or to limit the Secretary's evaluation to data submitted to him by the Attorney General but rather to defer submission of a request to the Secretary until the Attorney General, on the basis of all the information available to him—particularly any information developed by him as to the scope, pattern, and significance of abuse of a drug or substance in this country—has reason to believe that there may be ground for controlling or decontrolling a drug or other substance. The phrase "after gathering the necessary data" does, however, envision the utilization of Bureau of Narcotics and Dangerous Drugs laboratory facilities for chemical analysis, especially in the case of substances being abused in the street which require identification.

In making his recommendation and evaluation, the Secretary must consider certain factors listed in subsection (c) and more specifically described under that subsection, as to the substances' pharmacological effect, the state of current knowledge regarding the substance, the risk to the public health posed by the substance, the substance's psychic or physiological dependence liability, and whether or not the substance is an immediate precursor of a substance already controlled. The Secretary must also consider any medical and scientific considerations involved in the substance's potential for abuse, its history and current pattern of abuse, and the scope of its abuse. Subsection (a) further provides that the Secretary's evaluations and recommendations shall be in writing and shall be binding on the Attorney General as to medical and scientific matters. The subsection also specifies that a recommendation by the Secretary that a substance should not be controlled is binding on the Attorney General. After receiving the recommendation of the Secretary, the Attorney General shall consider it and all other relevant data to ascertain whether there is substantial evidence of a potential of abuse such as to warrant the initiation of a control proceeding. In making this determination, the Attorney General is to consider the same criteria as the Secretary considers in making his evaluations and recommendations, subject, of course, to the above-mentioned requirements as to the effect to be given the Secretary's recommendations. If the Attorney General finds that all

the relevant data constitutes substantial evidence of a potential for abuse, he may proceed under the rulemaking procedures of the Administrative Procedure Act to control the substance.

Subsection (c) of this section sets out a number of factors which the Attorney General must consider in making his findings under subsection (a) of this section and subsection (b) of section 202. These factors include: (1) a substance's actual or relative potential for abuse; (2) scientific evidence of the substance's pharmacological effect, if known; (3) the state of current scientific knowledge regarding the substance; (4) the substance's history and current pattern of abuse; (5) the scope, duration, and significance of abuse of the substance; (6) the risk to the public health posed by the substance; and (7) the psychic or physiological dependence liability of the substance. It should also be noted that these factors must be considered by the Secretary of Health, Education, and Welfare in making his evaluations and recommendations to the Attorney General under subsection (b) of this section.

A key criterion for controlling a substance, and the one which will be used most often, is the substance's potential for abuse. If the Attorney General determines that the data gathered and the evaluations and recommendations of the Secretary constitute substantial evidence of potential for abuse, he may initiate control proceedings under this section. Final control by the Attorney General will also be based on his findings as to the substance's potential for abuse.

The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" contained in section 201(v) of the Federal Food, Drug, and Cosmetic Act and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under that section as follows:

> The Director may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:
>
> (1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or
>
> (2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or
>
> (3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or
>
> (4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

These regulations follow and extend the suggestions contained in the report of this committee accompanying H.R. 2, 89th Congress, which became the Drug Abuse Control Amendments of 1965 (House Report No. 130, 89th Congress, first session, page 7 (1965)).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional nontherapeutic purposes." The committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community" (at page 7).

With respect to the question of the extent to which actual, as distinguished from potential, abuse was required to be established, that report stated that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill" (at page 7).

In speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies, and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use are regarded as indicative of a drug's potential for abuse.

Aside from the criterion of actual or relative potential for abuse, subsection (c) of section 201 lists seven other criteria, already referred to above, which must be considered in determining whether a substance meets the specific requirements specified in section 202(b) for inclusion in particular schedules and accordingly should be designated a controlled substance under a given schedule (including transfer from any other schedule) or removed entirely from the schedules. A brief discussion of each of these criteria follows.

(1) *Scientific evidence of its pharmacological effects.*—The state of knowledge with respect to the effects of uses of a specific drug is, of course, a major consideration, e.g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect. The best available knowledge of the pharmacological properties of a drug should be considered.

(2) *The state of current scientific knowledge regarding the substance.*—Criteria (1) and (2) are closely related. However, (1) is primarily concerned with pharmacological effects and (2) deals with all scientific knowledge with respect to the substance.

(3) *Its history and current pattern of abuse.*—To determine whether or not a drug should be controlled, it is important to know the pattern of abuse of that substance, including the social, economic, and ecological characteristics of the segments of the population involved in such abuse.

(4) *The scope, duration, and significance of abuse.*—In evaluating existing abuse, not only must the Attorney General know the pattern of abuse, but he must know whether the abuse is widespread. He must also know whether it is a passing fad, or whether it is a significant chronic abuse problem like heroin addiction. In reaching his decision, the Attorney General should consider the economics of regulation and enforcement attendant to such a decision. In addition, he should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(5) *What, if any, risk there is to the public health.*—If a drug creates no danger to the public health, it would be inappropriate to control the drug under this bill.

(6) *Its psychic or physiological dependence liability.*—There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(7) *Whether the substance is an immediate precursor of a substance already controlled.*—The bill allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

It should be noted that the above-mentioned factors do not require specific findings to be made with respect to control under or removal from, schedules, but rather are factors to be considered in making the special findings required under section 202(b) for control under such schedules.

Under subsection (d), where control of a drug or other substance by the United States is required by reason of its obligations under an international treaty, convention, or protocol which is in effect on the effective date of part B of the bill (i.e., the date of its enactment), the bill does not require that the Attorney General seek an evaluation and recommendation by the Secretary of Health, Education, and Welfare, or pursue the procedures for control prescribed by the bill but he may include the drug or other substance under any of the five schedules of the bill which he considers most appropriate to carry out the obligations of the United States under the international instrument, and he may do so without making the specific findings otherwise required for inclusion of a drug or other substance in that schedule. The reference to treaties, conventions, or protocols in effect upon enactment of the bill is intended to refer to the Single Convention on Narcotic Drugs, 1961, and to those predecessor conventions or protocols as to which the United States may still have an obligation. This would include any obligations of the United States that might arise after enactment of the bill by reason of changes in the schedules of the Single Convention by the international organs specified in the convention under the authority of the provisions of the convention in effect as to the United States on the date of enactment of the bill.

Subsection (e) of this section provides that if the Attorney General designates a substance as an immediate precursor, he may place it in the same schedule in which the controlled substance of which it is an immediate precursor is placed, or in a schedule with a higher numerical designation, whichever the Attorney General deems appropriate. For example, under section 202, lysergic acid, which is the immediate precursor of lysergic acid diethylamide (LSD–25), is contained in schedule III, while lysergic acid diethylamide is contained in schedule I.

In determining in which schedule to place an immediate precursor, the Attorney General need not follow the procedures prescribed by section 201 (a) and (b), or make the findings required by sections 201(a) and 202(b), for placement of a controlled substance in a schedule.

Subsection (f) provides that if at the time a new-drug application is submitted to the Secretary of Health, Education, and Welfare for a drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information is to be forwarded by the Secretary to the Attorney General.

Subsection (g)(1) requires the Attorney General to exclude any nonnarcotic substance from a schedule if the substance may be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

Subsection (g)(2) provides that the drug dextromethorphan is not to be deemed included in any of the schedules contained in section 202 unless subsequently controlled after the date of enactment of part B pursuant to the provisions of section 201. This section is merely designed to insure that dextromethorphan, which is used in a number of cough syrups sold over the counter without a prescription, will not be controlled by virtue of its relationship to drugs already listed in the schedules on the date of enactment. However, this subsection is not intended to prevent control of the drug in the future should an abuse potential be found.

Section 202

Subsection 202(a) establishes five schedules and provides that these schedules shall *initially* consist of the substances listed in section 202. The subsection further provides for a semiannual updating and republishing of the schedules during the 2-year period beginning 1 year after the date of enactment of title II of the act. After the expiration of this 2-year period, the schedules are to be updated and republished on an annual basis.

Subsection (b) sets out the criteria for each schedule of controlled drugs. However, findings with respect to these criteria are not required for placement of a substance in a schedule to carry out a U.S. obligation under a treaty, convention, or protocol in effect on the date of controlled substance in a schedule.

The criteria for those substances listed in schedule I are: a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

The criteria for substances listed in schedule II are: a high potential for abuse, a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions, and that abuse may lead to severe psychological or physical dependence.

The criteria for substances listed in schedule III are: a potential for abuse less than that for substances in schedules I and II, a currently accepted medical use in treatment in the United States, and that abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

The criteria for substances listed in schedule IV are: a low potential for abuse relative to the substances listed in schedule III, a currently accepted medical use in treatment in the United States, and that abuse of the substance may lead to limited physical or psychological dependence relative to the substances in schedule III.

The criteria for the substances listed in schedule V are: a low potential for abuse relative to the substances in schedule IV, a currently accepted medical use in treatment in the United States, and that abuse may lead to limited physical or psychological dependence relative to the substances listed in schedule IV.

Subsection (c) sets out the various narcotics, marihuana, stimulants, depressants, hallucinogens, and immediate precursors controlled under existing law and lists them in one of the five schedules. The listing of a drug by the bill under one schedule or another is not intended to affect the extent to which it is regulated under other laws. Methadone, listed in schedule II, for example, is used today in a number of programs for treatment of narcotic addicts and the adoption of this bill will not, of itself, lead to any change in the extent to which such use is permitted today.

Subsection (d) authorizes the Attorney General to except any compound, mixture, or preparation containing any stimulant or depressant substance contained in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of title II, if the substance contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures shall not be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

Part C—Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

Section 301

Section 301 authorizes the Attorney General to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of substances covered by the act.

Section 302. Persons required to register

Subsection (a) of section 302 requires every person who engages in the manufacture, distribution, or dispensing of controlled substances or who proposes to engage therein to register annually with the Attorney General.

Under subsection (b) of section 302, persons registered by the Attorney General to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent that they are authorized to do so by their registration. The committee inserted this subsection to make it clear that persons registered under this title are authorized to deal in or handle controlled substances.

Subsection (c) of this section exempts from registration an agent or employee of a manufacturer, distributor, or dispenser of controlled substances when he is acting in the course of his business or employ-

ment; a common or contract carrier or warehouseman, or employee thereof, whose possession of controlled substances is in the usual course of his business or employment; and an "ultimate user" who possesses a controlled substance for a purpose specified in section 102(25), which defines the term "ultimate user." This subsection also specifically authorizes possession of such substances by persons described in the subsection. In the case of an ultimate user who lawfully obtains a drug and whose possession is for his own use or for a member of his household or an animal owned by him, his possession is that authorized by the bill, as referred to in section 404(a) (relating to the offense of possession).

Subsection (d) of this section authorizes the Attorney General to waive the registration requirement of subsection (a) if he finds that such waiver is consistent with the public health and safety.

Subsection (e) of this section requires a separate registration at each principal place of business of the person required to register.

Subsection (f) of this section authorizes the Attorney General to inspect the establishment of a registrant or an applicant for registration in accordance with the rules and regulations promulgated by him.

Section 303. Registration requirements

Subsection (a) of section 303 requires the Attorney General to register an applicant to manufacture controlled substances included in schedule I or II of title II if he determines that such registration is consistent with the public interest and with U.S. obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining what constitutes the public interest, the Attorney General must consider the following factors: (1) Maintenance of effective controls against diversion of particular controlled substances and any schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for such purposes; (2) compliance with applicable State and local law; (3) promotion of technical advances in the art of manufacturing these substances and the development of new substances; (4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances; (5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective controls against diversion; and (6) such other factors as may be relevant to and consistent with the public health and safety.

Subsection (b) of section 303 requires the Attorney General to register an applicant to distribute a controlled substance included in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest the Attorney General shall consider the following factors: (1) Maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels; (2) compliance with applicable State and local law; (3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such

substances; (4) past experience in the distribution of controlled substances; and (5) such other factors as may be relevant to and consistent with the public health and safety.

Subsection (c) of this section provides that a registration granted under subsections (a) and (b) of the section shall not entitle a registrant to manufacture and distribute controlled substances in schedules I and II other than those specified in the registration, or any quantity of those controlled substances in excess of the quota assigned pursuant to section 306.

Subsection (d) of this section requires the Attorney General to register an applicant to manufacture controlled substances in schedule III, IV, or V unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest the Attorney General shall consider the following factors: (1) Maintenance of effective controls against diversion of particular controlled substances and any schedules III, IV, and V substance compounded therefrom into other than legitimate medical, scientific, or industrial channels; (2) compliance with applicable State and local law; (3) promotion of technical advances in the art of manufacturing these substances and the development of new substances; (4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances; (5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and (6) such other factors as may be relevant to and consistent with the public health and safety.

Subsection (e) of this section requires the Attorney General to register an applicant to distribute controlled substances included in schedule III, IV, or V unless he determines that the issuance of the registration is inconsistent with the public interest. In determining the public interest the Attorney General must consider the following factors: (1) Maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels; (2) compliance with applicable State and local law; (3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances; (4) past experience in the distribution of controlled substances; and (5) such other factors as may be relevant to and consistent with the public health and safety.

The criteria for registration set out in subsections (a), (b), (d), and (e) are to be considered by the Attorney General when passing on an application for initial registration under this title and when passing on an application for annual renewal of registration which is required by subsection 302(a). The criteria set out in subsection 304(a), relating to revocation and suspension of registration, are not the criteria to be considered by the Attorney General when granting or denying a renewal of registration under section 303.

Subsection (f) of this section provides that practitioners shall be registered under this title to dispense or conduct research in substances listed in schedules II through V if they are authorized to dispense or conduct research under the law of the State in which they practice. Practitioners engaging in research with nonnarcotic substances in schedules II through V, who are already registered in another capacity under part C, will not be required to obtain a separate registration to

conduct such research. However, practitioners conducting research in narcotic substances listed in schedules II through V may be required to obtain a separate registration even though they are already registered under this title in another capacity.

