
COMPREHENSIVE DRUG PENALTY ACT OF 1984

JUNE 19, 1984.—Ordered to be printed

Mr. HUGHES, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4901 which on February 22, 1984 was referred jointly to the Committees on the Judiciary, Energy and Commerce, and Ways and Means]

[Including cost estimates of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4901) to amend the Controlled Substances Act, the Controlled Substances Import and Export Act and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes, have considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF THIS LEGISLATION

H.R. 4901, as reported by the Committee, would amend title 21 of the United States Code and the Tariff Act in order to substantially increase the maximum fines for drug offenses, provide the sanction of criminal forfeiture for all felony drug offenses and facilitate procedures for both civil and criminal forfeitures. The thrust of this legislation is to increase the use of forfeiture and criminal fines to attack the phenomenal increase of profits in drug trafficking and the concomitant amassing of huge fortunes as a result of this illegal activity, and to improve certain administrative procedures and law enforcement functions in the Customs Service. As such, the bill

attacks the basic motivation for this activity and the economic means by which it is sustained as well as increases the efficiency of Federal law enforcement agencies.

BACKGROUND

One of the single most important crime problems confronting this country is the vast increase in drug trafficking in recent years. Drug dealers have been able to accumulate huge fortunes as a result of their illegal activities. The sad truth is that the financial penalties for drug dealing are frequently only seen by dealers as a cost of doing business. Under current law the maximum fine for many serious drug offenses is only \$25,000. Moreover, the Government's ability to obtain civil or criminal forfeiture of the profits or proceeds of drug dealing has been hampered by statutory deficiencies. This bill attempts to address these problems in a manner that will encourage the immediate and effective utilization of these new tools by law enforcement.

A view of the problems of any economic attack by Government on the illegal drug business produces a clear consensus about the need for change. What is less clear is the path to achieve that reform. Most observers agree that prosecutors face three major problems: ambiguous statutes, problems in tracing the proceeds of drug trafficking, and difficulties in proof. The solutions to these dilemmas are numerous and pursuit of them can often create a divergence of views. For example, while it may be desirable to expand the authority of the Government to seize property involving drug trafficking, one must also be careful to protect the rights of innocent third parties. Frequently, it is these conflicting values that produce different opinions about the wisdom of particular legislative reforms.

The problems in this area are outlined in a seminal document produced by the General Accounting Office. See "Asset Forfeiture—A Seldom Used Tool in Combatting Drug Trafficking" GGD 81-5 (April 10, 1981):

The Report states:

The Federal Government's record in taking the profit out of crime is not good. Billions of dollars are generated annually by organized crime; drug trafficking alone is estimated at \$60 billion annually. These illicit profits and the assets acquired with them were the target of legislation passed nearly 10 years ago to combat organized crime through forfeiture of assets. However, assets obtained through forfeiture have been minuscule.

The Government has simply not exercised the kind of leadership and management necessary to make asset forfeiture a widely used law enforcement technique. The Department of Justice has not given investigators or prosecutors the incentive or guidance to go after criminal assets. Steps are now underway to do more, but emerging case law indicates legislative changes are also needed if investigators and prosecutors are to make meaningful attacks on the economic base of organized crime.

Whether or not an improved asset forfeiture program will make a sizable dent in drug trafficking is uncertain. The almost insatiable demand for drugs and the huge dollar amounts involved may be obstacles too great for law enforcement alone to overcome. But a successful forfeiture program could provide an additional dimension in the war on drugs by attacking the primary motive for such crime—monetary gain.

One highly publicized case, although anecdotal, is illustrative of the problem. That case was *United States v. Meinster et al.* (Case No. 79-105-CR-JKL, Southern District of Florida). In this prosecution, commonly called the "Black Tuna" case, a Florida based criminal organization had imported over a million pounds of marijuana and grossed about \$300 million over a 16-month period. The Federal Government completed a successful prosecution in which the three primary defendants were convicted and this major drug operation was aborted. However, forfeiture was attempted on only two residences worth \$750,000, an auto auction business used as a "front" and five yachts.

Of the \$750,000 for the residences, \$175,000 was returned to the wife of one of the defendants, and \$559,000 was used to pay the defendant's attorneys. The auto auction business was worthless and the five yachts were never found.

The Government wound up with \$16,000.

This was an organization that lived in the "fast lane" of privately owned jets, half million dollar yachts and \$60,000 in restaurant bills. Although there are many interrelated reasons for the Government's lack of success on the economic level, it is obvious that a considerable amount of the "proceeds" of this drug operation are elsewhere, probably funding future "Black Tunas."

It is against this background that present Federal forfeiture procedures are tested and found wanting. For example, the following chart outlines the extent to which, in practical terms, our present forfeiture procedures were effective in 1979.

*Narcotics-related seizures compared to estimated illicit narcotic income*¹

	1979
Narcotics income retained by illegal distributors	\$54,275,000,000
Civil seizures DEA:	
Vehicles	3,000,000
Aircraft	800,000
Boats	600,000
Currency	5,500,000
Total DEA civil	10,400,000
Customs:	
Vehicles	5,300,000
Aircraft	4,300,000
Boats	12,800,000
Currency	100,000
Total Customs civil	22,500,000
Total civil seizures	32,900,000

Criminal Forfeitures DEA: Real estate	1979 300,000
Total criminal forfeitures	300,000
Total civil seizures and criminal forfeitures	33,200,000
Seizures as a percent of income	0.06

¹ Attachment II of Statement by William J. Anderson, Director, General Government Division, General Accounting Office, before the Subcommittee on Criminal Justice of the Committee on the Judiciary, U.S. Senate, 96th Congress, July 23, 1980, Serial Number 96-81 at p. 25.

In the course of the Subcommittee on Crime's investigation on how to improve forfeiture procedures in drug trafficking, it came upon a related problem, i.e., the care and disposal of seized vehicles by the Federal Government. This problem is extensively documented in the Comptroller General Report to the Chairman, Committee on Government Operations, House of Representatives, "Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement" GAO/PLRD 83-94 (July 15, 1983).

As pertinent to this legislation, the GAO summarized its findings in this fashion:

The Customs Service, Immigration and Naturalization Service, and Drug Enforcement Administration seized cars, boats, and planes used to transport illegal aliens, narcotics, and various other forms of contraband. These seized conveyances often devalue rapidly after seizure, primarily because of the lengthy forfeiture process and inadequate storage, maintenance, and protection. When the forfeited conveyances are acquired for use by law enforcement agencies, the conveyances often have high startup and continual repair costs. Also, a lack of storage space has caused the Immigration and Naturalization Service to periodically stop seizure operations.

GAO recommends that the Congress enact legislation to

- expedite the forfeiture process,
- create an improved funding mechanism for preservation costs and for the acquisition of needed conveyances, and
- gain more oversight over the use by Federal agencies of forfeited conveyances.

The Subcommittee on Crime independently pursued this ancillary problem and the Committee on Judiciary agreed in substance to many of the recommendations contained in this report; remedial legislation is incorporated in H.R. 4901. The Committee on the Judiciary believes it is not only our responsibility as Members of Congress to give law enforcement new tools in our fight against crime, but that we must, through legislative oversight, also ensure that law enforcement is doing the best job possible with tools that are available.

PRESENT FORFEITURE LAW

Presently, there are three principal forfeiture statutes used against illegal drug activity. They are the "in rem" proceedings under civil forfeiture as provided in 21 U.S.C. 881, and "in personam" proceedings under criminal forfeiture in the Continuing

Criminal Enterprise Statute (hereafter CCE) (21 U.S.C. 848) and the Racketeer Influenced Corrupt Organization Statute (hereafter RICO) (18 U.S.C. 1963).