Pharmacies, as distinguished from pharmacists, when engaged in commercial activities, will be registered under subsection (f) if they are authorized to dispense under the law of the State in which they regularly conduct business. The committee inserted this language to make clear that only pharmacies and not pharmacists employed by them will be required to register. However, this provision is not intended to apply to a pharmacist who is using controlled substances in teaching or research and is not doing so as an employee or agent of a registered establishment. In that case, he will have to be personally registered.

Registration applications under subsection (f) by practitioners wishing to conduct research on schedule I substances are to be referred to the Secretary of Health, Education, and Welfare who shall determine the qualifications and competency of each applicant, as well as the merits of each research protocol. In determining the merits of the research protocol, the Secretary is required to consult with the Attorney General as to whether or not there are effective procedures to adequately safeguard against diversion of the controlled substances to be used in the proposed research. If the Secretary deems a researcher qualified, the Attorney General may only deny him registration if he finds that the applicant has materially falsified his application, has had his State license or registration revoked or denied, or has been convicted of a felony under Federal or State law relating to controlled substances.

Section 304. Denial, revocation, or suspension of registration

Subsection (a) of this section empowers the Attorney General to revoke or suspend any registration issued under this title if it is found that the holder has falsified his application, lost his State license, or has been convicted of a felony violation relating to any controlled substance.

Subsection (b) of this section authorizes the Attorney General to limit the revocation or suspension to the particular controlled substance with which the action is concerned.

Subsection (c) of this section requires that the Attorney General serve notice upon the applicant or registrant of the intended action prior thereto and give him an opportunity to show cause why the proceeding should not commence. Proceedings under this subsection shall be in accordance with subchapter II of chapter 5, of title 5, of the United States Code, and they shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this act or any law of the United States.

Subsection (d) of this section permits the Attorney General, at his discretion, to suspend a registration simultaneously with the institution of the proceedings under this section, where he finds that there is an imminent danger to the public health or safety.

Subsection (e) of this section provides that a suspension or revocation under this section shall operate to suspend or revoke any quota applicable under section 306.

Subsection (f) of this section empowers the Attorney General to place under seal controlled substances within the control of the person whose registration is suspended or revoked until court action has been completed thereon. Upon a revocation order becoming final, all controlled substances subject to the order shall be forfeited to the Federal Government, and shall be disposed of in accordance with section 511(e).

Section 305. Labeling and packaging requirements

Subsection (a) of this section makes it unlawful to distribute a controlled substance in a commercial container unless the container, when and as required by the Attorney General, bears a label, as defined in section 201(k) of the Federal Food, Drug, and Cosmetic Act, containing an identifying symbol in accordance with regulations promulgated by the Attorney General. A different symbol is to be required for each schedule of controlled substances.

Subsection (b) of this section makes it unlawful for the manufacturer of a controlled substance to distribute the substance unless the labeling, as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act, of the substance contains the identifying symbol required by subsection (a), when and as required by the regulations of the Attorney General.

Subsection (c) of this section requires the Secretary of Health, Education, and Welfare to prescribe regulations under section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act to provide that the labels of drugs listed in schedules II, III, and IV shall, when dispensed to or for a patient, contain a warning that it is a crime to transfer the drug to any person other than a patient.

Subsection (d) prohibits the distribution of controlled substances listed in schedules I and II and narcotic substances listed in schedules III and IV unless the bottle or other container, stopper, covering, or wrapper in which it is packaged is securely sealed in a manner prescribed by the Attorney General.

Section 306. Quotas applicable to certain substances

Subsection (a) of this section requires the Attorney General to determine total quantity and to establish quotas for the production of each basic class of controlled substances included in schedules I and II for every calendar year in order to provide for the estimated medical, scientific, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.

Subsection (b) of this section requires the Attorney General to limit or reduce individual production quotas so as not to exceed the amount determined necessary each year under subsection (a). The quota of each registered manufacturer for each controlled substance in schedule I or II shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. Provision is also made to subtract from a manufacturer's following year's quota that produced in excess of quota revision before such revision.

Subsection (c) of this section provides that on or before July 1 of each year, upon application by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the controlled substances in schedules I and II that the manufacturer seeks to produce.

The Attorney General, in fixing quotas, determines the manufacturer's estimated disposal, inventory, and other requirements for the calendar year, and in making the determination, the Attorney General considers the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

Subsection (d) of this section provides for the fixing of quotas for schedule I and II substances for those registrants who have not manufactured that substance during one or more previous years. In fixing these quotas the Attorney General is to consider generally those factors applicable in subsection (c) of this section.

Subsection (e) of this section provides for application for increased quotas by a registered manufacturer to meet his needs during the year. In processing such an application, the Attorney General is to consider those factors which may have a bearing on the need for such an increase.

Subsection (f) of this section provides that no quota shall be required for incidentally produced substances resulting from the manufacturing process used in the manufacture of a controlled substance with respect to which its manufacturer is registered under this title. The Attorney General may, by regulation, restrict the retention and disposal of such incidentally produced substances.

Section 307—Records and reports of registrants

Subsection (a)(1) of this section provides that every registrant, except those specifically excluded under subsection (c) of this section, must on the effective date of the section and every second year thereafter, make a complete and accurate record of all stocks of controlled substances on hand. Regulations prescribed by the Attorney General under this section must permit the biennial inventory to be prepared on the registrant's regular general physical inventory date which is nearest to and does not vary by more than 6 months from the biennial date that would otherwise apply.

Subsection (a)(2) provides that at the time a substance is first designated as a controlled substance, all registrants under title II manufacturing, distributing, or dispensing the substance must make complete and accurate records of all stocks on hand.

Subsection (a)(3) requires that on the effective date of section 305 and thereafter, every registrant manufacturing, distributing, or dispensing controlled substances must maintain on a current basis a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. However, this paragraph specifically does not require a registrant to maintain a perpetual inventory.

Subsection (b) of this section provides that required records shall be in accordance with and contain the information required by the Attorney General pursuant to regulations. In addition, records are to be maintained separately from all other records of the registrant or, in the alternative, in the case of nonnarcotic substances, be in such form that the information required by the Attorney General is readily retrievable from the ordinary business records of the registrant. All

records required to be kept under this section must be maintained and made available, for at least 2 years, for inspection and copying by officers of the United States authorized by the Attorney General.

Under this subsection, records of narcotic drugs must be maintained separate and apart from all other records kept by a registrant. However, in the case of nonnarcotic substances, a registrant has the option of maintaining them either separately or in a manner such that they can readily and easily be separated or retrieved. In the case of the wholesale druggist, this may mean that he asterisk or "redline" all controlled substance items on a shipping invoice. The wholesale druggist will not be required to prepare and keep two invoices—one containing controlled substance items and the other containing noncontrolled substance items—so long as he asterisks, redlines, or in some manner identifies those items on an invoice which relate to controlled substances.

Subsection (c)(1)(A) excepts from the recordkeeping requirements the prescribing or administering of narcotic controlled substances listed in schedules II through V by a practitioner in the lawful course of his professional practice. However, practitioners who dispense these narcotic drugs (*other than* by prescribing or administering them) are subject to the recordkeeping requirements of this section with respect to the narcotic drugs so dispensed.

Subsection (c)(1)(B) of this section exempts from the recordkeeping requirements practitioners who dispense (*including* prescribing or administering) nonnarcotic controlled substances listed in schedules II through V to their patients, unless the practitioner is regularly engaged in charging the patients for such substances, either separately or together with charges for other professional services. In that case, the practitioner will be subject to the recordkeeping requirements of this section with respect to the drugs dispensed.

Subsection (c)(2)(A) of this section provides that the recordkeeping requirements do not apply to the use of controlled substances, at establishments registered under title II which keep records with respect to such substances, in research conducted in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act. The intent of this subsection is to exclude from the requirements of this section registrants using controlled substances in animal or human research under the investigational new drug procedures of the Federal Food, Drug, and Cosmetic Act, but only if the establishments at which they are conducting research are registered and keeping records of the controlled substances used in the research.

Subsection (c)(2)(B) of this section provides that the recordkeeping requirements do not apply to the use of controlled substances, at establishments registered under title II which keep records with respect to such substances, in preclinical research or in teaching. Here again, if the establishment at which the research is being conducted is registered and keeps records with respect to the controlled substances used in the research, the individual researcher-registrant will not be required to keep records.

Subsection (c)(2)(C) provides that the recordkeeping requirements will not apply to the extent of any exemption granted by the Attorney General.

Subsection (d) of this section requires manufacturers registered under title II to make reports, when and as required by the Attorney General, of every sale, delivery, or other disposal of any controlled substance. This subsection further requires all distributors registered under title II to make such reports with respect to narcotic controlled substances as may be required by the Attorney General. Reports under this subsection are to identify by registration number the person or establishment to whom sale, delivery, or other disposal was made, unless such person is exempt from registration.

Subsection (e) of this section provides that regulations promulgated under sections 505(i) and 512(j) of the Federal Food, Drug, and Cosmetic Act, relating to investigational use of drugs, are to include such procedures as the Secretary of Health, Education, and Welfare, after consultation with the Attorney General, determines are necessary to insure the security and accountability of controlled substances used in research.

Section 308. Order forms

Subsection (a) of this section makes it unlawful for any person to distribute a controlled substance in schedule I or II unless the substance is distributed pursuant to a written order of the person to whom the substance is distributed, made on a form issued by the Attorney General in blank in accordance with subsection (d) and regulations.

Subsection (b) of this section provides that the order form requirements of subsection (a) do not apply to the exportation of schedules I and II substances from the United States in conformity with the provisions of title III. Subsection (b) further provides that the order form requirements do not apply to a common or contract carrier or warehouseman whose delivery or storage of a controlled substance is in the lawful and usual course of business.

Subsection (c)(1) of this section requires persons distributing schedule I or II controlled substances to preserve the order form for 2 years and make it available for inspection and copying by officers of the United States authorized by the Attorney General and by State or local enforcement officers who under their laws are authorized to inspect such orders.

Subsection (c)(2) of this section requires that the person who gives an order form required under subsection (a) must make a duplicate of it and preserve it for a period of 2 years and make it available for inspection and copying.

Subsection (d)(1) provides that the Attorney General may only issue order forms to persons registered as manufacturers, distributors, or dispensers under section 303 or persons exempted from registration under subsection 302(d). This subsection also makes it unlawful for any person other than the one to whom an order form is issued to use the form for the purpose of obtaining controlled substances or to furnish the form to anyone with intent thereby to procure the distribution of such substances.

Subsection (d)(2) provides that the Attorney General may charge reasonable fees relating to the issuance of order forms.

Subsection (e) makes it unlawful for a person to obtain by means of order forms schedule I and II controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business or in the course of professional practice.

Section 309. Prescriptions

Subsection (a) provides that, except when dispensed by a practitioner, other than a pharmacist, to an ultimate user, no schedule II substance which is a prescription drug under the Federal Food, Drug, and Cosmetic Act may be dispensed without a written prescription of a practitioner. Provision is made, however, for the dispensing of schedule II substances on oral prescriptions in emergency situations, as prescribed by the Secretary of Health, Education, and Welfare after consultation with the Attorney General. The subsection further provides that a prescription for a schedule II drug may not be refilled.

Subsection (b) provides that, except when dispensed by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance listed in schedule III or IV which is a prescription drug under the Federal Food, Drug, and Cosmetic Act may be dispensed without a written or oral prescription in conformity with the provisions of that act. Such prescriptions may not be filled or refilled more than 6 months after their date and they may not be refilled more than five times after their date unless renewed by the practitioner.

Subsection (c) provides that no controlled substance listed in schedule V which is a drug may be distributed or dispensed for a nonmedical purpose.

Subsection (d) of this section provides that when it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act should be considered a prescription item because of its abuse potential, the Attorney General shall so advise the Secretary of Health, Education, and Welfare, and furnish him all relevant available data.

PART D—OFFENSES AND PENALTIES

Section 401. Prohibited acts A—Penalties

Section 401(a). This section makes it unlawful for a person to knowingly or intentionally (1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance, except as authorized by this title; or (2) create, distribute, dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Except in the case of violations punishable under section 405 (relating to distribution to persons under 21), section 401(b) establishes the following penalties for anyone who violates section 401(a):

(1)(a) In the case of a narcotic drug in schedule I or II, up to 15 years in prison and/or a fine of not more than $25,000 may be imposed, except that if the person has one or more prior convictions for an offense punishable under this subsection, or for a felony under another provision of this title or of title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, such person shall be sentenced to not more than 30 years and/or a fine of not more than $50,000. A special parole term of 3 years is imposed in addition to any prison term under this paragraph, and if there exists a prior conviction, the special parole term is for 6 years.

(b) In the case of a schedule I or II nonnarcotic substance or a schedule III substance, a violator shall be imprisoned for not more than 5 years and/or fined not more than $15,000, except that in the case

of prior convictions as above described, the punishment is not more than 10 years and/or a fine of not more than $30,000. A special parole term of 2 years is added to the prison term unless there was a prior conviction, in which case it would be for 4 years.

(2) In the case of a schedule IV substance, the sentence is to be for not more than 3 years and/or a fine of not more than $10,000. If there is a prior conviction as above described, the sentence shall be for not more than 6 years and/or a fine of not more than $20,000. A special parole term of 1 year is imposed except in the case where there is a prior conviction, in which case it would be for 2 years.

(3) In the case of a schedule V substance, sentence is to be for a prison term of not more than 1 year and/or a fine of not more than $5,000. If there is a prior conviction, the punishment shall be for not more than 2 years and/or a fine of not more than $10,000.

Section 401(c) provides that the special parole term imposed under this section or section 405 may be revoked if its conditions are violated, and in such a case the original term of imprisonment is increased by the period of the special parole term. The prisoner may be required to serve part or all of the new prison term. The special parole term is in addition to and not in lieu of any other parole provided by law.

Section 402. Prohibited acts B—Penalties

Section 402(a) makes it unlawful (1) to distribute or dispense a controlled substance, which is a prescription drug without a lawful prescription in violation of section 309; (2) for a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration; (3) for a registrant to distribute a controlled substance without the required identifying symbol or without its container being securely sealed where required; (4) to remove, alter, or obliterate a required symbol or label; (5) to refuse or fail to make, keep or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required by this title or title III; (6) to refuse entry into any premises or inspection authorized by this title; (7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to this act or to remove or dispose of substances so placed under seal; or (8) to use for his own advantage or reveal, other than to duly authorized officers or employees of the United States or to the courts (including disclosure pursuant to discovery process), any information acquired in the course of an inspection authorized by this title concerning any method of process which as a trade secret is entitled to protection.

Section 402(b) prohibits a person who is registered to manufacture any schedule I or II controlled substance which is (1) not expressly authorized by his registration and by a properly assigned quota; or (2) in excess of a quota assigned to him.

Section 402(c)(1) subjects a violator of this section to a civil penalty of not more than $25,000, except as 402(c)(2) provides otherwise. The U.S. district court or otherwise proper U.S. court having jurisdiction of matters of this nature shall have jurisdiction to enforce this paragraph. Section 402(c)(2)(A) provides that in the event of prosecution by information or indictment alleging that the violation was

committed knowingly, and if the trier of fact so finds, such person shall, except as provided by section 402(c)(2)(B), be imprisoned for not more than 1 year and/or fined not more than $25,000. Section 402(c)(2)(B) provides that for a violation referred to in subparagraph (A) committed after one or more prior convictions, the violator shall be sentenced to a term of imprisonment of not more than two years and/or fined not more than $50,000. Section 402(c)(3) provides that except under the conditions specified in 402(c)(2), a violation of this section does not constitute a crime, and a judgment and the imposition of a civil penalty shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

Section 403. Prohibited acts C—Penalties

Section 403(a) makes it unlawful for any person to knowingly or intentionally (1) in the case of a registrant, distribute controlled substances in schedule I or II, in the course of his legitimate business, except pursuant to an order on an order form issued by the Attorney General; (2) use fictitious, revoked, or suspended registration numbers, or a number issued to another person, in connection with manufacture or distribution of controlled substances; (3) acquire a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge; (4) furnish false, fraudulent, or incomplete material information in any application, report, record, or other document required under this law; or (5) make, distribute, or possess an instrument designed to print or reproduce the trademark or other identifying mark of another upon any drug or container or its labeling so as to render such drug a counterfeit substance.

Section 403(b) makes it unlawful for any person to knowingly or intentionally use any communication facility in committing or facilitating the commission of a felony under this title or title III. Each separate use of a communication facility is deemed a separate offense, and the term "communication facility" is defined as any instrumentality for the transmission of writing, signs, signals, pictures, or sounds.

Section 403(c) provides that any person who violates this section shall be imprisoned for not more than 5 years and/or fined $30,000. If there is a prior conviction, the person shall be imprisoned for not more than 10 and/or fined not more than $10,000.

Section 404. Penalty for simple possession; conditional discharge and expunging of records for first offense

Section 404(a) makes it unlawful for any person knowingly or intentionally to possess a controlled substance unless it was obtained from a practitioner directly or pursuant to a valid prescription or order, except as otherwise authorized by this title or title III. Any person who violates this section shall be imprisoned for not more than 1 year and/or fined not more than $5,000. If there is a prior conviction under this subsection, he shall be sentenced to not more than 2 years and/or fined not more than $10,000.

Section 404(b)(1) provides that if a person, who has not previously been convicted of violating subsection (a) of this section, any other provision of this title, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of violating section 404(a), after a trial or a plea of guilty, the court may, without entering a judgment of guilty, and with

the consent of such person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for such a period, not to exceed 1 year, as the court may prescribe. Upon a violation of a condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may dismiss the proceedings against such person and discharge him from probation before the expiration of the probation period. If the person does not violate the conditions of probation, the court may discharge the person and dismiss the charges against him at the end of his term of probation. Such discharge and dismissal shall be without a court adjudication of guilt, but a nonpublic record shall be retained by the Department of Justice solely to be used by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. A discharge and dismissal shall not be deemed a conviction of a crime, but may occur only once with respect to any person. Section 404(b)(2) provides that after a dismissal and discharge under the above subsection, if the person was not over 21 years of age at the time of the offense, he may apply to the court for an order to expunge from all official records (other than the nonpublic records retained by the Department of Justice) all recordation of his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The court shall make such an order if the person fits the qualifications and the order shall restore such person, in the contemplation of the law, to the status he occupied before such arrest, indictment or information. No person as to whom such order has been entered shall thereafter be held guilty of perjury or giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry.

The committee is confident that judges, in administering the provisions of this section, will recognize that many defendants coming before them will be in need of medical treatment and that the judges will require that these persons undergo some form of prescribed treatment as a condition of their probation.

Section 405. Distribution to persons under age 21

Section 405(a) provides that anyone at least 18 years of age who violates section 401(a)(1) by distributing a controlled substance to a person under the age of 21 may be punished by twice the amount of imprisonment and/or fine, and twice the special parole term, authorized in section 401(b) for that substance. Thus, in the case of a first offense under this section, imprisonment of up to 30 years, or a fine of up to $50,000, could be imposed, plus at least 6 years' special parole, if a schedule I or II narcotic is involved; 10 years' imprisonment, $30,000 fine, or both, plus 4 years' special parole, if a nonnarcotic schedule I or II substance or any schedule III substance is involved; 6 years' imprisonment, a $20,000 fine, plus a 2 years' special parole in the case of a schedule IV substance; and 2 years' imprisonment, a $10,000 fine, or both, in the case of a schedule V substance.

Section 405(b) provides that if a person commits a violation of section 405(a) after a prior conviction under this section (or of section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to enactment of this bill, which relates to distribution to minors), the prison term and/or fine will be up to three times the corresponding

penalty and special parole term under section 401(b). Thus in the case of a second or subsequent offense under this section, these sentences could range from up to 45 years' imprisonment or $75,000, plus 9 years' special parole, for a narcotic schedule I or II substance; to 15 years' imprisonment or $45,000, plus 6 years' special parole, for a nonnarcotic schedule I or II substance or any schedule III substance; to 9 years' imprisonment or $30,000 plus 3 years' special parole, in the case of a schedule IV substance; and to 3 years' imprisonment or $15,000, or both, in the case of schedule V substances.

Section 406. Attempt and conspiracy

Section 406 provides that any person who attempts or conspires to commit any offense defined in this title may be punished by imprisonment and/or fine which may not exceed the maximum amount set for the offense, the commission of which was the object of the attempt or conspiracy.

Section 407. Additional penalties

Section 407 provides that any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanctions authorized by law.

Section 408. Continuing criminal enterprise

Section 408(a) provides that any person who engages in a continuing criminal enterprise shall upon conviction for that offense be sentenced to a term of imprisonment for not less than 10 years and up to life, to a fine of not more than $100,000, and to the forfeiture prescribed in paragraph (2) of this section. If the person engages in this activity subsequent to one or more prior convictions under this section, he shall receive a penalty of not less than 20 years' imprisonment and up to life, a fine of not more than $200,000, and the forfeiture prescribed. Section 408(a)(2) provides that a person convicted under paragraph (1) shall forfeit to the United States (A) the profits obtained by him in such enterprise, and (B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

Section 408(b) provides that a person is engaged in a continuing criminal enterprise if (1) he violates any provision of title II or title III which is punishable as a felony, and (2) such violation is part of a continuing series of violations of title II or III which are undertaken by such person in concert with five or more other persons with respect to whom he occupies a position of organizer, supervisor, or manager; and from which he obtains substantial income or resources.

Section 408(c) states that any sentence which is imposed under this section shall not be suspended, that probation shall not be granted, and that section 4202 of title 18 of the United States Code and the act of July 15, 1932 (D.C. Code, sec. 24–203–24–207), relating to parole, shall not apply.

Section 408(d) determines that the district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section as they deem proper.

Section 409. Proceedings to establish previous convictions.

Sec. 409. This section prescribes the procedure for establishing prior convictions so as to authorize imposition of an increased penalty upon a subsequent conviction.

Part E. Administrative and Enforcement Provisions

Section 501. Procedures

Section 501 serves three purposes. First, it authorizes the Attorney General to delegate his functions under title II to other officials in the Department of Justice. Second, it authorizes him to promulgate rules and regulations for the efficient execution of his functions under title II. Third, it allows him to accept gifts and bequests on behalf of the Department where the donor intends that such items are to be used to control the abuse of dangerous substances.

Section 502. Education and research programs of the Attorney General

Subsection (a) of this section authorizes the Attorney General to carry out educational and research programs directly related to enforcement of laws relating to drugs or other substances which are or may be subject to control under this title. Such programs may include any of the items in paragraphs (1) through (6).

Paragraph (1) of subsection (a) specifies educational and training programs on drug abuse or on controlled substances law enforcement for local, State, and Federal personnel and is intended to include training of college deans and security personnel in relation to such enforcement, and forensic chemists. It is also intended to include speeches and lectures by personnel of the Bureau of Narcotics and Dangerous Drugs on drug abuse or controlled substances law enforcement. Paragraph (2) of subsection (a) specifies studies or special projects designed to compare effects of various enforcement strategies on drug use and abuse. Paragraph (3) of subsection (a) specifies studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of these drugs or other substances. Paragraph (4) of subsection (a) specifies studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country. Paragraph (5) of subsection (a) specifies studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels. Paragraph (6) of subsection (a) specifies studies or special projects to develop information necessary to carry out the Attorney General's functions under section 201 of this title.

The provision of section 502(a)(6), authorizing the Attorney General to carry out studies or special projects to develop information necessary to carry out his functions under section 201, is intended to authorize him to develop relevant information, particularly information as to the scope, pattern, and significance of abuse of a drug or substance in this country, but is not intended to authorize him to conduct or support medical or scientific research of the kinds authorized to be conducted or supported by the Department of Health, Education, and Welfare under its own authority.

Subsection (b) of this section authorizes the Attorney General to enter into contracts for educational and research activities without performance bonds.

Subsection (c) of this section permits the Attorney General to authorize researchers to withhold the names of persons who are subjects of research. A person so authorized cannot be compelled to identify his research subjects in any civil, criminal, legislative, or administrative proceeding either State or Federal.

Subsection (d) of this section permits the Attorney General on his own motion or at the request of the Secretary of Health, Education, and Welfare to authorize researchers to possess, distribute, and dispense controlled substances. While they are already authorized to do so for the purpose of such research by virtue of being registered under part C, the Attorney General's action under subsection (d) immunizes the researcher from prosecution under other laws, particularly State or local law. However, this does not excuse compliance with applicable requirements of the Federal Food, Drug, and Cosmetic Act. See section 707 of this bill.

Section 503. Cooperative arrangements

Subsection (a) of this section provides for cooperation between all of the Federal enforcement authorities and the State and local enforcement authorities. The Attorney General is authorized to exchange information, cooperate in prosecution, conduct training, maintain files on addicts and other controlled substance offenders, maintain statistics on violations, and conduct programs to eradicate the growth of the plant species from which controlled substances may be extracted.

Subsection (b) of this section provides for the furnishing of technical and other assistance to the Attorney General by other agencies of the Federal Government but allows those agencies to withhold the names or other identifying characteristics of patients or research subjects which they have undertaken to keep confidential.

Section 504. Advisory committees

Section 504 provides for appointment of committees by the Attorney General to advise him with respect to preventing and controlling the abuse of controlled substances.

The committee deleted from this section the original language which provided for continuation of the Scientific Advisory Committee whose function is to advise on whether a particular substance should be controlled. Instead, it assumes that under section 201 the Secretary of Health, Education, and Welfare will perform the functions of the Scientific Advisory Committee under present statutory authority.

Section 505. Administrative hearings

Subsection (a) of this section authorizes the Attorney General in carrying out his functions under title II to conduct administrative hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

Subsection (b) of this section requires that all hearings held under this act be conducted in accordance with the Administrative Procedure Act.

Section 506. Subpenas

Subsection (a) of this section authorizes the Attorney General to subpena witnesses and compel their attendance and testimony in investigations relating to his functions under title II. He is also authorized to compel production of records or other tangible things which constitute or contain evidence and upon which he has made a finding as to materiality or relevancy.

Subsection (b) of this section provides that the Attorney General may designate the person to serve the subpena, that service upon a natural person is by personal delivery, that service may be made upon a corporation by delivery to an officer of that corporation, and that the affidavit of the person serving the subpena or a copy thereof constitutes proof of delivery of the subpena.

Subsection (c) of this section provides that refusal to respond to a subpena allows the Attorney General to invoke court aid, and refusal to obey a court order compelling participation in an administrative proceeding is punishable as contempt.

Section 507. Judicial review

Section 507 makes all determinations of the Attorney General final and conclusive, except that a person aggrieved by a decision may have this decision reviewed by the U.S. Court of Appeals for the District of Columbia or by the court of appeals of the circuit in which his principal place of business is located, upon petition filed within 30 days after notice of the decision. Findings of the Attorney General supported by substantial evidence would be conclusive. It is intended that support by substantial evidence or its absence should be determined on the record considered as a whole.

Section 508. Powers of enforcement personnel

Subsection (a) of this section incorporates and expands upon section 702(e) of the Food and Drug Act (21 U.S.C. 372(e)) and 26 U.S.C. 7607. Section 702(e) contains the authority granted to agents of the former Bureau of Drug Abuse Control by the Drug Abuse Control Amendments of 1965. Section 7607 contains the authority granted to agents of the former Bureau of Narcotics.

The authorities in each of the above sections have been carried over by section 508. These authorities confer the right to carry firearms and execute and serve search-and-arrest warrants, subpenas, and summonses. This authority is expanded to include the execution and service of judicially issued administrative inspection warrants.

Section 702(e)(4) of the Food and Drug Act and 26 U.S.C. 7607(2) granted agents the authority to make arrests for dangerous-drug and narcotic drug or marihuana offenses, respectively, committed in the agent's presence or, in the case of felonies, when the agent has probable cause.