Under these laws there are four classes of property subject to forfeiture. The first involves contraband which is easily identified and the most commonly forfeited under American law. Guns used in crime, controlled substances, illegal gambling devices, etc., fall into this category. The second is derivative contraband which is property such as cars, boats, and airplanes which serve the purpose of conveying, or facilitating the illegal transaction. The third class is direct proceeds such as cash received in payment for the illegal transaction. The last class, derivative proceeds, describes property such as corporate stock, legitimate businesses, and real estate which may be unrelated to the drug operation, but which are purchased, maintained, indirectly or directly, with the proceeds of the illegal transactions. This last class is the most difficult to reach.

CIVIL FORFEITURE

Under 21 U.S.C. 881 the legal actions are "in rem" or against the property itself, which is considered "tainted". This is the traditional method to seize such property as boats, airplanes, cars, and equipment used to manufacture or refine drugs. This statute, historically, has been used against contraband and derivative contraband not against "proceeds" or "derivative proceeds".

In 1978, the statute was amended to include "proceeds" of illicit drug transactions, and has subsequently been used to reach the immediate cash proceeds of drug transactions. The GAO in testimony before the Senate Subcommittee on Criminal Justice stated that civil forfeiture, even after the 1978 amendments, "has never been applied to derivative proceeds." The Department of Justice in a reply to the GAO stated that recently (in 1981) they had caused to be forfeited \$2 million in derivative proceeds under an "Operation Gateway". Obviously this is still a small amount compared to the money involved in the business.

Since existing criminal forfeiture proceedings (RICO and CCE) are very complicated and subject to varying interpretations (discussed later), civil forfeiture has been the major source of forfeiture actions. These actions, however, require a separate proceeding against the property itself and thus in large and complicated cases often entail separate and parallel civil actions in several districts, which from a common sense standpoint should be combined with the criminal case, since the issues and evidence are often identical. There are other problems under the present civil forfeiture law, such as whether property such as a warehouse and other buildings used in large-scale drug operations are forfeitable under 18 U.S.C. 881(c).

There are also other obstacles endemic to all forfeitures in drug cases, such as proving a nexus between the proceeds and subsequently acquired property, dissipation of assets, and sale to innocent third parties.

CRIMINAL FORFEITURE

Criminal ("in personam") forfeiture does not have an extensive history in this country, probably because of its nefarious counterpart in common law England, "forfeiture of estate". Forfeiture of estate in early English law occurred when a defendant breached the common law and as such committed an "offense to the King's Peace" thus depriving the transgressor of the right to own property. As early as the Magna Carta, the King was forced to limit his criminal forfeiture power ("We will not retain beyond one year and one day, the land of those who have been convicted of a felony and the lands shall thereafter be handed over to the Lords of the Fiefs").

The only specific reference to criminal forfeiture in the Constitution is in a negative sense where it states:

The Congress shall have the power to declare the Punishment of Treason, but no Attainder of Treason shall work corruption of Blood or Forfeiture except during the Life of the person attained.

Based on this precedent, it has been argued that since "forfeiture of estate" (the ultimate "in personam" forfeiture) is prohibited for treason, it could not be imposed for lesser crimes.¹

This negative note was followed in the 1st Congress which passed the Act of April 30, 1790 (§24 Stat. 112) which said "Provided always, and be it enacted, that, no conviction or judgment for any of the offenses aforesaid, shall work corruption of blood, or any forfeiture of estate."

However, the enormity and complexity of organized crime and drug operations led the Congress to enact the RICO and CCE statutes in 1970, which included limited criminal forfeiture provisions. RICO (which included illegal drug transactions) provides that upon conviction for racketeering in an enterprise the defendant forfeit all "interest" in the enterprise. The CCE Act provided criminal forfeiture of "profits" derived through a continuing criminal enterprise in controlled substances. These statutes were a bold attempt to attack the economic base of the criminal activity. The realization of this attack, however, has been limited by several lower courts' interpretations of the breadth of these statutes. In the RICO case, e.g., some courts had concluded that the "interest" in an "enterprise" does not include the broader concept of "proceeds" of "rigged" contracts. See *U.S. v. Marubeni America Corp.*, 611 F. 2d 763 (9th Cir.) 1980. See also *U.S. v. Thevis*, 747 F. Supp. 134 (N.D. Ga. 1979), and *U.S. v. Martino*, 648 F. 2d (5th Cir. 1981).

However, in an en banc decision in *U.S. v. Martino, supra* (618 F. 2d 952 (1982)) the Fifth Circuit upheld a broader interpretation of RICO and included "proceeds" of insurance based on arson violations. Recently, the Supreme Court agreed with this decision in a unanimous opinion (*Russelo v. U.S.*, Petition No. 82-472 decided November 1, 1983).

The CCE Act on the other hand speaks in terms of "Profits" so that one could suggest that the cost of narcotics to the dealer

¹ See, *United States v. Grande*, 620 F. 2d 1026, 1038 (1980).

might be deductible and not be subject to forfeiture. Thus, it is arguable then that CCE may not include the broader concept "proceeds" of the transactions.¹

There are other serious practical problems in enforcing these statutes. For instance there is confusion as to what degree there must be a nexus between the illegal activity and the derivative proceeds in both RICO and CCE cases. There is uncertainty also as to the extent to which the government must show that the specific property was itself purchased, acquired or maintained with illicit funds. Another serious question involves the situation where there are transfers of property before forfeiture can be accomplished. This combined with the fact that much of the property involved in these transactions is highly liquid, provides a situation where there is always the chance of dissipation of the assets either before or after indictment.

WHAT H.R. 4901 DOES

First, the bill substantially increases maximum permissible criminal fines in drug cases (generally tenfold) and establishes a new alternative fine concept under which drug offenders can be fined up to twice their gross profits or proceeds where the alternative fine would be greater than that specified in the crime itself. The new maximum fine limits were developed in large part by the Judiciary Committee during the consideration of the Criminal Code revision in the 96th Congress. The alternative fine concept was recommended in the final report of the National Commission on Reform of Federal Criminal Laws (the Brown Commission).

Second, it amends the present civil forfeiture law (21 U.S.C. 881) to permit the civil forfeiture of land and buildings used, or intended to be used, for holding, storage or cultivation of controlled substances when such use constitutes a felony. Current law is unclear as to whether warehouses or other buildings can be forfeited and land cannot be forfeited at the present time.

Third, the bill changes certain venue authority to allow the Justice Department to bring civil forfeiture actions in the district where the defendant is found or where the criminal prosecution is brought.

Fourth, it sets up two funds from forfeiture receipts in the Department of Justice and Customs Service to be used for law enforcement purposes and maintenance of seized properties in fiscal years 1985, 1986 and 1987. After fiscal year 1987 this fund will "sunset" and there is a \$10 million per year limitation for unreimbursed law enforcement expenses.

Fifth, the bill provides, for the first time, criminal forfeiture provisions for all felony drug cases.

Sixth, it outlines authority for courts to restrain the transfer of property which might be subject to forfeiture and allows, under certain circumstances, the seizure of such property in order to insure its availability for a forfeiture proceeding. Remission and mitigation provisions are also provided in order to protect the in-

¹ In *United States v. Jeffers*, 532 F.2d 101, 1117 (7th Cir. 1976), aff'd in part, vacated in part, *Jeffers v. United States*, 432 U.S. 137 (1977), the court took notice on the "extreme difficulty in this conspiratorial, criminal area of finding hard evidence of net profits".

terest of innocent property owners. It also details procedures for allowing temporary restraining orders in ex parte hearings under extraordinary circumstances.

Seventh, the bill creates a permissive presumption in criminal forfeiture cases that all property acquired by drug offenders during the period of the violations or shortly thereafter is subject to forfeiture if no other likely source for such property exists.