Paragraph (3) of section 508 of the bill broadens this arrest authority to include any offenses against the United States. Paragraph (4) contains the authority to seize property which is in violation of the narcotic and dangerous drug laws. Paragraph (5) grants the agents authority to perform other law enforcement duties as the Attorney General may designate. This section is not aimed at any particular

function, but provides the Attorney General with flexibility in the utilization of enforcement personnel wherever and whenever the need arises.

Section 509. Search warrants

Subsection (a) of this section incorporates 18 U.S.C. 1495 and authorizes service of a search warrant at any time of the day or night if probable cause has been established to the satisfaction of the judge or U.S. magistrate issuing the warrant.

Subsection (b) of this section authorizes an agent, in cases where the violation carries a penalty of more than 1 year, to execute a search warrant without announcing his authority and purpose and, in the process, break into the premises to be searched, if the judge or U.S. magistrate issuing the warrant is satisfied that there is probable cause to believe that the property sought may, and, if such notice is given, will be quickly and easily destroyed or disposed of, or that immediate danger to the agent will result if notice is given. A statement that notice is not required must be included in the warrant. Officers acting under such warrants are required to give identification, reasons, and authority for their entrance as soon as it is practicable after entrance. This section incorportaes current case law and procedures adopted by many States.

Section 510. Administrative inspections and warrants

Subsection (a) of this section defines "controlled premises", for purposes of this section, to mean (1) places where records or documents required under title II are kept or required to be kept, and (2) places, including conveyances, where persons registered or exempted from registration are permitted to handle controlled substances.

Subsection (b) of this section authorizes the Attorney General to conduct administrative inspections of controlled premises.

Paragraph (1) of this subsection confers this authority upon the Attorney General for the purpose of inspecting, copying, and verifying the correctness of records, reports, or documents required to be kept under title II and for the purpose of otherwise facilitating the carry out of his functions under these titles. Paragraph (2) of this subsection allows the Attorney General to designate "inspectors" to carry out the inspection functions. The inspector has the right to enter upon stating his purpose to the owner, operator, or agent in charge, after presenting that person with his credentials and a written notice of his inspection authority. If an administrative inspection warrant is required or has in fact been issued, written notice shall consist of the warrant. Paragraph (3) of this subsection authorizes the inspector, unless restricted by an administrative inspection warrant, to inspect and copy records required to be kept or made and to inspect the premises, equipment, raw materials, finished and unfinished drugs, containers, labeling, etc., appropriate for verification of such records or otherwise bearing on the provisions of title II, and to inventory controlled substances and take samples thereof. Paragraph (4) of this subsection states that unless consent in writing is obtained, no inspection may be extended to financial data, sales data, or pricing data.

Subsection (c) of this section provides that subsection (b) shall not preclude inspection without a warrant of books and records pursuant to an administrative subpena issued in accordance with section 506 of this title, or inspections without a warrant which are conducted under the following circumstances: (1) with the consent of the owner of the premises; (2) in situations presenting imminent danger to health or safety; (3) where mobility of a conveyance to be inspected makes it impractical to obtain a warrant; (4) in emergency situations where time or opportunity to apply for a warrant is lacking; (5) where a warrant is not constitutionally required.

Subsection (d) of this section authorizes the issuance and execution of administrative-inspection warrants. Paragraph (1) of this subsection authorizes issuance of such warrants by Federal judges, judges of a State court of record, and U.S. magistrates. These warrants may be issued only within the territorial jurisdiction of these officials and upon a sworn application showing probable cause and only for the purpose of conducting inspections of controlled premises authorized by this act or regulations promulgated under it and for seizing property appropriate to such inspection. The subsection defines probable cause as "a valid public interest in the enforcement of this title or regulations sufficient to justify inspection * * * in the circumstances specified in the application."

The provisions authorizing the issuance of judicial warrants for administrative inspections under the bill have been inserted because of the Supreme Court's decisions in *Camara* v. *Municipal Court*, 387 U.S. 53, and *See* v. *Seattle*, 387 U.S. 541, both decided on June 5, 1967. The first case involved a criminal prosecution for violating a municipal housing code by refusing to permit inspection, without warrant, of a dwelling unit in a building; the second case involved a conviction for refusing to permit a city fire department inspector to enter and inspect, without a warrant, a locked commercial warehouse. The Court held that in both instances a warrant was constitutionally required, but that probable cause for a warrant should be determined in the light of a "flexible standard of reasonableness that takes into account the public need for effective enforcement of the particular regulation involved". The Court expressly reserved opinion as to the constitutionality of such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product (cf sec. 302 of this bill). In deference to these decisions a provision for issuance of judicial warrants for administrative inspections has been inserted in the bill as above described.

Section 511. Forfeitures

Subsection (a) of this section sets forth the conditions for forfeiture and the property to be forfeited. These include all controlled substances produced or obtained in violation of the act, all raw materials, products, and equipment used, or intended for use, in manufacturing, handling, or conveying controlled substances in violation of the act and any container for property previously described. Also subject to forfeiture are all conveyances used, or intended for use, to transport or conceal such violative property. Exempted from this last provision are conveyances belonging to common carriers where the owner or person in charge of the conveyance was not a consenting party nor privy to a violation of

title II, and conveyances where the owner did not have knowledge of activities in which the conveyance was used or where the conveyance was unlawfully in possession of the person who so used it. Also subject to forfeiture are books, records, formulas, and other documents or instruments which are used or intended for use in violation of the act.

Subsection (b) of this section states that any property subject to forfeiture under the act may be seized by process issued pursuant to the supplemental rules for certain admiralty and maritime claims. Further, seizure may be made without such process when incident to an arrest or under the authority of a search warrant or administrative inspection warrant; when the property seized has been the basis of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under title II; when the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or when the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of title II.

Subsections (c) and (e) of this section state, respectively, various means by which the Attorney General may store or dispose of the seized property.

Subsection (d) of this section provides that forfeiture proceedings shall be in accord with the provisions of existing U.S. customs law.

Subsection (f) of this section provides that all substances listed in schedule I which are illegally possessed, sold, transferred, or the owner of which is unknown, are contraband and are subject to seizure and forfeiture.

Subsection (g) of this section provides for the seizure and forfeiture of all plants from which substances in schedules I and II may be derived where such plants have unknown owners, are wild or are grown in violation of title II. The failure to produce appropriate license to grow the subject plants constitutes authority for their seizure and forfeiture. Additionally, authority is granted to enter upon lands, or into dwellings pursuant to a search warrant, to seize such plants.

Section 512. Injunctions

Subsection (a) of this section authorizes U.S. courts to issue injunctions against violators of title II in accordance with the Federal rules of civil procedure. Subsection (b) of this section provides for jury trial of violators of injunctions in accordance with the Federal rules of civil procedure.

Section 513. Enforcement proceedings

This section incorporates section 305 of the Food and Drug Act (21 U.S.C. 335) and authorizes the Director of the Bureau of Narcotics and Dangerous Drugs, to allow a person against whom criminal action is contemplated under title II an opportunity to present his views or show cause as to why he should not be prosecuted. This proceeding is generally intended to cover technical violations by registrants and allows for administrative compliance, if possible, before court action is initiated.

Section 514. Immunity and privilege

This section authorizes the U.S. attorney, with the approval of the Attorney General, to make application to the court to order any wit-

nesses in a case brought under the provisions of title II, to testify or produce evidence within his possession. No such witnesses shall be prosecuted or subjected to any penalty or forfeiture because of this compelled testimony or production of evidence, if such witness has claimed his privilege against self-incrimination. This exemption does not preclude prosecution for perjury or contempt committed during the trial at hand.

Section 515. Burden of proof; liabilities

Subsection (a)(1) provides that it shall not be necessary for the Government to negate any exemption or exception set forth in title II, but that the burden of going forward with the evidence with respect to such exemption or exception shall be on the person claiming its benefits.

Subsection (a)(2) provides that, in prosecutions for possession of a controlled substance under section 404(a), a prescription label identifying the substance for purposes of section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act shall be prima facie evidence that the substance was obtained pursuant to a valid prescription.

Subsection (b) of this section provides that in the absence of proof that a person is a registrant or holder of an order form issued under title II, the presumption shall be that he is not and the burden of going forward with the evidence as to the registration or order form is upon him.

Subsection (c) of this section provides that the burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with the substances listed in schedule I was used lawfully is upon the person engaged in that use.

Subsection (d) of this section exempts Federal officers from liability when lawfully engaged in enforcing title II and further exempts State and local officers when lawfully engaged in enforcing any law relating to controlled substances.

Section 516. Payments and advances

Subsection (a) of this section authorizes the payments of moneys from appropriated funds to persons who furnish information concerning violations of title II.

Subsection (b) of this section provides that moneys expended and subsequently recovered shall be reimbursed to the current appropriation of the Bureau.

Subsection (c) authorizes the Attorney General to direct the advance of funds by the Treasury Department in connection with the enforcement of title II.

Part F—Advisory Commission

Section 601—Establishment of Commission on Marihuana and Drug Abuse

This section provides for the appointment of a Commission on Marihuana and Drug Abuse, composed of two members from each House, and nine members appointed by the President.

The Commission is directed to conduct a study of marihuana, including but not limited to—

(1) the extent of marihuana use in the United States;

(2) the efficiency of existing marihuana laws;

(3) the pharmacology of the drug and its immediate and long-term effects, both physiological and psychological;

(4) the relationship of marihuana use to aggressive behavior and crime;

(5) the relationship between marihuana and the use of other drugs; and

(6) the international control of marihuana.

The Commission is directed to submit, within 1 year after the date funds first become available to carry out the study, to the President and Congress a comprehensive report on this study, including its recommendations and proposals for legislative and administrative action.

The Commission is further directed to conduct a comprehensive study of the causes of drug abuse (not limited to marihuana use) and their relative significance, to make such interim reports as it deems advisable, and within 2 years after the date funds first become available to carry out the study to submit to the President and Congress a final report, including such legislative and administrative recommendations as it deems appropriate. It is the intent of the committee that the Commission should include in its study an examination of such subjects as the relationship, if any, to drug abuse by the young of individual personality with reference to personality traits which may make an individual prone to drug abuse; peer group relationships; patterns of family relations which appear to provide greater susceptibility than others to drug abuse; the degree to which societal tensions within the immediate community and Nation relate to drug abuse, including consideration of poverty, urban decay, war, and social permissiveness; availability and exposure to hard drugs; leisure activity; personal and family use of alcoholic beverages and drugs; movies, lyrics of rock music; advertising; underground newspapers; and other influences in the general social environment.

This section provides that the Commission's total expenditures shall not exceed $1 million.

Part G—Conforming, Transitional and Effective Date, and General Provisions

Section 701—Repeals and conforming amendments

Section 701 deletes from the Federal Food, Drug, and Cosmetic Act the provisions relating to depressant or stimulant drugs inserted by the Drug Abuse Control Amendments of 1965, and the 1968 penalty amendments, and makes conforming amendments to the Federal Food, Drug, and Cosmetic Act, section 302(a) of the Public Health Service Act, and sections 1114 and 1952 of title 18 of the U.S. Code. Section 302(a) of the Public Health Service Act, which now requires the Service to investigate the use and misuse of narcotic drugs and advise the Attorney General on the quantities of narcotic drugs necessary to supply U.S. medicinal and scientific requirements, is also broadened so as to require research into drug abuse and drug dependence for all controlled substances and to require the Service to advise the Attorney General on domestic requirements for all such substances.

See, also, sections 1101 and 1102 of the bill with respect to repeals of, and conforming amendments to, laws within the jurisdiction of the Ways and Means Committee.

Section 702—Pending proceedings

Subsection (a) of this section provides that prosecutions for a violation of law occurring prior to the effective date of section 701 shall not be affected by the repealers or amendments contained in that section.

Subsection (b) of this section provides that civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 701 shall not be affected by the repealers or amendments contained in that section.

Subsection (c) provides that all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on the date of enactment of the act are to be continued and brought to a final determination in accord with the laws and regulations in effect prior to the date of enactment. The subsection further provides that where a drug is finally determined under such proceedings to be a depressant or stimulant drug, as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act, the drug shall automatically be controlled under title II of this bill by the Attorney General without any further proceedings and listed in the appropriate schedule of section 202 after obtaining the recommendation of the Secretary of Health, Education, and Welfare as to the scheduling.

This provision will require that the administrative hearings relating to the control of the drugs chlordiazepoxide and diazepam under section 201(v) of the Federal Food, Drug, and Cosmetic Act, if they are pending on the date of enactment, must be continued and brought to a close under the provisions of the Federal Food, Drug, and Cosmetic Act rather than terminated and reinstituted under the control provisions of this bill. If controlled under the provisions of the Federal Food, Drug, and Cosmetic Act, this provision authorizes the Attorney General to control the two drugs under the provisions of title II of this act and list them in the appropriate schedule after obtaining the recommendation of the Secretary, without regard to the procedures and findings required for control in section 201. In this instance, control will be automatic.

Subsection (c) further provides that for any drug not already listed in section 202, with respect to which a final control determination has been made prior to the date of enactment of the bill, the Attorney General is authorized to control it without further proceedings and list it in the appropriate schedule after obtaining the recommendation of the Secretary of Health, Education, and Welfare.

Section 703—Provisional registration

Subsection (a) of this section provides that persons engaged in the manufacture, distribution, or dispensing of controlled substances on the day before the effective date of section 302 and who are registered on that day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954, are to be deemed to have a provisional registration for the manufacture, distribution, or dispensing of controlled substances. The committee inserted this language to insure against any possibility that legitimate manufacturers, distributors, or dispensors could be held in technical violation of regulatory and penalty provisions of title II for nonregistration during the transitional period in which these persons will be registering under title II.

Subsection (b) provides that the revocation and suspension provisions of section 304 are applicable to provisional registrations.

Subsection (c) provides that unless revoked or suspended, a provisional registration shall continue in effect until the date on which the provisional registrant is registered under section 303 or has his registration denied under that section, or until such date as may be prescribed by the Attorney General for the registration of manufacturers, distributors, or dispensers, as the case may be.