H.R. 4901 also contains significant administrative reforms in Title II dealing with the Customs Service. This latter title, in substance, was initially attached to H.R. 7140 by Senator Baker in the Senate version of H.R. 7140 in the 97th Congress and has been strongly supported by numerous members of Congress, Administration officials and participants at recent hearings. After discussion with the appropriate members of the Ways and Means Committee, the Subcommittee on Crime agreed that it would be advantageous to attach this title to H.R. 4901 so that we can expeditiously alleviate some of the egregious administrative aspects of this procedure.

This title would: First, increase the scope of what Customs Service could "administratively forfeit" (essentially a default judgment process in their civil forfeiture procedure) from \$10,000 to \$100,000, with no dollar limit in cases involving conveyances of contraband in default situations; second set up a "Customs Forfeiture Fund" similar to the Department of Justice Fund; third, allow Customs to transfer property seized or forfeited under this authority to State or local law enforcement agencies which participated directly in the seizures or forfeiture; and fourth, increases certain Customs' law enforcement authority.

HISTORY OF THE ACT

On September 16, 1981, the House Subcommittee on Crime held a hearing on H.R. 2646, H.R. 4110 and H.R. 2910 which were introduced by Mr. Sawyer, Mr. Zeferetti, and Mr. Gilman respectively. During this hearing we heard various innovative options for reforms of our forfeiture laws from the Members, experts from the Bar, and the Justice Department. The Subcommittee also heard from the General Accounting Office in regard to its thorough study of drug forfeiture.

On March 9, 1982, the Subcommittee on Crime again met and heard from Congressman Pepper, as well as further testimony from experts in the field on H.R. 5371. The Department of Justice also submitted its forfeiture package for the Subcommittee's consideration on that date. From that time until September, the Subcommittee and its staff worked with the Department of Justice to develop a final bill. On September 16, 1982 Chairman Hughes offered at the Subcommittee's markup an amendment in the nature of a substitute to H.R. 5371. At that time, the Ranking Minority Member, Mr. Sawyer, sought to amend the bill to clarify that civil forfeitures of storage facilities under 21 U.S.C. 881 would apply only when such use would constitute a felony. The amendment was accepted unanimously and the bill as amended was reported favorably without dissent to the full Judiciary Committee. Subsequently, Chairman Hughes introduced this substitute as a clean bill, H.R. 7140, for himself, Mr. Kastenmeier, Mr. Glickman, Mr. Sawyer,

and Mr. Fish, and on September 22, 1982 it was ordered reported favorably by this Committee on the Judiciary, without amendment, by a voice vote.

H.R. 7140 passed the House of Representatives without dissent on September 28, 1982. A compromise version of this bill (now in essence H.R. 4901) along with other bills (H.R. 3963, the anti-crime package) passed the House and Senate late in the lame duck session of the 97th Congress by the margin of 271-72 in the House and unanimously in the Senate. The President, primarily on an issue unrelated to this bill, decided to pocket veto the anti-crime package.

In the 98th Congress, Mr. Hughes and Mr. Sawyer introduced legislation similar to H.R. 7140 (H.R. 3299) and this bill was the subject of hearings in Washington on June 23, 1983 and in Ft. Lauderdale, Florida on October 14, 1983 (where the Subcommittee also made a field visit to the Customs Service storage facilities for boats). The Subcommittee on Crime marked up H.R. 3299 on October 27, 1983 at which time Chairman Hughes offered an amendment in the nature of a substitute which included two major substantive amendments. They were:

(1) an amendment which allows a person, other than a defendant, who claims an interest in forfeited property independent access to courts; and

(2) an expansion of the Department of Justice Forfeiture Fund to include the Immigration and Naturalization Service conveyance forfeitures and the inclusion of "payment for equipping for law enforcement functions of vessels, vehicles, and aircraft retained or provided by law for official use by the DEA or the Immigration and Naturalization Service" as an additional purpose of the fund. The substitute was accepted without dissent as was a clarifying amendment from Congressman Shaw to allow the Federal Government to defer forfeiture procedures on both "seized" and "forfeited" property in favor of State and local agencies. A clean bill, H.R. 4901, was then reported by voice vote to the full Committee.

The full Committee on the Judiciary marked up H.R. 4901 and approved unanimously the following major substantive amendments introduced by Mr. Sawyer, the Ranking Minority Member of the Subcommittee on Crime, for himself and Chairman Hughes:

(1) an amendment permitting civil forfeiture of land used in cultivation of controlled substances with a clause allowing the court to forfeit a proportion of such land if appropriate;

(2) allow for the purchase of evidence from the Department of Justice and Customs revolving funds;

(3) the extension of the revolving fund test period through fiscal year 1987 instead of through fiscal year 1986;

(4) a provision which would allow the Customs Service to abandon or destroy seized property of \$500 or less if the expense of keeping this property would exceed its value if forfeited. The Customs Forfeiture Fund would be subject to claims of parties of interest in this property;

(5) expand the Secretary of Treasury's authority to transfer forfeited property to State and local law enforcement agencies

which participated directly in the seizure or forfeiture of the property.

At the full Committee two other significant substantive matters were discussed. The first was raised by Congressman Shaw who noted that H.R. 4901 did not include any amendments to violations of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1963, et seq.). Since H.R. 4901 deals with amendments to the Controlled Substances Act and the Tariff Act, such an amendment would not be germane to this bill under the Rules of the House of Representatives. Chairman Hughes of the Subcommittee on Crime, however, recognizes that there are problems in enforcement of the RICO statute and has assured the Committee that the Subcommittee will pursue this complex matter in depth at the first opportunity.

SUBSTITUTE ASSETS

The other substantive matter discussed, the so-called "substitute assets" issue, was raised by an amendment offered by Congressman Lungren at the markup. This amendment, which was defeated, would have permitted the courts to forfeit assets with no known "nexus" to the violations involved if other property subject to forfeiture has been removed, concealed, transferred, or substantially depleted.

Anticipating that the "substitute asset" issue might come up in the 98th Congress, Chairman Hughes of the Subcommittee on Crime asked the Department of Justice, during the 97th Congress, to come forward with *all* the specific cases the Department could find which would justify such a proposal prior to the June 23, 1983 Subcommittee hearing. At that hearing Mr. Knapp, a Deputy Assistant Attorney General speaking for the Department, cited only 4 cases in his testimony to indicate there was such a need. Two of these cases were hypothetical (*U.S. v. Ashbrook* and a case "related to the *DeLorean* case") because both defendants agreed to a forfeiture settlement in a plea bargain. Mr. Knapp merely anticipated problems because money and assets were out of the country, a problem which, by the way, "substitute assets" would not solve. A third case, *U.S. v. Mouzin*, Mr. Knapp referred to in his oral testimony because Mouzin had claimed a profit of \$1.5 million and allegedly had a bank account in Panama. Mr. Knapp did not point out what substitute assets were available in that case or why the provisions in H.R. 4901 would not handle any of his assets in the United States. The fourth and last case cited was *U.S. v. Webster* in which a bar was used as a front in a heroin operation and would have been subject to forfeiture, but was sold a month before indictment. H.R. 4901 sets up procedures in extraordinary circumstances to restrain transfers prior to indictment and this could have been done in *Webster* if H.R. 4901 was law at that time. In any case, the Department of Justice could have obtained forfeiture of the proceeds of the sale of the bar.

In Mr. Knapp's testimony before the Subcommittee on Crime, he indicated the Department of Justice primary reason for the "substitute asset" proposal is the Department's desire to take exclusive sanction authority away from judges and share it with prosecutors.