Section 704—Effective dates and other transitional provisions

Subsection (a) of this section provides that, except as otherwise provided, title II shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

Subsection (b) provides that parts A (relating to definitions), B (relating to control and classification), E (relating to administrative and enforcement provisions), and F (relating to the advisory commission) and sections 702, 704, and 705 through 709 are to become effective upon enactment.

Subsection (c) provides that sections 305 (relating to labels and labeling) and 306 (relating to manufacturing quotas), are to become effective on the date specified in subsection (a), unless the Attorney General postpones the effective date by an order published in the Federal Register. The Attorney General may postpone the effective dates for these sections for such a period as he deems necessary for the efficient administration of title II.

Section 705—Continuation of regulations

This section provides for the continuation of existing administrative regulations which are in effect on the day preceding enactment of title II unless modified, superseded, or repealed by the Attorney General.

Section 706—Severability

This section provides that if a provision of the Act is held invalid, all valid provisions that are severable shall remain in effect.

Section 707—Saving provision

This section provides that nothing in the Act, except this part and (to the extent of any inconsistency) sections 307(e) and 309, shall in any way affect the provisions of the Federal Food, Drug, and Cosmetic Act.

Section 708—Application of State law

This section provides that title II of the bill is not intended to occupy the field (including criminal penalties) to the exclusion of any otherwise valid State law unless there is a direct and positive conflict between the latter and a provision of this title, so that the two cannot consistently stand together.

Section 709—Appropriations authorization

This section provides the appropriation authorization for the expenses of the Department of Justice in carrying out its functions under title II, except for section 103 which contains a specific appropriation authorization. Appropriations of $60 million for the fiscal year

ending June 30, 1972; $70 million for the fiscal year ending June 30, 1973; and $90 million for the fiscal year ending June 30, 1974, are authorized.

TITLE III

Title III of the bill is explained hereafter in this report, in the portion prepared by the Committee on Ways and Means.

AGENCY REPORTS

H.R. 18583, was introduced as a clean bill on July 22, 1970, after the conclusions of hearings and executive sessions before the Subcommittee on Public Health and Welfare. No agency reports have been received on this bill; however, reports received on H.R. 13743 and other bills on which hearings were held before the subcommittee are relevant, and are included below.

In addition, a letter from the Department of Health, Education, and Welfare with respect to the scheduling of marihuana, and a letter from the Department of Justice concerning certain recordkeeping requirements in the bill, are also set forth below.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 14, 1970.

Hon. HARLEY O. STAGGERS
Chairman Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In a prior communication, comments requested by your committee on the scientific aspects of the drug classification scheme incorporated in H.R. 18583 were provided. This communication is concerned with the proposed classification of marihuana.

It is presently classed in schedule I(C) along with its active constituents, the tetrahydrocannabinols and other psychotropic drugs.

Some question has been raised whether the use of the plant itself produces "severe psychological or physical dependence" as required by a schedule I or even schedule II criterion. Since there is still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is that marihuana be retained within schedule I at least until the completion of certain studies now underway to resolve this issue. If those studies make it appropriate for the Attorney General to change the placement of marihuana to a different schedule, he may do so in accordance with the authority provided under section 201 of the bill.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ROGER O. EGEBERG, M.D.,
Assistant Secetary for Health and Scientific Affairs.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 28, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on an amendment to subsection 307(b) of H.R. 18583, which was agreed to by the Committee on Interstate and Foreign Commerce in executive session. This amendment is designed to afford persons registered under the bill the option of maintaining required records either separately or in such a manner that they are readily retrievable from their ordinary business records.

In order to comply with U.S. obligations under international treaties, protocols, and conventions, existing Federal law requires separate records to be kept for all narcotic drugs manufactured or distributed. However, there is no such requirement for stimulant and depressant drugs, which are presently regulated under the Drug Abuse Control Amendments of 1965 (P.L. 89–74, 79 Stat. 226). The Department agrees with the committee that there is no need at this time to require manufacturers and distributors of stimulant and depressant drugs to keep separate records, so long as the required records are kept in such a manner that they can be easily identified and separated out from the registrant's ordinary business records.

Subsequent to the committee's amendment, representatives of the Department of Justice met with committee staff to work out appropriate alternative language which would require the maintenance of separate records for narcotic drugs while at the same time insuring that records for nonnarcotic controlled substances will not have to be kept separate and apart from all other records. The agreed upon language reads as follows:

"or, alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant,"

The Department interprets the phase "readily retrievable" to mean that a distributor need only red-line, asterisk, or in some other manner identify all nonnarcotic controlled substance items on an invoice or other record he maintains. This is the present practice among many manufacturers and distributors, and is acceptable to the Department of Justice.

We appreciate your having afforded us the opportunity to express our views on the committee's amendment to this extremely significant legislation.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 6, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 13743, a bill to protect the public health and safety by amending the depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

For the reasons expressed by the Attorney General in his testimony on February 3, 1970, before your Subcommittee on Public Health and Welfare, the Bureau of the Budget recommends the enactment of S. 3246 as passed by the Senate on January 28, 1970.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., February 4, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 13743, to protect the public health and safety by amending the depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

The Attorney General, on July 15, 1969, forwarded to the House of Representatives the administration's comprehensive legislative proposal to control narcotic and dangerous drugs. The proposed legislation incorporates the provisions of the administration's proposal except those relating to the control of narcotic drugs derived from opium and coca and the cannabis-based drugs. Those provisions are incorporated in H.R. 13742 which is pending before the Committee on Ways and Means.

The Department recommends the enactment of the administration's proposal.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

ROY T. ENGLERT,
Acting General Counsel.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., March 10, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of September 15, 1969, requested the views of the General Services Administration on H.R. 13743, 91st Congress, a bill to protect the public health and safety by amending the depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

GSA's interest in the bill arises from section 704, under which certain property may be seized by the Attorney General and subject to forfeiture to the United States.

Subsection 704(c) provides that, in the case of seized property, the Attorney General may either place the property under seal; remove it to a place designated by him; or require that the General Services Administration take custody and remove it to an appropriate location for disposition in accordance with law.

Subsection 704(e) provides that, in the case of forfeited property, the Attorney General may either retain it for official use; sell such property which is not required to be destroyed by law and which is not harmful to the public, with the additional provision that the proceeds may be disposed of for payment of certain expenses; require the General Services Administration to take custody and remove it for disposition in accordance with law; or forward it to the Bureau of Narcotics and Dangerous Drugs for disposition, which disposition may include delivery for medical or scientific use to any Federal or State agency, under regulations of the Attorney General.

Disposition of seized property could not be effected under the bill until after its forfeiture has occurred either by court action or by operation of law. Since GSA therefore would be unable to dispose of property merely seized, it would serve no useful purpose to require GSA to take custody of such property prior to forfeiture. Accordingly, it is recommended that the following changes be made on page 61 of the bill: add the word "or" after the semicolon on line 18; change the semicolon to a period and delete the word "or" on line 20; and delete paragraph (3), lines 21 through 24.

With respect to forfeited property, we feel that (a) it also should be made available to other Federal agencies for official use, if not required by the Attorney General, particularly when it may involve property such as aircraft, vehicles, or vessels; (b) there appears to be no need for additional authority to sell such property, since there is already adequate sales authority provided in title 40 United States Code 304f through 304m; and (c) such property forwarded to the Bureau of Narcotics and Dangerous Drugs for disposition should be limited to controlled dangerous substances. Therefore, in view of the above, we recommend that section 704(e) be replaced by the following new subsection:

"(e) Whenever property is forfeited under this act, the provisions of title 40 United States Code 304f through 304m shall apply: *Provided*, That the Attorney General may forward any controlled dangerous substances to the Bureau of Narcotics and Dangerous Drugs for disposition, which disposition may include delivery for medical or scientific use to any Federal or State agency, under regulations of the Attorney

General; and *Provided further,* That the proceeds of sale of any forfeited property may be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs."

Subject to the above recommended changes, GSA has no objection to the enactment of H.R. 13743.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely,

ROD KREGER,
Assistant Administrator.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 14, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of September 15, 1969, for a report on H.R. 13743, a bill entitled the "Controlled Depressant and Stimulant Drugs Act of 1969."

Title I of the bill contains the findings of Congress with regard to the necessity of controlling dangerous substances and the definition of the bill's principal terms.

Title II designates the substances to be controlled and lists criteria to be considered by the Attorney General in deciding whether to add, delete, or reschedule substances as controlled dangerous substances. Before making this decision, the Attorney General must request the advice in writing of the Secretary of Health, Education, and Welfare and of the Scientific Advisory Committee established by the act, both of which must render such advice within a reasonable time. Each controlled substance is listed in one of four hierarchal schedules depending on its relative abuse potential, medical usefulness, and dependence-producing liability.

Title III provides for the regulation of the manufacture, distribution, and dispensing of controlled substances. All persons must obtain an annual registration from the Attorney General before engaging in the manufacture, distribution, or dispensing of any controlled substance. The Attorney General must establish quotas for the production of schedule I and II substances sufficient to provide for the country's estimated medical, scientific, and industrial needs for lawful export and for maintenance of reserve stocks.

Title IV provides for the monitoring and control of the import and export of controlled substances. The controls are patterned after the presently existing Narcotic Drugs Import and Export Act with alterations sufficient to extend them to other dangerous substances.

Title V sets out the bill's offenses and penalties. In general the bill's penalty structure is modeled after existing law, although with respect to some of the specific substances listed in the bill, its penalties are more severe than under existing law. A novel provision of the bill which stems generally from a provision of the 1968 penalty amendments to the Federal Food, Drug, and Cosmetic Act, gives the court discretion,

without entering a judgment of guilt and without the defendant's consent, to place on probation anyone who is found guilty of possession of a controlled dangerous substance and who has never previously been convicted under the bill or any other Federal or State law relating to stimulant, depressant, or hallucinogenic drugs. If the conditions of probation are fulfilled, the court must dismiss the proceedings, which in that event are not to count as a conviction, but if the probation terms are violated the court may enter a guilty verdict and impose the allowed penalty. This procedure may be used only once with respect to any person.

The final titles contain various administrative provisions, including authority for the Attorney General to carry out educational or research programs necessary for the effective enforcement of the act and the requirement that he appoint a committee of experts of diversified professional backgrounds, selected from a list drawn by the National Academy of Sciences, to advise him with respect to dangerous substances which may be subject to control. The bill would repeal the Food and Drug Act's special provisions relating to depressant or stimulant drugs.

Expressly excluded from the scope of H.R. 13743 are the substances covered by present tax laws (narcotics and marihuana) and for that reason covered by a separate bill, H.R. 13742, which was referred to the Ways and Means Committee. The latter bill excludes depressant or stimulant drugs, which are covered by H.R. 13743. Taken together, the two bills are the equivalent of the original administration bill (S. 2637) submitted to Congress by the Attorney General on this subject. Since the framework of the two bills is the same and their drug coverage provisions are complementary, and since the division is based on committee jurisdiction, we recommend that the legislation as finally enacted be a single comprehensive law for all dangerous controlled substances, with appropriate distinctions within the comprehensive law.

In addition to this unification, we strongly support the present version of the administration proposal contained in S. 3246 as passed unanimously by the Senate on January 28, 1970. Especially important are the provisions of S. 3246 to make penalties more flexible and more appropriately adapted to various offenses. We note, further, that under S. 3246 selection of the members of the Scientific Advisory Committee (from a list drawn by the National Academy of Sciences) is to be made by the Attorney General after consultation with this Department. We also invite favorable attention to the provisions of section 801 of the Senate bill requiring this Department and the Department of Justice to appoint jointly a committee to study all available information concerning marihuana and make recommendations with respect to the degree of control to be exercised over marihuana use.

Specific comments on the provisions of S. 3246 as well as H.R. 13743 have been presented by administration witnesses, including representatives of this Department, to the Public Health and Welfare Subcommittee in its hearings of February 3 and 4, 1970. These are strongly in support of the enactment of comprehensive legislation in the version of S. 3246 as passed by the Senate.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

ROBERT H. FINCH, *Secretary.*

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., November 17, 1969.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 10342, to authorize the Secretary of Health, Education, and Welfare to make grants for treatment and rehabilitation centers for drug addicts and drug abusers, and to carry out drug abuse education curriculum programs, and to strengthen the coordination of drug abuse control programs by establishing the National Council on Drug Abuse Control.

The proposed legislation would (1) authorize the Secretary of Health, Education, and Welfare to make grants to assist States and nonprofit private organizations in establishing, developing, equipping, and operating drug addict prevention, treatment, and rehabilitation centers, including the training and salaries of personnel necessary to operate such centers; (2) authorize the Secretary to make grants to assist medical schools and institutions of higher learning in developing and carrying out curriculum programs on drug abuse education; and (3) establish in the Executive Office of the President the National Council on Drug Abuse Control to advise and assist the President on drug control education programs and on drug abuse law enforcement activities. It would authorize to be appropriated over the 5 fiscal years 1970–74 $35[illegible]illion to carry out (1) above, and $100 million to carry out (2) above.

The Department has no independent knowledge as to the necessity or desirability of the programs proposed by the bill and accordingly has no comment to make with respect to its general merits.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

PAUL W. EGGERS, *General Counsel.*

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., February 4, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 11701, H.R. 12882, and H.R. 12894, bills relating to narcotic and drug abuse care and control, and H.R. 11697, a bill relating to marihuana.

On July 15, 1969, the Attorney General transmitted to the Congress a draft bill, to protect the public's health and safety by amending the narcotic, depressant, stimulant and hallucinogenic drug laws, and for other purposes.

The Department recommends favorable consideration of the Department of Justice proposed legislation in lieu of further action on H.R. 11701, H.R. 12882, H.R. 12894 and H.R. 11697.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

ROY T. ENGLERT,
Acting General Counsel.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS, AFFAIRS,
Washington, D.C., October 30, 1969.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to furnish the following comments in response to your request for a report by the Veterans' Administration on H.R. 10408, 91st Congress, a bill to amend the Public Health Service Act to authorize the Secretary of Health, Education, and Welfare to provide financial assistance for education and information programs relating to drugs and their abuse, and for other purposes.