For example, when Chairman Hughes asked Mr. Knapp why the alternative fine would not be adequate, he answered "Because it is optional to impose", meaning in the discretion of the court, whereas the substitute asset can be forfeited "directly". By "directly", Mr. Knapp apparently meant in the discretion of the prosecutor. The Committee believes this approach is ill-advised and unworkable, particularly when the same trial judges' discretion would be involved in the substitute asset procedure. A further rationale behind the substitute assets provision appears to be that they should be forfeited because the assets that are the product of the illegal activity have been made unreachable by the defendant, such as by transfer to other persons or transfer out of the country. The Committee concluded that there is every reason to believe that this is exactly what would happen to most "substitute assets", if they were made subject to forfeiture in H.R. 4901.

A better solution accepted by the Committee is the alternative fine provision of H.R. 4901. All assets can be executed against to collect the fine. Under this procedure a court could even reach assets otherwise outside the jurisdictional reach of the court, such as foreign assets, by suspending a portion of a sentence to imprisonment, and imposing, as a condition of probation, a requirement that the fine be paid.

The Committee would also note that H.R. 4901 contains the following new provisions:

- increases fines tenfold and more, e.g., (\$25,000 to \$250,000);
- permits criminal forfeiture as part of all drug felony criminal proceedings;
- broadens scope of criminal forfeiture from "profits" to "proceeds";
- new alternative fine, limited only by "twice the proceeds" of the trafficking;
- permissive presumption that all property acquired after trafficking comes from the offense.

Thus, H.R. 4901 contains a multi-faceted approach to criminal forfeiture, which is an unusual sanction that has only been used in three Federal laws in this country's history. (A fourth law H.R. 3635, the Child Protection Act of 1984 was signed into law on 5/21/84.) A further inclusion of "substitute assets" appears unnecessary and might come dangerously close to constitutional problems under the Eighth Amendment and the Constitution's negative reference to "forfeiture of estate" in Article III, section 3, clause 2.

Although the courts generally have stated that the "in personam" forfeiture provisions of both RICO and CCE are constitutional as they have been applied,¹ there has been numerous indications that the courts would look closely at any broad expansion of criminal forfeiture. The court in *U.S. v. Marubeni*, for instance, noted that, "The forfeiture provision (RICO) could, indeed, be read to produce penalties shockingly disproportionate to the offense. For example, a shopkeeper who over many years and with much honest labor establishes a valuable business could forfeit it all if, in the

¹ See, e.g., *U.S. v. Huber*, 603 F. 2d 387, (1979); *U.S. v. Rubin*, 559 F. 2d 977, (1977); *U.S. v. Marubeni*, 611 F. 2d 763, (1980); *U.S. v. Thevis*, 474 F. Supp. 134, (1979); *U.S. v. Grande*, 620 F. 2d 1026, (1980).

course of his business, he is mixed up in a single fraudulent scheme. See, e.g., *United States v. Parness*, 503 F. 2d 430 (2nd Cir. 1974), cert denied, 419 U.S. 1105, 95 S. Ct. 774, 42 L.Ed 2d 801 (1975). This example raises issues of statutory construction and constitutional law which we leave for another day.”¹

In a similar fashion the court in *U.S. v. Huber*, warned, “We did not say that no forfeiture sanction may ever be so harsh as to violate the eighth amendment. But at least where the provision for forfeiture is keyed to the magnitude of a defendant’s criminal enterprise, as it is in RICO, the punishment is at least in some rough way proportional to the crime. We further note that where the forfeiture threatens disproportionately to reach *untainted* property of a defendant, for example, if the criminal and legitimate aspects of the enterprise have been commingled over time, Section 1963 permits the District Court a certain amount of discretion in avoiding draconian (*and perhaps potentially unconstitutional*) applications of the forfeiture provisions”.²

Thus, the courts have taken pains to assert that “. . . it is important to note that the forfeiture authorized by RICO is, like the traditional in rem action, limited to interests or property rights put to an illegal use under 18 U.S.C. § 1962”.³

At the present time the proposed “substitute asset” provision appears to be ill-advised, unworkable and the need for it has not been substantiated. Any attempt to forfeit “substitute assets” which has no “nexus” to the crime in “in personam” forfeiture is a giant step in the direction of “forfeiture of estate” and would needlessly raise constitutional questions which could jeopardize successful prosecutions under this bill for years to come.

H.R. 4901 is the result of prior extensive work and negotiations over the last two Congresses, and the Committee on the Judiciary believes it is a substantial and workable reform of both criminal and civil laws.

SECTION-BY-SECTION ANALYSIS OF H.R. 4901

Section 101: Sets forth the short title, the Comprehensive Drug Penalty Act of 1984.

Section 102, subsection (a): Amends section 881 of Title 21 to permit the civil forfeiture of land and buildings used, or intended to be used, for holding of storage of dangerous drugs or for cultivation of these drugs when such use constitutes a felony. Current law only reaches “containers” and it is unclear whether warehouses or other buildings can be forfeited. There is also presently no provision for civil forfeiture of land used in the cultivation of dangerous drugs.

This new section requires knowledge or consent of the violation by the property owner and provides a procedure where by the owner can provide mitigating circumstances as to the extent of use of such land or buildings to be forfeited, and in the case of land allows the court to forfeit a proportionate amount of the land so used rather than the specific segments used.

¹ 611 F. 2d 763, 769 and 770, Footnote 12 (1980). (Emphasis supplied)

² 403 F. 2d 387, 397 (1979). (Emphasis supplied)

³ *U.S. v. Thevis*, 474 F. Supp. 134, 1431, Footnote 10 (1979). (Emphasis supplied)

Subsection (b): Allows the Justice Department to bring a forfeiture action in the District where the defendants owning the property are found or in the District where the criminal prosecution is brought. Presently 28 U.S.C. 1395(b) controls and states that civil forfeitures must be brought in the District where the property is located.

Section 102(c): Allows funds from forfeiture proceedings to go to the Department of Justice forfeiture fund as set up in Sec. 103, *infra*.

Section 103: This section amends the Controlled Substances Act to allow proceeds from civil drug felony forfeitures to be deposited in the Department of Justice funds with a "sunset" provision, effective September 30, 1987. Section 103 also provides for a stay of other civil forfeiture proceedings after an indictment under this act. This merely puts into law what is common practice and addresses the concern of the Department of Justice that defendants would improperly use discovery authorized in civil forfeiture cases to aid their criminal cases.

Section 104, subsections a-1: Amends twelve sections of title 21 drug offenses by increasing the maximum criminal fines. The new maximum fine levels were derived in large part from the proposed criminal code approved by the Committee on the Judiciary during the 96th Congress. See section 3502 of H.R. 6915 and H. Report 96-1396 at 465-9. In some instances the maximum fines exceed one million dollars in order to maintain the penalty structure of the existing statute (i.e., to allow for a penalty twice as large for a second conviction.) The rationale for the amendments relating to fine levels is straightforward. To many drug traffickers, the costs associated with the Criminal Justice System are merely the costs of doing business. These amendments attempt to raise the ante. While changes in the law with respect to forfeiture are desirable, they may not permit the government to deter criminal conduct sufficiently. As numerous witnesses before various Congressional Committees have clearly established, forfeiture procedures are very cumbersome and time consuming. Thus, the availability of higher fines will offer yet another weapon to the government in its efforts to take the profit out of crime.

The chart which follows indicates the changes made.

Current law penalties are in roman, the amendments are in italic. The first italic figure is the new maximum fine for a defendant who is an individual, and the second figure is the maximum fine for a defendant other than an individual. The current maximum prison terms are unchanged except for the importation of more than 1,000 lbs. of marijuana (21 U.S.C. 960(b)(3)), which is increased from 5 years to 15 years for the first offense and from 10 years to 30 years for a second offense.