The bill would authorize the Secretary of Health, Education, and Welfare to assist projects designed to educate the public on problems of drug abuse by making grants to or entering into contracts with public or private nonprofit institutions of higher education or other public or private nonprofit agencies, institutions, or organizations. Such projects would include the development of curriculums on the use and abuse of drugs, the demonstration and testing of the effectiveness of such curriculums, and the dissemination of curricular materials and other information regarding the use and abuse of drugs.

Additionally, the bill provides for the establishment of an Advisory Committee on Drug Abuse Education to advise the Secretary concerning the administration and operation of the programs contemplated by the bill, to review and evaluate the implementing programs and projects and to make recommendations with respect thereto.

We are, of course, vitally concerned with the problem of drug addiction in connection with our extensive medical programs. While we are in agreement with the purposes and objectives of H.R. 10408, we defer to the views of the Department of Health, Education, and Welfare, which would have overall administrative responsibility for the proposed program, as to whether the approaches employed in this bill are the most effective methods for achieving its aims.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON, *Administrator.*

DEPARTMENT OF DEFENSE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., January 20, 1970.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 10408, 91st Congress, a bill to amend the Public Health Service Act to authorize the Secretary of Health, Education, and Welfare to provide financial assistance for education and information programs relating to drugs and their abuse, and for other purposes.

The purpose is as stated in the title. The bill also provides for the establishment of an Advisory Committee on Drug Abuse Education to assist the Secretary, and in addition the functions, powers, and duties of the Attorney General under Reorganization Plan No. 1 of 1968 to designate a drug as a depressant or stimulant or to find that a drug or other substance is an opiate are transferred to the Secretary of Health, Education, and Welfare. The attendant positions, personnel assets, property and unexpended balances of authorizations, allocations and funds are likewise transferred to that Secretary.

Inasmuch as the bill pertains to the personnel, functions, duties and authorizations of the Departments of Justice and Health, Education, and Welfare, the Department of Defense defers to the views of those agencies as to the merits of the bill.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATION OF VETERANS AFFAIRS,
Washington, D.C., December 12, 1969.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to furnish the following comments in response to your request for a report by the Veterans' Administration on H.R. 10342, 91st Congress, a bill to authorize the Secretary of Health, Education, and Welfare to make grants for treatment and rehabilitation centers for drug addicts and drug abusers, and to carry out drug abuse education curriculum programs, and to strengthen the coordination of drug abuse control programs by establishing the National Council on Drug Abuse Control.

The bill is designed to deal with the problems of drug abuse and addiction in several ways. It would provide for grants to assist States and nonprofit private organizations in the establishment, development, and maintenance of prevention, treatment, and rehabilitation centers. It would also provide financial assistance to medical schools and other institutions of higher learning in the development and

implementation of drug abuse education curriculum programs. Finally, it would provide for the establishment of a National Council on Drug Abuse Control to coordinate programs conducted by Federal, State, and local public agencies or private organizations.

We are, of course, vitally concerned with the problems of drug addiction in connection with our extensive medical programs, and we note that the Administrator is designated as a member of the proposed National Council. The bill does not otherwise appear to impose additional administrative responsibilities upon the Veterans' Administration.

While we are in sympathy with the objectives of H.R. 10342, we defer to the view of the Department of Health, Education, and Welfare, which would have overall administrative responsibility, as to whether the approaches employed in this bill are the most effective methods for achieving its aims.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON, *Administrator.*

TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

I. Purpose

Title III, which is the result of work by the Committee on Ways and Means, has two major purposes. First, it would unify and integrate statutory controls over importation and exportation of narcotics and other dangerous drugs, reformulating the provisions of existing law so as to bring them into conformity with the proposed new system established by Title II. Second, it is designed to improve such controls by making the changes which are voted in the general discussion below. The changes providing for stricter supervision of the importation and exportation of depressant and stimulant drugs are intended to prevent the diversion of these substances into illicit channels, a problem which present statutory requirements have proven insufficient to meet. Through the changes in the penalty provisions of existing law, particularly through elimination of mandatory minimum sentences, the Committee has sought to arrive at a more realistic, more flexible, and thus more effective system of punishment and deterrence of violations of the Federal narcotic and dangerous drug laws.

II. General Discussion

Title III was developed by the Committee on Ways and Means after consideration of Administration proposals as contained in H.R. 13742 and H.R. 17463. It pertains primarily to the regulation of importation and exportation of the substances controlled under the provisions of Title II. In addition, since the bill provides for a comprehensive system of regulation of narcotics and dangerous drugs, title III contains the necessary repeals of existing narcotics and marihuana laws, along with conforming amendments. Its short title is the "Controlled Substances Import and Export Act."

Title III is designed to replace all present law (except the smuggling law, 18 U.S.C. 545) relating specifically to the importation and exportation of narcotic drugs and marihuana and to strengthen the present controls over the importation and exportation of depressant and stimulant drugs. As in the case of Title II, a number of provisions of Title III derive directly from the substance of existing statutes.

The basic law now controlling the importation and exportation of narcotics and marihuana is the Narcotic Drugs Import and Export Act (21 U.S.C. 171, 173, 174–184, 185). Existing law governing the importation and exportation of depressant and stimulant drugs is Section 801 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 381).

Through the provisions of Title III, the importation and exportation of *all* controlled substances—narcotics, marihuana, depressants, stimulants, and any other dangerous substances which may be brought under the controls provided by Title II—would be covered by a single statute, except that the safeguards of the Federal Food, Drug and Cosmetic Act against adulterated or misbranded drugs and

unapproved new drugs would continue to apply. These provisions of title III are based upon the schedules established by Title II, with the requirements for legal import or export of each drug or other substance varying according to its assigned schedule. Penalities for illegal import or export are to an extent also dependent upon the schedule of the substance involved.

Specifically, the title makes it unlawful to import into the United States any schedule I or II substance or any narcotic drug contained in schedule III, IV, or V except with the special consent of the Attorney General. Any other controlled substance could be imported only for medical, scientific, or other legitimate uses, and only in accordance with whatever notification or declaration requirements might be prescribed by the Attorney General. No controlled substance could be exported except in compliance with specified procedures, which would vary according to the schedule of the substance. Controls are provided for the transshipment of controlled substances through the United States to other countries and for their in-transit shipment within the United States for immediate export, and for the possession of controlled substances on board any vessel or aircraft or other vehicle arriving in or departing from the United States.

The title would specifically authorize the Attorney General to issue regulations exempting an individual from the above-mentioned restrictions if he is merely carrying a legitimate drug for his own personal medical use, or for administration to an animal accompanying him, and if he has lawfully obtained it and conforms with whatever notification procedures the Attorney General may require. It is the Committee's intent, in including this provision, that the Attorney General will exercise this authority so as to allow the exemption in all appropriate cases. In the case of exportation, the regulations would be consistent with the obligations of the United States under the Single Convention on Narcotic Drugs, 1961. The Attorney General is expected to give reasonable notice to travelers of the requirements of title III and his regulations thereunder, and to provide under these regulations a reasonably convenient declaration system for travelers.

Title III also requires yearly registration with the Attorney General of all persons importing any controlled substance and all persons exporting controlled substances in schedules I, II, III, or IV. The requirements are similar and supplementary to those created by Title II.

The title establishes penalties, for violation of the provisions therein, separate and apart from those provided under Title II.

Changes from existing law

Basic changes contemplated by Title III in the substance of existing law are as follows:

(1) Depressant or stimulant drugs classified in schedule I or II (which would initially include only the hallucinogens) would be subject to import controls similar to those provided by existing law for narcotic drugs and marihuana.

(2) In the case of stimulant and depressant drugs not classified in schedule I or II (under the present schedule this would include all such drugs except for the hallucinogens), the Attorney General could prescribe notification or declaration requirements for importation.

(3) The Attorney General would be given authority to permit the importation of finished narcotics in an emergency or because of inadequate competition among domestic manufacturers.

(4) With regard to exportation, hallucinogens would be subject to the following new controls:

(*a*) the country of destination must have a system, deemed adequate by the Attorney General, for the control of imports of such substances;

(*b*) the export must be consigned to a properly licensed receiver;

(*c*) evidence must be furnished the Attorney General that the substance is to be used in the receiving country for a legitimate need and purpose; and

(*d*) a permit to export the substance must be issued.

(5) In the case of depressant and stimulant drugs other than the hallucinogens, it would be required for legal export that:

(*a*) the Attorney General be furnished documentary proof that importation is not contrary to the laws or regulations of the country of destination;

(*b*) special invoices with such information as the Attorney General may prescribe, accompany the shipment, and that additional copies of the invoice be forwarded to the Attorney General before the substances are exported.

(6) Registration of importers and exporters of any substances classified in schedule I or II would be based on the Attorney General's determination that this would be consistent with the public interest and with certain treaty obligations. In other cases, registration would be based on his determination that it would not be inconsistent with the public interest. Registration would not be a matter of right, as under existing law. Registration criteria for schedule I or II substances as required by both this title and Title II would approximate to the licensing provisions of existing law for manufacturers of narcotics.

(7) Penalties for illegal import or export would be revised as indicated in the following table:

	Offense	Maximum fine	Sentence	Special parole term	Probation or suspended sentence permitted	Parole permitted
1st offense	Present law:					
	Narcotics	$20,000	5 to 20 yrs.	No	No	No.
	Marihuana	20,000	5 to 20 yrs.	No	No	Yes.
	Dangerous Drugs	10,000	Up to 5 yrs.	No	Yes	Yes.
	H.R. 18583:					
	I & II narcotics	25,000	Up to 15 yrs.	At least 3 years.	Yes	Yes.
	I & II non-narc. & III substances.	15,000	Up to 5 yrs.	At least 2 years.	Yes	Yes.
	IV substances	15,000	Up to 5 yrs.	At least 1 year.	Yes	Yes.
	V substances	15,000	Up to 5 yrs.	No	Yes	Yes.
2d offense	Present law:					
	Narcotics	20,000	10 to 40 years	No	No	No.
	Marihuana	20,000	10 to 40 years	No	No	Yes.
	Dangerous Drugs	20,000	Up to 5 years	No	Yes	Yes.
	H.R. 18583:					
	I & II narcotics	50,000	Up to 30 years.	At least 6 years.	Yes	Yes.
	I & II non-narc. & III substances.	30,000	Up to 10 years.	At least 4 years.	Yes	Yes.
	IV substances	30,000	Up to 10 years.	At least 2 years.	Yes	Yes.
	V substances	30,000	Up to 10 years.	No	Yes	Yes.

(8) A separate penalty would be provided for importation of a schedule I, II, III, or IV substance for transshipment to another country, or for the in-transit shipment of such a substance, unless certain requirements were met. The penalty would be a civil penalty of up to $25,000 unless the violation were committed knowingly or intentionally and criminally prosecuted in which case it would be imprisonment for up to 1 year and/or a fine of up to $25,000.

III. Section-by-Section Analysis of Title III

Section 1000. Short Title

This section designates title III of the bill as the "Controlled Substances Import and Export Act".

Part A. Importation and Exportation

Section 1001. Definitions

Subsection (a)(1) of this section defines the term "import" to mean, with respect to any article, any bringing in or introduction of such article into any area, regardless of whether or not the bringing in or introduction constitutes an importation within the meaning of the tariff laws within the United States.

Subsection (a)(2) provides that the term "customs territory of the United States" has the meaning assigned to such term by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202). Headnote 2 of the Tariff Schedules defines "customs territory of the United States" to mean "only the States, the District of Columbia, and Puerto Rico".

Subsection (b) provides that for purposes of title III the terms "controlled substance", "distribute", "manufacture", "narcotic drug", "ultimate user", and "United States" have the meanings assigned to such terms by section 102 of the bill.

Section 1002. Importation of controlled substances

Subsection (a) of this section provides that it is unlawful to import into the customs territory of the United States from any place outside thereof but within the United States, or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug listed in schedule III, IV or V of such title. (Section 102(26) of the bill defines United States, when used in a geographic sense, as including all places and waters, continental or insular, subject to the jurisdiction of the United States.)

Paragraphs (1) and (2) of this subsection provide for specific exceptions to the prohibition against the importation of controlled substances contained in subsection (a). Paragraph (1) permits the importation of those amounts of crude opium and coca leaves which the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes.

Paragraph (a)(2) continues the present policy of restricting imports of narcotic substances other than opium. The only exceptions are to meet an emergency supply situation in the United States, or an inadequately competitive situation which cannot be corrected by increasing the number of registered domestic manufacturers.

Paragraph (2) permits the importation of those amounts of any schedule I or II substances or any narcotic drugs listed in schedule III, IV, or V, which the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States, but only (a) during an emergency situation in which domestic supplies of such substances or drugs are found to be inadequate by the Attorney General, or (b) if the Attorney General finds that competition among domestic manufacturers of such substances is inadequate and will not be rendered adequate by registration of additional manufacturers under section 303 of title II.

Subsection (b) makes unlawful the importation into the customs territory of the United States from any place outside thereof (but within the United States), and the importation into the United States from any place outside thereof, of any nonnarcotic controlled substance in schedule III, IV, or V, unless the substance is imported for medical, scientific, or other legitimate uses, and pursuant to notification or declaration requirements prescribed by regulations of the Attorney General.

Subsection (c) authorizes the Attorney General to permit the importation of additional amounts of coca leaves, but requires all cocaine and ecgonine (and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made) contained in such additional amounts of coca leaves to be destroyed under government supervision.

Section 1003. Exportation of controlled substances

Subsection (a) of this section makes unlawful the exportation from the United States of any narcotic drug in schedule I, II, III, or IV unless—

(1) it is exported to a country which is a party to one of four international conventions relating to control of narcotic drugs;

(2) the country has a system for the control of imports of narcotic drugs which is in conformity with the requirements of the conventions to which it is a party and which the Attorney General deems adequate;

(3) certain import permits (or licenses) are issued by the country of import;

(4) the exporter furnishes to the Attorney General evidence that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drugs for medical or scientific uses within such country; and

(5) a permit to export the drug has been issued by the Attorney General.