Presently, the penalty for unauthorized possession of any controlled substance is a maximum sentence of not more than 1 year imprisonment, a fine of not more than \$5,000 or both. A second offense of possession carries a maximum double penalty. No changes are made in possession offenses.

All Controlled Substances are listed on at least 1 of 5 "Schedules" (21 U.S.C. 812)). Substances listed on Schedule I are unavailable except for special research permits. Schedule II, III, and IV

substances are only available upon presentation of a prescription signed by a "registrant" medical practitioner. Certain Schedule V substances are, depending upon State law, available over-the-counter from pharmacies if required records are kept.

(There are three classes of prohibited acts (21 U.S.C. 841, 842, and 843) in the Controlled Substances Act and two such classes in the Controlled Substances Import and Export Act.)

CHART A—EFFECT OF AMENDMENTS TO THE PENALTIES OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 801, ET SEQ.)

Offense	Penalty (21 U.S.C. 841(b))				
	Schedule I or II narcotic	Schedule I or II nonnarcotic and schedule III	Schedule IV	Schedule V	
Prohibited acts A(21 U.S.C. 841).	e.g. heroin (I), opium (II), methadone (II), cocaine (II), morphine (II)	e.g. marijuana (I), LSD (I), methaqualone (II), amphetamines (II, III), barbiturates (II, III)	e.g. Valium, Librium, chloral hydrate	e.g. paregoric, Lomotil, Robitussin A-C.	
(a)(1) unauthorized, knowingly or intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.	First offense: 15 yr/\$25,000 \$250,000/\$1,000,000	5 yr/\$15,000** \$250,000/\$1,000,000	3 yr/\$10,000 \$100,000/\$250,000	1 yr/\$5,000 \$10,000/\$25,000	
(a)(2) unauthorized, knowingly or intentionally create, distribute or dispense or possess with intent to distribute or dispense a counterfeit substance (defined 21 U.S.C. 802(7)).	Second offense: 30 yr/\$50,000 \$500,000/\$2,000,000	10 yr/\$30,000** \$500,000/\$1,000,000	6 yr/\$20,000 \$250,000/\$500,000	2 yr/\$10,000 \$25,000/\$50,000	
**Variations on penalties: *(21 U.S.C. 841(b) (5)) Phencyclidine (PCP) Schedule II.					
*(21 U.S.C. 841(b) (6)) Marijuana exceeding 1,000 pounds Schedule I.					

CHART A—EFFECT OF AMENDMENTS TO THE PENALTIES OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 801, ET SEQ.)—Continued

Offense	Penalty (21 U.S.C. 841(b))			
	Schedule I or II narcotic	Schedule I or II nonnarcotic and schedule III	Schedule IV	Schedule V
21 U.S.C. 841(d) knowing possession of piperidine with intent to manufacture PCP without authority.			First offense: 5 yr./\$15,000 \$250,000/\$1,000,000 Second offense: No increased penalty.	

Note.—The distribution by a person over the age of 18 to a person under the age of 21 is subject to a maximum penalty up to twice that authorized by 21 U.S.C. 841(b) for a first offense involving the same controlled substance and schedule. A second offense is subject to a maximum penalty of 3 times that authorized by 21 U.S.C. 841(b). (21 U.S.C. 845).

Offense	Penalty	
	First offense knowing violation	Subsequent offenses knowing violation
<p>Prohibited act B (21 U.S.C. 842):</p> <p>(a)(1) a person subject to the requirements of Part C (pertaining to registration) who distributes a controlled substance in violation of 21 U.S.C. 829.</p> <p>(2) a registrant to distribute or manufacture outside the authorization of the registration.</p> <p>(3) registrant distribution in violation of 21 U.S.C. 825.</p> <p>(4) removal, alteration or obliteration of required label.</p> <p>(5) failing to keep or furnish required records.</p> <p>(6) refusal to allow authorized entry into premises.</p> <p>(7) to remove, break or deface a seal.</p> <p>(8) to use to own advantage or to disclose a protected trade secret.</p> <p>(9) to distribute piperidine in violation of regulations.</p> <p>(b) to manufacture a schedule I or II substance not authorized by registration or quota.</p>	<p>1 yr/\$25,000 \$250,000/ \$1,000,000</p>	<p>2 yr/\$50,000 \$500,000/ \$1,000,000</p>
<p>Prohibited acts C (21 U.S.C. 843):</p> <p>(a)(1) registrant distribution of a schedule I or II substance except pursuant to required order form.</p> <p>(2) to use false, suspended or another's registration number.</p> <p>(3) to acquire a controlled substance by fraud or forgery.</p> <p>(4)(A) to furnish false information in required writing.</p> <p>(4)(B) to present false identification to purchase piperidine.</p> <p>(5) to make, distribute or possess counterfeiting implements for counterfeit substances.</p>	<p>4 yr/\$30,000 \$250,000/ \$1,000,000</p>	<p>8 yr/\$60,000 \$500,000/ \$1,000,000</p>
<p>Continuing criminal enterprise (21 U.S.C. 848).</p>	<p>20 yr to life/\$100,000 \$500,000/\$1,000,000</p>	<p>20 yr to life/\$200,000 \$1,000,000/\$2,000,000</p>

Subsection 104(m) (on page 9): Establishes for the first time a concept known as an "alternative fine." There is no fixed dollar

amount limit on these fines, which may be up to twice the gross profits or proceeds obtained from the narcotics violations. This idea originated in § 3301(2) in the Final Report of the National Commission of Federal Criminal Laws established by Public Law 89-801 (the Brown Commission).

Also a new section 414 provides guidelines to the court on matters concerning the imposition of this alternative fine, which give primary consideration to the need to deprive the defendant of the proceeds of the crime, but allows for consideration of pertinent equitable factors.

CRIMINAL FORFEITURE (PAGE 10)

Subsection 104(m) also proposes a new section 415 which makes all felony violations under the Controlled Substances Act and the Controlled Substances Import and Export Act subject to criminal forfeiture and various procedures to protect the availability of property for forfeiture determinations.

Subsection 415(a): Provides for a procedure after indictment or information whereby the court may issue a warrant of seizure of property based upon a probable cause showing, if it determines that a protective order would not assure its availability. This subsection attempts to deal with the problems that the properties involved in drug cases often are easily concealed or highly liquid. With this type of property a restraining order alone might not be adequate to assure that the property will be available if the defendant is convicted.

Section 415(b): Provides a general criminal forfeiture provision under which convicted defendants would forfeit all gross profits or other proceeds derived as a result of the violation(s), property used to commit such violations or any "interest" under a Continuing Criminal Enterprise violation discussed earlier.

Subsection 415(c): Provides a "beyond a reasonable doubt" standard for criminal forfeitures. This standard was requested by the Department of Justice.

Subsection 415(d): Contains a general notice requirement.

Subsection 415(e): States that any person (including a defendant) with an interest in forfeited property may petition the Attorney General for remission and mitigation within 60 days after a court order of forfeiture and the Attorney General must rule on that petition within 90 days. The Attorney General's decision on this basically equitable procedure is not reviewable but a court, for good cause, can extend the time period in which this petition can be made.

Subsection 415(f): Sets up an alternate procedure whereby a person, other than a defendant, may petition the court for remission or mitigation of their interest in forfeited property. This procedure allows for an independent review of third parties' interest in forfeited property, and for relief if their interest was separate from or superior to the defendant's at the time of the offense, or acquired for value after the offense and the petitioner did not know or have reason to know of the offense or any restraining order in the transfer of the property.

Subsection 415(g): Outlines the matters that the petitions should contain and requires that the petitions be verified.

Subsection 415(h): Incorporates the procedures in the customs laws for disposition of forfeited property into this bill, with the Attorney General performing the Secretary of the Treasury's responsibilities.

Subsection 415(i): Prohibits a convicted person from reacquiring property forfeited by that person. Under current law (*See U.S. v. Huber*, 603 F. 2d 387, 397 (2d Cir. 1979)) a convicted white collar criminal repurchased, after conviction in a RICO violation, his interest in a hospital. This provision would specifically prohibit the defendant from purchasing such property following drug-related forfeitures.

Subsection 415(j): Authorizes the court to enter appropriate restraining orders and prohibitions and to take other actions to protect the availability of property that may be subject to criminal forfeiture. This language is similar to language in the RICO statute and CCE position of title 21.¹

Subsection 415(k): Details procedures for allowing temporary restraining orders prior to indictment and for ex parte hearings for these orders under extraordinary circumstances. A TRO will be entered if the government shows that:

1. a substantial probability exists that the United States will prevail on the forfeiture issue;
2. failure to enter the order will result in unavailability of the property for forfeiture; and
3. the need to assure availability outweighs the hardship against any person against whom the order is entered.

Ex parte hearings are authorized to cover situations where the property to be forfeited consists of highly liquid assets and may be easily moved, concealed and disposed of even in the relatively short period of time between the giving of notice and the holding of an adversary hearing concerning the entry of a restraining order.

Such temporary order would follow strict restrictions and would normally be limited to 10 days.

The permissibility of the postponement of notice and hearing until after the initial entry of a restraining order in a criminal forfeiture case has not been squarely considered by the courts. However, a similar issue was addressed with respect to the more intrusive action of seizure in the context of civil forfeiture (see, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974)). In this case the fact situation was that a yacht containing contraband was seized pursuant to a civil forfeiture statute without prior notice or adversary hearing. The Supreme Court held that an immediate seizure of a property interest, without an opportunity for a prior hearing, was permitted in limited circumstances and the case met the following criteria: First, the ex parte seizure served a significant gov-

¹ Nothing in this section is intended to interfere with a person's Sixth Amendment right to counsel. The Committee, therefore, does not resolve the conflict in District Court opinions on the use of restraining orders that impinge on a person's right to retain counsel in a criminal case. Compare *United States v. Meinster*, *supra* (court approved post-indictment transfer of assets to defendant's retained counsel); *United States v. Mandel*, 408 F. Supp. 679, 682-684 (D. Md. 1976) (court denies order restraining transfer of assets), *With United States v. Bello*, 470 F. Supp. 723 (S.D. Cal. 1979) (court approves restraining order because appointed counsel is available).

ernmental purpose, i.e., preventing continued criminal use of the property and enforcing criminal sanctions; second, that prior notice might frustrate the purposes of the statute, since the property could be removed, concealed, or destroyed if advance warning of the seizure were given; and third, that unlike the situation in *Fuentes v. Shevins*, (407 U.S. 67), a case the lower court has relied on to hold that the seizure was unconstitutional, the seizure was not initiated by selfinterested private parties, but rather by government officials. Since these considerations are also present where the government seeks simply to restrain the transfer or disposition of property that may be subject to criminal forfeiture, it appears that some postponement of notice and hearing is permitted.

Subsection 415(1): Sets forth procedures for developing a rebuttable presumption that property obtained by drug traffickers during the time period of their illegal acts is subject to forfeiture. The impetus for this provision is found in H.R. 2646 (by Mr. Sawyer) in the 97th Congress.

This subsection draws upon the practice in criminal tax evasion cases of using the defendants' net worth to establish the government's case (for a discussion of net worth method of proof in tax cases see, *Holland v. U.S.*, 348 U.S. 121, 125-9 (1954)) and creates a presumption of forfeitability once the government has established, by a preponderance of the evidence, that two circumstances exist: (1) the defendant acquired the property during the violation period or a reasonable time thereafter; and (2) there is no likely source for acquisition of the property other than the criminal activity.

Once the government has met its burden of proof with respect to the two circumstances, the trier of fact is permitted to find that property is subject to forfeiture. As such, the bill follows the procedures for a permissive (rebuttable) presumption outlined in *Tot v. U.S.*, (319 U.S. 467), *Leary v. United States*, (395 U.S. 36), *Ulster County Court v. Allen*, 442 U.S. 165 and 166 and should alleviate some of the problems of showing a direct nexus between the illegal activity and derivative proceeds.

Section 105: Amends sections of the Controlled Substances Import and Export Act of title 21 to increase the maximum amount that may be imposed as a criminal fine.

Below is a chart of those new penalties.

Current law penalties are in roman. Effect of the amendments is in italics. The first figure is the new maximum fine for a defendant who is an individual, and the second figure is the maximum fine for a defendant other than an individual.

The only prison term changed is for the importation of more than 1,000 pounds of marijuana, to conform to actions of the 96th Congress.

CHART B—EFFECT OF AMENDMENTS TO THE PENALTIES OF THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT (21 U.S.C. 951, et seq.)

Offense	Penalty (21 U.S.C. 960b)		
	Schedule I or II narcotic	Schedule I or II nonnarcotic and schedules III, IV, and V	More than 1,000 lbs marijuana
<p>Prohibited acts A (21 U.S.C. 960):</p> <p>(a)(1) knowingly or intentionally imports or exports a controlled substance in violation of 21 U.S.C. 952, 953 or 957.</p> <p>(2) knowingly or intentionally possess a controlled substance on board a vessel, aircraft or vehicle in violation of 21 U.S.C. 955.</p> <p>(3) manufactures or distributes a controlled substance knowing or intending that such substance will be unlawfully imported into the United States in violation of 21 U.S.C. 959.</p>	<p>First offense: 15 yr/\$25,000 \$500,000/\$1,000,000</p> <p>Second offense: 30 yr/\$50,000 \$1,000,000/\$2,000,000</p>	<p>First offense: 5 yr/\$15,000 \$500,000/\$1,000,000</p> <p>Second offense: 10 yr/\$30,000 \$1,000,000/\$2,000,000</p>	<p>First offense: 5 yr/\$25,000 15 yr/\$250,000/\$1,000,000</p> <p>Second offense: 10 yr/\$30,000 30 yr/\$500,000/\$2,000,000</p>
<p>21 U.S.C. 955a: Manufacture, distribution or possession with intent to manufacture or distribute controlled substances—</p> <p>(a) on board vessels subject to the jurisdiction of the United States on the high seas.</p> <p>(b) by citizens of the United States on board any vessel.</p> <p>(c) on board any vessel within the custom waters of the United States.</p> <p>(d) or possess, knowing or intending that the controlled substance be unlawfully imported into the United States.</p>			

Subsection 105(e) authorizes the court to use an alternative means of setting the fine to be imposed, and various other procedures similar to that contained in section 104(m).

Section 106: This deletes the separate forfeiture provision of the Continuing Criminal Enterprise Act (CCE) since, under the new section 415, all the felony drug violations can serve as a basis for criminal forfeiture. Thus, this provision deletes the redundancy.

Section 107: Amends the table of contents.

Section 108: This section creates a new section 530A in Chapter 31 of title 28 of the United States Code in which a Department of Justice forfeiture fund is established from enactment through Fiscal Year 1987. The purpose of this fund is to encourage the enforcement agencies to move aggressively to pursue forfeiture actions and better maintain seized property prior to forfeiture, thereby increasing revenue while reducing costs and overhead. The fund will eliminate the irony that the agencies' operating funds for enforcement actions are decreased by the amount of monies expended on forfeitures, which has the net effect of reducing funds for more direct law enforcement purposes. Under present law the costs in handling each seizure are deducted from the proceeds of that seizure, if any. The resulting "net proceeds" are then transferred to the General Fund in the Treasury. If the proceeds do not exceed the expenses, however, the agency must cover the expenses out of its regular budget. In other words, the net proceeds from the sale of one seizure cannot presently be used to offset the unrecouped costs of another seizure. The new fund would allow the agency to balance all proceeds against all expenses, with the overall net proceeds being transferred to the General Fund of the Treasury at the end of each fiscal year.