Subsection (b) of this section permits the Attorney General to authorize (notwithstanding subsection (a)) the exportation of narcotic drugs for special scientific purposes in the country of destination, provided that the authorities of the country of destination will permit the importation of the drug for such purposes.

Subsection (c) prohibits the exportation from the United States of any nonnarcotic controlled substance in schedule I or II unless—

(1) it is exported to a country which has an adequate system for the control of imports of such substances;

(2) the substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;

(3) evidence is furnished the Attorney General that (A) the substance is exclusively for medical, scientific, or other legitimate uses within the country of import, (B) it will not be exported from such country, and (C) there is an actual need for the substance for medical, scientific, or other legitimate uses within the country; and

(4) a permit to export the controlled substance has been issued by the Attorney General.

Subsection (d) contains authority to permit exports for special scientific purposes similar to that in subsection (b).

Subsection (e) prohibits the exportation from the United States to any other country of any nonnarcotic controlled substance in schedule III or IV or any controlled substance in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination; and

(2) certain requirements respecting invoices are met.

Section 1004. Transshipment and in-transit shipment of controlled substances

This section provides an exception to the rules of sections 1002 and 1003 (relating to imports and exports) for certain transshipments and in-transit shipments of controlled substances. Persons who comply with the requirements of this section would not be required to register as importers or exporters. Under paragraph (1), a controlled substance in schedule I may be imported into the United States for transshipment to another country, or be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation, if and only if it is so imported, transferred, or transshiped for scientific, medical, or other legitimate purposes in the country of destination, and with the prior written approval of the Attorney General.

Under paragraph (2), a controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations.

Section 1005. Possession on board vessels, etc., arriving in or departing from United States

This section makes it unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier, arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle.

Section 1006. Exemption authority

Subsection (a) of this section authorizes the Attorney General, by regulation, to exempt from sections 1002 (a) and (b), 1003, 1004, and 1005 any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives

such other notification) as the Attorney General may by regulation require. As noted above, it is anticipated the Attorney General will exercise his authority under this subsection.

Subsection (b) contains authority to exempt from this title particular compounds, etc., which is similar to the Attorney General's authority under section 202(d).

Section 1007. Persons required to register

Subsection (a) of this section prohibits any person from—

(1) importing into the customs territory of the United States from any place outside thereof (but within the United States), or importing into the United States from any place outside thereof, any controlled substance in schedule I, II, III, IV, or V of title II, or

(2) exporting from the United States any controlled substance in schedule I, II, III, or IV,

unless he is registered under section 1008, or is exempt from registration by reason of subsection (b).

Subsection (b) exempts from the registration requirements of subsection (a) (1) agents and employees of registrants, (2) carriers and warehousemen, (3) ultimate users, and, (4) importers and exporters for whom the Attorney General has waived the registration requirements. Section 102(25) of the bill defines an ultimate user as a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household. Persons exempted under this section may possess controlled substances for the purpose for which the exemption is available.

Section 1008. Registration Requirements

Subsection (a) of this subsection directs the Attorney General to register an applicant to import or export a controlled substance in schedule I or II if he determines that registration is consistent with the public interest and with United States obligation under international treaties, conventions, and protocol in effect on the effective date of section 1008. In determining the public interest, he is to consider the same factors which he is required to consider in registering manufacturers under section 303(a). Subsection (b) provides that registration under subsection (a) does not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration.

Subsection (c) directs the Attorney General to register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest he is to consider the same factors that he considers in registering manufacturers under section 303(d).

Subsection (d) provides that no registration may be issued under part A of title III for a period in excess of one year, and that, unless the regulations of the Attorney General otherwise provide, sections 302(f), 304, 305, and 307 will apply to registrants under this section to the same extent such sections apply to registrants under section 303.

Subsection (e) authorizes the Attorney General to promulgate rules and regulations and to charge reasonable fees relating to the regis-

tration under this section. Subsection (f) provides that registrants under this section may import or export (and for purposes thereof, possess) controlled substances to the extent authorized by their registration and in conformity with the other provisions of this title and title II. Subsection (g) requires a separate registration at each principal place of business where the applicant imports or exports controlled substances.

Subsection (h) provides that, except in emergency situations described in section 1002(a)(2)(A), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General must give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Section 1009. Manufacture or distribution for purposes of unlawful importation

This section makes it unlawful for any person to manufacture or distribute a controlled substance in schedule I or II knowing or intending that such substance be unlawfully imported into the United States. This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States.

Section 1010. Prohibited acts A—penalties

This section sets penalties for any person who contrary to section 1002, 1003, 1005, or 1007 knowingly or intentionally imports or exports a controlled substance, or brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or who contrary to section 1009 manufactures or distributes a controlled substance for purposes of unlawful importation.

Subsection (b)(1) provides that a violation with respect to a narcotic drug in schedule I or II will be punished by a fine of not more than $25,000, or by imprisonment of not more than 15 years, or both. If the sentence provides for imprisonment, it must include a special parole term of not less than 3 years in addition to the term of imprisonment.

Subsection (b)(2) provides that a violation with respect to a controlled substance other than a narcotic drug in schedule I or II will be punished by a fine of not more than $15,000, or by imprisonment of not more than 5 years, or both. If the sentence provides for imprisonment, it must, in addition to the term of imprisonment, include (A) a special parole term of not less than 2 years if such controlled substance is in schedule I, II or III, or (B) a special parole term of not less than 1 year if such controlled substance is in schedule IV.

Subsection (c) provides that a special parole term imposed under this section may be revoked if its terms and conditions are violated, and sets out the consequences of such a revocation.

Section 1011. Prohibited acts B—penalties

This section sets penalties for persons who violate section 1004.

Paragraph (1) provides that any such person shall, with respect to any such violation, be subject to a civil penalty of not more than

$25,000. Sections 402 (c)(1) and (c)(3) are applicable to civil penalties assessed under this paragraph. However, if such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, then, under paragraph (2) such person may be sentenced to imprisonment for not more than 1 year or a fine of not more than $25,000 or both.

Section 1012. Second or subsequent offenses

This section provides that any person convicted of any offense under this part is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. In addition, if the conviction is for an offense punishable under section 1010(b) and if it is the offender's second or subsequent offense, the court must impose twice the special parole term otherwise authorized.

Under subsection (b) a person is considered to be convicted of a second offense if, prior to the commission of such offense, prior convictions of him for a felony under any provision of this title or title II of the bill or under any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final. Section 409 applies with respect to any proceeding to sentence a person under this section.

Section 1013. Attempt and conspiracy

This section provides that any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Section 1014. Additional penalties

This section provides that any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Section 1015. Applicability of part E of title II

This section provides that part E of title II applies with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under title III, to administrative and judicial proceedings under title III, and to violations of title III, to the same extent that such part applies to those functions, proceedings, and violations under title II.

Section 1016. Authority of Secretary of Treasury

This section provides that nothing in the bill shall derogate from the authority of the Secretary of the Treasury under the customs and related laws. This will assure the continuation of the responsibilities within the jurisdiction of the Treasury Department regarding the unlawful importation of narcotics and dangerous drugs. Your committee is informed that the words "customs and related laws" include over 40 separate existing statutes that Customs enforces or assists in enforcing.

PART B. AMENDMENTS AND REPEALS; TRANSITIONAL AND EFFECTIVE DATE PROVISIONS

Section 1101. Repeals

This section repeals the provisions of existing law which deal with narcotics and or marihuana and which are presently within the jurisdiction of the Ways and Means Committee. The principal laws repealed are the Harrison Narcotics Act (sections 4701–4736 of the Internal Revenue Code of 1954), the Marihuana Tax Act (sections 4741–4762 of the 1954 Code), the Narcotic Drugs Import and Export Act (21 U.S.C. 171, 173, 174, 176–184, 185), and the Narcotics Manufacturing Act of 1960 (21 U.S.C. 501–517).

Section 1102. Conforming amendments

This section makes conforming amendments to various provisions of law within the jurisdiction of the Ways and Means Committee to reflect the enactment of the bill and the repeals in section 1101.

Section 1103. Pending proceedings

Subsection (a) of this section provides that prosecutions for any violation of law occurring prior to the effective date of the repealer section (sec. 1101) will not be affected by, or abated by reason of, the repeals or the conforming amendments made by section 1101 or 1102.

Subsection (b) provides that civil seizures or forfeitures and injunctive proceedings commenced prior to such effective date will not be affected by, or abated by reason of, the repeals or conforming amendments.

Section 1104. Provisional registration

This section provides a provisional registration system for importers and exporters which is similar to that provided by section 703 for persons required to register under title II of the bill.

Section 1105. Effective dates and other transitional provisions

This section contains the effective date provisions for title III of the bill. These provisions parallel those for title II. In general, title III takes effect on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment; however, sections 1001, 1006, 1013, 1103, 1104, and 1105 take effect on the date of enactment. A special provision provides for postponing the effective date of the repeal of the licensing and quota provisions of the Narcotics Manufacturing Act of 1960 for any period for which the Attorney General postpones the effective date of the quota provisions of section 306 of title II of the Act. Subsection (d) contains a provision, similar to section 705, extending the applicability of regulations, etc., issued under existing law.

CHANGES IN EXISTING LAW

Changes in existing law made by the reported bill are set forth in part 2 of this report, printed as a separate document.

ADDITIONAL VIEWS

The main report of this committee accurately states that drug abuse in the United States is a problem of most serious concern. We feel that it is serious and complex enough to deserve precise congressional treatment, not the quick, rimfire legislative reflex action often set off by dramatic events and emotional responses. Initially, the evil involved here deserves accurate description. It is not "drug abuse"; it is abuse of people by misuse of drugs, and it is important that we not further abuse people by misuse of law and process in attempting to bring about reform.

It must be said, though, in behalf of the committee that its majority was not impervious to constitutional criticism and to suggestions going toward due—and fair—process. All of the presumptions of guilt contained in the language submitted by the Justice Department which appeared in the original bill have been omitted upon the suggestions offered by the signers of these additional views. It must be said, too, that the subcommittee and the full committee worked diligently to present a framework upon which to build solid legislation for control of narcotics, psychedelics, amphetamines, barbiturates, and tranquilizers in a single piece of legislation. We join in this endeavor, and each of us joined in the unanimous vote to bring this matter to the floor of the House.

Nevertheless, serious defects remain in the legislation as reported: defects which may cause unnecessary and unjust pain particularly to young people and their anxious parents, defects which may unnecessarily place serious constitutional impediments in the way of immediate enforcement, and defects which go against the grain of Anglo-American concepts of due process.

Since other provisions of the bill are in general wholesome we will pass at once to these defects. They fall in these categories:

I. Those provisions pertaining to the continuing criminal activity section, and

II. Those provisions pertaining to the no-knock section.

Let us consider them in order:

I. The Continuing Criminal Activity Provision

A. ORIGIN OF CONTINUING CRIMINAL ENTERPRISE PROVISION

Three variations of the "continuing criminal activity" concept appear in versions of legislation before Congress. The concept is contained in S. 30, relating to the control of organized crime, in a section called "Dangerous Special Offender Sentencing." The provision of that section most comparable to the provisions in this bill appears in the language of title X, section 1001 of S. 30. It would provide a new section in chapter 227, title 18, United States Code, Section 3575. Subsection (e) of that title would provide in part:

(e) A defendant is a special offender for purposes of this section if—

* * * * * * *

(2) The defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; * * *

This provision in the organized crime legislation deals with sentencing, as does the language of H.R. 18583 as originally introduced.

B. CONTINUING CRIMINAL ENTERPRISE PROVISIONS OF THIS BILL

The language in H.R. 18583 is somewhat different but is essentially to the same effect. It is, as it appears in its final form in the bill, as follows:

(b) For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this title or title III the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this title or title III—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

C. COMMON PROVISIONS OF BOTH BILLS

In both these bills, S. 30 and H.R. 18583 in its original form, the prosecuting attorney is called upon, in order to institute the special sentencing procedures, to file with the court an instrument specifying that the defendant falls in the category of a special offender, in which case special procedures are provided for sentencing.

Both bills provide for a hearing before sentencing wherein the defendant is permitted the ordinary representation and process, except that he is to be afforded only "the substance of such parts of the presentence report as the court intends to rely upon" and this only if there are not "placed in the record compelling reasons for withholding particular information."

D. ORIGINAL CONTINUING CRIMINAL ENTERPRISE PROVISIONS

Though the original provisions of the continuing criminal enterprise section are not contained in the bill as finally reported (the language quoted above *is* in the bill), it is important to discuss them for three reasons:

(1) They show the history, development, and rationale of the special offender concept which originated with the Justice Department;

(2) Some of the criticisms relating to them are also applicable to the amended provision in the reported bill; and

(3) There is substantial Justice Department sentiment to retain the language of the original bill, and members may be called upon to choose between the original language and the amended language.

Let us comment briefly on these three points:

First, there can be no doubt that the Justice Department in S. 30 and in H.R. 18583 and its precursors has shown little sensitivity either toward constitutional rights or toward modern concepts of penology and rehabilitation. Whatever bill is passed may be expected to be enforced by a department affected by those predilections reflected in its original recommendations. Therefore, it is necessary for Congress to speak clearly and unambiguously in opposition to peremptory sentencing practices if such are to be avoided.

Second, since some of the provisions are also applicable to the amended provision in the reported bill, testimony by the American Bar Association and the Association of the Bar of the City of New York on S. 30 are applicable to the reported bill.

Third, if an amendment is offered in behalf of the administration, it is important for members to know that the Dingell Amendment—though far from perfect—cures serious additional constitutional defects contained in the original bill. These are discussed below.