The establishment of the fund would also give greater protection to innocent lienholders and it would also allow the agency to pay the costs of maintenance of the properties on a regular basis without regard to the sale or transfer date of the property and without the need of contracting for services on a contingency basis. The net effect would be to relieve the agency of the financial restrictions and complications of having to deal with each and every seizure on a separate basis, but would maintain the accountability on an overall basis, perhaps through computerization.

The idea for the fund was taken from the suggestions of Congressman Gilman (H.R. 2910) and Congressman Sawyer (H.R. 2646) in the 97th Congress. A similar fund is found in the recent reform of the Patent Office, Public Law 96-517, and with respect to certain fisheries funds.

Subsection 530A(a) establishes the Department of Justice Forfeiture Fund (Fund) for the payment of expenses arising under forfeitures permitted by the Controlled Substances Act (21 U.S.C. 801 *et seq.*), the Controlled Substances Import and Export Act (21 U.S.C. 951 *et. seq.*), section 1963(c) of title 18, United States Code, and section 274 of the Immigration and Nationality Act (8 U.S.C. § 1324). An appropriation is a required prerequisite to any expenditure from the Fund.

Specifically, the expenses to be paid by the Fund are:

"(1) payment of expenses of forfeiture and sale, including expenses of seizure and detention;

"(2) payment of rewards for information resulting in a conviction or forfeiture;

"(3) payment of liens against forfeited property;

"(4) payment of amounts with respect to remission and mitigation;

"(5) payment for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration or the Immigration and Naturalization Service; and

"(6) payment for purchase of evidence of any violation."

Subsection 530A(b) sets forth monetary limits on the payment of rewards and the purchase of evidence as well as approval requirements for large payments under subsection 530A(a) (2) and (6).

Subsection 530A(c) provides that the proceeds from forfeiture (after the payments of outstanding expenses of forfeiture and sale) and the earnings on amounts invested are to be deposited in the Fund.

Subsection 530A(d) permits the investment of amounts in the Fund which are not currently needed into obligations of, or guaranteed by, the United States.

Subsection 530A(e) requires the Attorney General to report annually to the Congress on the receipts and disbursements of the Fund. These reports will provide an impetus for the proper accounting that the Committee believes is necessary for the proper administration of the Fund and the forfeiture process in general. The reports will also be of value to the Congress' future decision regarding the continuation of the Fund beyond the scheduled 1987 sunset of the Fund.

Subsection 530A(f) limits the authorization of expenditures to \$10 million for payment of rewards, the purchase of evidence, and the equipping of law enforcement vessels, vehicles and aircraft for official use as provided in subsections 530A(a) (2), (5) and (6). The Committee views these expenditures as secondary. The primary function of the Fund is to pay the costs of forfeiture which include payment of direct expenses of forfeiture and sale (such as storage and maintenance fees), payment of liens, and payments of remission and mitigation. These direct costs of forfeiture are to be paid first and any residual amount in the Fund may be used as payment under subsection (2), (5) and (6), so long as payment of the primary expenses are not jeopardized.

Although the payment of rewards, purchase of evidence and the equipping of vessels, vehicles and aircraft for law enforcement use do not directly impact on the forfeiture process, these expenditures will assist in the law enforcement functions that result in forfeiture, and, therefore, improve the forfeiture process. For this reason, the Committee believes that these expenditures from the Fund will provide a valuable law enforcement resource, which, in turn, will contribute to the success of the Fund.

Subsection 530A(f)(2) directs the deposit of any amount in excess of \$10 million in the Fund at the end of each of the first three fiscal years into the general fund of the Treasury. The remaining \$10 million is to be carried forward into the new fiscal year for payment of expenses under subsection 530A(a) which continue into the new year. This subsection also sunsets the Fund at the conclu-

sion of Fiscal Year 1987. At this time the Fund will cease to exist and any amount remaining in the Fund will be deposited in the general fund of the Treasury.

Section 108(b), page 21—amends the table of sections.

TITLE II (TARIFF ACT PROVISIONS)

Section 201—amends Sections 602, 605, 606 and 607 of the Tariff Act to specifically add "aircraft." Although "aircraft" are presently covered, indirectly, under 49 U.S.C. 1509 and Part 6 of 19 C.F.R., this amendment merely incorporate this term into the text of the Tariff Act's administrative provisions.

Section 202: This would amend section 607 of the Tariff Act by raising the value of property which can be administratively forfeited to \$100,000 except in the case of conveyances used to import, export or otherwise transport controlled substances, for which there would be no limit. Increased enforcement activities have led to a dramatic rise in the number of conveyances seized by Customs during the last few years. Many of the conveyances were used to smuggle multi-ton loads of controlled substances. Under present law, all property over \$10,000 must be judicially forfeited. Thus, the increased number of seizures has led to crowded civil court dockets. However, many of the conveyances (particularly vessels) are not claimed by their owners who apparently write off the expenses as a cost of doing business. Thus the 12-18 month delay in forfeiture in formal civil suits (from the date the complaint is filed) only results in a default judgment. Nonetheless, during this period, the Government must pay for the conveyances' storage and maintenance and the conveyances generally deteriorate tremendously in value. Keeping a large number of seizures also strains Customs resources making it difficult to properly maintain the property under seizure and to prevent vandalism. Increasing the administrative forfeiture limit will reduce costs by speeding up forfeitures. The provision of law permitting individuals desiring to contest forfeitures to obtain court review if they are willing to post a claim and cost bond is retained.

This statutory change has been recommended by the General Accounting Office in its report "Better Care and Disposal of Seized Cars, Boats and Planes Should Save Money and Benefit Law Enforcement." GAO-PLRD-83-94 (July 15, 1983) at page vi.

Section 203: Amends Section 608 of the Tariff Act to increase the amount of the bond which must be posted in order to judicially contest the forfeiture of an article normally subject to administrative forfeiture. The Section also contains conforming amendments to Section 201 dealing with aircraft. The present \$250 cost bond has not been increased since 1844 when it was 2½ times the \$100 value of property which could then be administratively forfeited. Although the administrative forfeiture amount has increased to \$500, \$1,000, \$2,500 and \$10,000, the cost bond has remained at \$250. In order to keep the cost bond at a reasonable amount, a \$2,500 maximum is included. Under present Customs' procedures, poor persons may obtain judicial forfeiture proceedings without the bond if they complete and file an affidavit on financial inability. This procedure would remain unchanged.

Section 204: Contains conforming amendments to section 609 of the Tariff Act and permits proceeds of sale to be deposited in the Customs Forfeiture Fund outlined in section 207.

Section 205: Contains conforming amendments to section 610 to bring them into line with the proposed changes to new section 607 of the Tariff Act.

Section 206 is a conforming amendment to section 611 of the Tariff Act in regard to "aircraft".

Section 207 is a conforming section to § 612 of the Tariff Act relating to "aircraft" and the new section 607. Section 207(b) adds a new provision which allows the Customs Service to destroy a conveyance, merchandise or baggage if the cost of keeping it for subsequent forfeiture is disproportionate to its value and its value is less than \$500. The Customs Forfeiture Fund would be subject to claims of parties with an interest in this property.

Section 208: Amends section 613 of the Tariff Act to make it conform to new section 613A and other sections of this title which make it clear that the proceeds of sale after deducting expenses, would be deposited in the new Customs Enforcement Fund rather than the general fund of the Treasury while at the same time preserving existing authority of other agencies to use the current Customs' procedures.