E. OBJECTIONS TO ORIGINAL PROVISIONS

The serious objections to the original language of H.R. 18583 which were eliminated by the Dingell amendment are as follows:

(1) Under the original language the court would have before him, in addition to the indictment, a statement that the defendant is a person who has been involved in a continuing criminal enterprise, which statement could contain material which neither the defendant nor his counsel would ever see. The court would have the entire presentence report before him and would determine what parts of such report he intends expressly to rely upon. Only these would be given to the defendant or his attorney and this would only be done at the time of the sentencing hearing. Furthermore, even this would not be available to the defendant or his attorney if the court found "compelling reasons for withholding particular information."

(2) "Information" of all kinds, not only hearsay and rumor but also, presumably, the fruits of unlawful searches or illegal wiretapping, could be used and the defendant sentenced to life without any of the real protections afforded by a jury trial. (See report of the Association of the Bar of the City of New York, on S. 30, p. 92.)

(3) The right to cross examination is an illusory one because, even if the probation officer who prepared the presentence report should be present at the hearing, cross examination of him would be no substitute for cross examination of the various people who provided the information in the presentence report. (See ibid, p. 93; "General Criticism of Title X" in the association's report further enlarges the points made here, pp. 89–94.)

(4) Under the original provisions of H.R. 18583 respecting one of the elements of a continuing criminal offense (that defendant had derived substantial "income or resources" from the enterprise) the burden of

proof would be on the defendant to show that *any* substantial income or resources in his name or under his control were not derived from lawful activities or interests. The Dingell amendment eliminated this provision which held the defendant guilty of this element of the offense unless he proved himself innocent.

Even the proponents of this special sentencing procedure had constitutional doubts about it. The Justice Department conceded: "The lack of direct precedent makes it virtually impossible to predict whether these procedures would survive constitutional challenges." Senate Hearings on S. 30, page 377. The report on the propoesd Organized Crime Control Act of 1969 (S. 30) by the Association of the Bar of the City of New York says: "We think that it is unlikely that the proposed procedures would pass constitutional muster" (see p. 91).

F. THE DINGELL AMENDMENT

The amendment offered by Mr. Dingell which was adopted by the full committee corrected these defects. Instead of providing a post-conviction-presentencing procedure, it made engagement in a continuing criminal enterprise a new and distinct offense with all its elements triable in court.

Thus, it is seen that the Dingell amendment improved the continuing criminal activity section. All of the signers of these additional views supported the Dingell amendment as preferable to the original language. However, candor requires that it be pointed out that this section still contains serious objections, objections which also apply to the original provisions in the continuing criminal offense portion of the bill. They are as follows:

(1) The definition of what is a continuing offense is indefinite in that—

(*a*) It is not at all clear what constitutes a "continuing series of violations of this title or title III * * *."

Suppose, for instance, that six young men attending a college reside together in a cooperative boarding house. All of them have engaged in the practice of smoking marihuana cigarettes and there has been, on a day or more, free exchange between them of such forbidden drug. Each incident of giving a cigarette to another constitutes a felony. How long must this practice continue in order to constitute a "continuing series of violations"? Would a single day's experiment with smoking "pot" constitute a "continuing series of violations," or would it require a week, a month, or a year of such activities to make the offenses "continuing"?

(*b*) *It is not at all clear what is meant by deriving "substantial income or resources" from the enterprise.*

Let us take the situation mentioned above. Suppose one of the young men is the house manager of the boarding house. As such he is in a general "supervisory position" or "other position of management" in the ordinary affairs of the house, but he has not ordinarily obtained any "income or resources" connected with the sale of marijuana. He has only been paid for his general house management. On one occasion he purchases $100 worth of marijuana and divides it with the other five members, selling it to them at cost. Has he then obtained "substantial income or resources" in connection with the enterprise?

Or what if such common purchase by one of the group is done each week? Also, does "substantial income or resources" relate to profits or, on the other hand, to mere receipt of money? Would "income or resources" include the advantage to the house manager of obtaining his own share of the marijuana at a cheaper rate because it was bought in bulk?

(2) The very severe penalty of the continuing criminal enterprise section (a minimum of ten years and a maximum of life imprisonment) is applicable to a broad range of criminal activities, some of which are very mild and some of which are very serious, without discrimination.

The American Bar Association in its "Standards Relating to Sentencing Alternatives and Procedures," approved August 1968, stated that the sentence imposed in special offender cases should not be disproportionately more severe than a maximum sentence generally provided by law for a given felony. Edward L. Wright, president of the American Bar Association, objected to the language of the special offender sentencing provisions of S. 30 because they violate such standard. (See his testimony before Subcommittee No. 5 of the House Judiciary Committee on July 23, 1970.)

The standard is even more flagrantly abused in the bill recommended by this committee. The student house manager described in the example above would have to receive at least a 10-year sentence if convicted at all. The same sentence might be received by a member of a ring of heroin peddlers operating wholly for profit. Indeed, it is conceivable in cases where long-haired students are particularly obnoxious that the student house manager—who is, say, also a black activist—would receive a life sentence. In another community a hard-working "straight" heroin peddler, with a large family and a good lawyer, might receive the 10-year sentence.

The point is that the range of penalty, running as it does up to the life sentence, is too wide to encompass offenses which range from hardly more than student peccadillos to hardened crime. The duty of the legislative body to bracket offenses and penalties is solely for the purpose of creating uniformity and fairness as between different judges, different juries, and different parts of the country in the application of the criminal law intended to be enforced fairly and uniformly.

Since there is no field of criminal law which is more subject to abuse—subject as it is to planting evidence, framing the accused or stirring up the prejudice of the community—than that involving drug abuse, it is extremely important that we not leave the range of risk and punishment to prosecutor's discretion. Unfortunately, prosecutor's discretion is sometimes like the discretion of the hound on the scent of the hare. It is our duty reasonably to constrain it.

(3) The mandating of a minimum penalty upon the Court presents the dilemma of—

(*a*) Holding a person guilty of a minor or moderate crime not guilty in order to avoid the inordinate sentence of 10 years, or

(*b*) Imposing a 10-year sentence upon one who is not guilty of a serious crime, not likely to be a repeater, and whose life may be ruined by the conviction.

II. The No-Knock Provision

The bill as reported from the committee contains a no-knock provision in the following language:

> (b) Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than 1 year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

The no-knock provision of this bill is important because the no-knock approach is appearing in various pieces of special legislation apparently looking toward possible general adoption. It appeared in the District of Columbia crime bill which passed and became Public Law 91–358. It also appeared in the companion drug bill in the Senate, S. 3246. The provision bristles with constitutional questions.

A. THE BASIC CONSTITUTIONAL RIGHT

The fourth amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures * * *." Upon the face of it, this language would appear to embrace the mandate that people shall not be broken in upon without a prior announcement of the purpose and authority of the intrusion unless there is no other reasonable way that law may be enforced.

There is a paucity of case authority, however, respecting whether or not an officer is constitutionally required to announce his purpose and authority when he forcibly enters premises to make an arrest. One reason for this is that the Supreme Court has not been called upon to answer the question in Federal cases upon a constitutional basis, because since at least 1917, the Federal officer has been required by statute to announce his purpose and authority. (See title 18, section 3109, United States Code.)

It is interesting to note that the language of section 3109 was originally adopted as a World War I measure. The impetus behind the action seems to have been to expedite search warrants seeking evidence of subversion or espionage. Thus, the act was to broaden authority to break in premises rather than to restrict. Obviously, even before the passage of section 3190 the breaking into premises without notice violated "the notions of justice of English-speaking peoples."

As early as *Semayne's* case (5 Co Rep 91a, 91b, 77 Eng. Rep.194, 195 (1603)), it was declared that:

> [i]n all cases when the King is party, the Sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors * * *.

Thus, as to the qualification "after notice of his authority and purpose," the statute merely restated the common law and Constitutional law of the Nation.

There is no question but that the Constitution does not permit breaking and entering into premises for the purpose of search and seizure where the whole factual nexus shows action which offends "those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offense." *Malinski* v. *New York*, 324 U.S. 401 at 416.

B. UNANNOUNCED ENTRY UNDER KER V. CALIFORNIA

The case of *Ker* v. *California* (374 U.S. 23), is the case which sheds the most light on the question. Its meaning is somewhat muddied by the fact that Justice Clark's opinion (joined by Justices Black, Stewart, and White) is the majority opinion only through its section I (though the results of the remainder are concurred in by the majority). Three Justices join Justice Brennan in his outright denunciation of unannounced instrusion, and Justice Harlan concurs in the result but would return to Justice Frankfurter's view in *Rochin* v. *California* (342 U.S. 165). Nevertheless, the opinion affords the following standards and guides: In the case of unannounced intrusion without warrant, as existed in Ker, the constitutional question of whether or not there was a reasonable search and seizure is clearly raised. Justice Clark and those who joined in the result of his opinion thought that it was. He wrote:

> Here justification for the officer's failure to give notice is uniquely present. In addition to the officer's belief that Ker was in possession of narcotics, which could be quickly and easily destroyed, Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police. We therefore hold that in the particular circumstances of this case the officer's method of entry, sanctioned by the law of California, was not unreasonable under the standards of the Fourth Amendment as applied to the States through the Fourteenth Amendment (at pp. 40, 41).

Justice Clark invoked chiefly the exception allowing unannounced entry when officers have reason to believe that someone within is attempting to destroy the evidence.

Justice Brennan, joined by the Chief Justice, Justice Douglas, and Justice Goldberg, would have overtunred the conviction on grounds that there was a lack of "evidence which shows that the occupants were in fact aware that the police were about to visit them." But,

except for this difference as to the evidentiary standard, the four judges who dissent seems to be in substantial accord with the four judges who support the opinion on the propositions—

(1) That the question involved in such unannounced entry is a constitutional one, and

(2) That search and seizure is unconstitutional unless there exists probable cause for the arrest, and probably cause in the case of an entry without notice is guarded within rather narrow standards.

It is the dissenting opinion that sets out exceptions to illegality of unannounced police intrusion into a private home as follows:

(1) Where the persons within already know of the officers' authority and purpose, or

(2) Where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or

(3) Where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door) are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted.

THE FEDERAL EXCLUSIONARY RULE

It is recognized that "the Federal exclusionary rule is not a command of the fourth amendment but is a judicially created rule of evidence which Congress might negate." (See Justice Black's concurring opinion in *Mapp* v. *Ohio*, 367 U.S. 643, at p. 1094.) Also, it must be understood, as Justice Clark said in *Ker* v. *California*, *supra* at p. 33:

> And although the standard of reasonableness is the same under the fourth and fourteenth amendments, the demands of our Federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over Federal courts and that held inadmissible because prohibited by the U.S. Constitution.

Therefore, of course Congress could establish standards for applying the exclusionary rule so long as those standards did not trench upon "the right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures * * * ." Also, in making provisions respecting when evidence would be excluded, Congress would be bound by the fifth amendment's requirements of due process.

The close interrelationship between the fourth and fifth amendments, as they apply to this problem, has long been recognized. *Mapp* v. *Ohio*, 367 U.S. 643, at p. 662; *Boyd* v. *U.S.*, 116 U.S. 616. Indeed, the latter case considered the fourth and fifth amendments as running "almost into each other."

D. NO KNOCK PROVISION NOT CONSTITUTIONALLY DEFENSIBLE

The difficulty of Constitutional defense of the proposed no-knock provision of this bill is as much, if not more, involved with the fifth amendment as with the fourth. This provision provides a prior administrative-type determination upon ex parte testimony of law en-

forcement authorities that an exceptional situation permitting unannounced entry exists. The factors are stated in terms that "there exists probable cause to believe" that certain conditions exist. Such determination in advance of development of the facts could not possibly satisfy the standards enunciated by Justice Brennan and the Chief Justice in the *Ker* case, because they insist upon evidence which shows that the occupants were in fact aware that the police were about to visit them. The entire rationale of this opinion is based upon a demand that evidence exists, in fact, at the time of the entry, that would justify the unannounced entry.

But reliance need not be placed wholly on the opinion of these four judges who did not join in the majority opinion. The rationale of the other four judges who signed the majority opinion is likewise based upon the "circumstances within their [the officers'] knowledge" at the time of the act itself. The justification of the reasonableness of the arrest was based upon "Ker's furtive conduct in eluding [the officers] shortly before the arrest," not upon some general condition, or some usual practices of the suspect which might give reason to believe, under general policy, that it would be expedient to issue a warrant permitting no-knock entry.

It is our belief that there is a basic difference between the administrative-type process, related as it is to a legislative or administrative process or a determination in equity in injunctive processes, and a judicial-type process, relating to what the facts actually were at the time. The former, we think, does not satisfy due process in affording a means of determining whether or not the search or seizure was reasonable under the existing circumstances. The question is not one of condemning or exonerating officers for their acts, not one of judging the reasonableness of their motives. It is one of protecting people in their right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. This is not a question of general policy as to the range of official authority to be determined in advance. It is a question of whether or not officers, when they invade the house of the accused and riffle through his papers and effects, are then and there, under the actual circumstances existing at the time, engaging in "unreasonable searches and seizures."

The no-knock provision of H.R. 18583 does not afford due process, because it follows the former course and not the latter. The process provided by this provision does not address the real question involved. It does not assure that, if it is followed, people will be "secure in their persons, houses, papers, and effects against unreasonable searches and seizures", but only that policemen will have to follow a certain form which proves to a magistrate, in an ex parte procedure, that they are at that time quite sincere in their beliefs that they should have a broad mandate to engage in searches and seizures upon more or less general policy grounds.

Conclusion

The signers of these additional veiws, although agreeing in general with the approach and terms of H.R. 18583, find that the two objectionable provisions of the bill discussed in I and II above very sharply

raise the warning expressed by Justice Brandeis in *United States ex. rel. Democratic Publishing Company* v. *Burleson* (255 U.S. 407):

> * * * In every extension of governmental functions lurks a new danger to civil liberty.
>
> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent.

The warning is particularly poignant when the two objectionable provisions of this bill are seen to be applications, in a narrow field, of rules which the Justice Department has espoused as far more general propositions.

In view of this, these objectionable provisions are seen to be the surveyor's slash through the majectic wilderness of privacy which may become the road that will despoil it.

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