Section 209: Establishes a special Customs Forfeiture Fund which is substantially the same as the Department of Justice Fund. New section 613A would (1) remove certain "contingency appropriations" from the Customs budget, thereby resulting in budget savings; (2) provide greater efficiency in the handling of seized and forfeited property; and (3) eliminate the irony that the agencies' operating funds for enforcement actions are decreased by the amount of monies expended on forfeitures which has the net effect of reducing Customs funds for more direct law enforcement purposes. Under present law costs in handling each seizure are deducted from the proceeds of that seizure, if any. The resulting "net proceeds" are then transferred to the General Fund in the Treasury. But if the proceeds do not exceed the expenses, the agency must cover the net loss from operating expenses.

The expenses to be paid by the fund are the same as those in the Department of Justice fund and are:

- (1) payment of expenses of forfeiture and sale, including expenses of seizure and detention;
- (2) payment of awards of compensation to informers under section 619 of the Tariff Act;
- (3) payment for satisfaction of—
 - (A) liens for freight, charges and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and
 - (B) other liens against forfeited property; and
- (4) payment of amounts authorized by law with respect to remission and mitigation;
- (5) payment for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service; and
- (6) payment for purchase of evidence of any violation.

(7) payment for property disposed under the new section 612(b) of this bill.

The establishment of the special account would also encourage more efficient maintenance, storage and inventory procedures than are feasible under current requirements, such as possible national inventory and property maintenance control through computerization.

The establishment of the fund would also give greater protection to innocent lienholders and it would also allow the agency to pay the costs of maintenance of the properties on a regular basis without regard to the sale or transfer date of the property and without the need of contracting for services on a contingency basis. The net effect would be to relieve the agency of the financial restrictions and complications of having to deal with each and every seizure on a separate basis, but would maintain the accountability on an overall basis. The agency would be required to furnish a complete accounting of these deposits and expenditures to the Congress. The combined effect of 613a and the amendments to 607 is to increase revenue while reducing costs and overhead.

This fund like the DOJ fund would also cease to exist on September 30, 1987. Section 613A(c) includes "laws enforced or administered" by the Customs Service since they administer or enforce numerous other laws other than the "Custom Law" (Title 19). For instance, many of their seizures are made initially by the Coast Guard under 21 U.S.C. 881 (Controlled Substances Act) and then maintained and forfeited by Customs. They also have forfeiture responsibility under Title 16 (Wildlife and Endangered Species Act); 18 U.S.C. 545 (smuggling); 21 U.S.C. § 955 (possession of contraband aboard vessels, vehicles or aircraft generally); and 49 U.S.C. § 1474 (aircraft), among others.

Section 210: Contains conforming amendments to § 614 and § 615 of the Tariff Act.

Section 211: Inserts a new section 616 in the Tariff Act permitting the Secretary of the Treasury to turnover property seized by Customs to State and local law enforcement agencies to permit those agencies in States with forfeiture laws to institute State forfeiture proceedings when appropriate or transfer property already forfeited to any State and local law enforcement agencies which participated directly in the seizure of the property. Such a transfer occurs under such terms as the Secretary may determine, thus allowing for the pass on of forfeiture costs to the States, if appropriate, and would also apply to DOJ seizures and forfeitures. In this situation, the Federal Government would cease to be liable once the property was turned over the State agency.

Section 212: Makes conforming changes and raises the maximum informant's award contained in section 619 of the Tariff Act from \$50,000 to \$250,000. The 25% award is only paid if the government makes a tangible recovery of property from the information provided. Many informants take great risks in reporting violations of Federal law to the Federal Government. The \$50,000 amount has not been raised since 1922.

Section 213: Is a conforming amendment to § 618 of the Tariff Act.

Section 214: Makes changes in existing law by adding a new section (589) to the Tariff Act to grant additional arrest authority to Customs officers. Under existing law, a Custom officer has authority to arrest without a warrant for violations of the narcotic drug and marijuana laws under section 7606 of the Internal Revenue Code, and for violation of the navigation laws if committed in the officer's presence (19 U.S.C. 1581(d)), laws providing for forfeiture or any law respecting the revenue under section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581)(e)(f), where the violation is committed in the officer's presence or where the officer has reason to believe that the person to be arrested has committed or is committing such violation. In addition, miscellaneous conservation, fisheries and pollution laws also confer arrest authority on Customs officers in various situations (16 U.S.C. 3405, 16 U.S.C. 772d, 916g, 959(b), and 33 U.S.C. 413).

Currently, the court decisions require Customs officers making arrests for export violations, assaults on Customs officers, and other Federal felony violations to rely on the various State laws conferring arrest authority on private persons ("citizen's arrest"), unless State law confers peace officer status on them. This reliance on fifty different State laws is both confusing and inconsistent with the authority conferred upon other Federal officers. (*U.S. v. Swarovski*, 557 F. 2d 40 (2nd Cir. 1977); *U.S. v. Heliczer*, 373 F. 2d 241 (2nd Cir. 1967) *cert. den.* 338 U.S. 917 (1967)).

Customs officers are now engaged in Federal enforcement programs where such limited authority has proven to be clearly inadequate and potentially compromises and hinders the Customs Service's present role in the efficient enforcement of such Federal programs.

The proposal would add a new section 589 to the Tariff Act which would grant additional arrest authority to officers of the Customs Service as those officers are defined in section 401(i) of the Tariff Act of 1930, as amended (19 U.S.C. 1401). It would incorporate present authority contained in section 7607 of the Internal Revenue Code of 1954 for Customs officers to carry firearms, execute and serve search and arrest warrants, and serve subpoenas and would, in addition, authorize an officer of the Customs Service to make arrests without a warrant for any offense against the United States committed in the officer's presence, or outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed, or is committing, a felony.

Enactment of section 214 would also make it clear that Customs officers may serve search and arrest warrants for any Federal offense including drug offenses. This would eliminate the problem raised in *U.S. v. Harrington*, 520 F. Supp. 93 (1981) which although reversed on appeal, questioned Customs authority to serve search warrants in joint DEA-Customs investigations away from the border.

The bill would also authorize Customs officers to perform any other law enforcement duties that the Secretary of the Treasury designates. This provision would codify present practice and permit maximum utilization of Customs personnel in other Treasury ac-

tivities, such as protective details and inspector general investigations.

By approving the provisions establishing law enforcement authority for the U.S. Customs Service, the Committee does not intend to greatly expand or diminish Customs Service jurisdiction over criminal offenses. Neither should these provisions be construed as an attempt to alter the terms of Reorganization Plan No. 2 of 1973, Executive Order No. 11727, "Establishing a Drug Enforcement Administration in the Department of Justice," which order defines the functions, jurisdiction and authority of the Drug Enforcement Administration as the principal Federal narcotics enforcement agency. Rather, this section of the bill is an effort to clarify and codify existing Customs Service authority and is supported by the Department of Justice as well as the Department of the Treasury.

OVERSIGHT FINDINGS

The Committee makes no oversight findings with respect to this legislation other than those included in the text of this report.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 4901 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4901 prepared by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., June 4, 1984.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary, U.S. House of Representatives, 2137 Rayburn House Office Building, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4901, the Comprehensive Drug Penalty Act of 1984, as ordered reported by the House Committee on the Judiciary, February 28, 1984. This letter supersedes the previous CBO estimate, dated May 15, 1984. We estimate that the federal government will realize a small savings, and that state and local governments will incur no additional costs as a result of the enactment of this bill.

H.R. 4901 changes certain forfeiture provisions and increases penalties for controlled substances offenses. The bill provides that any building, land, aircraft, vehicle, or other property used for cultivation, storage, export, or import of drugs may be subject to forfeiture. The bill provides for a Department of Justice Forfeiture Fund (DJFF) and a Customs Forfeiture Fund (CFF), to be set up as two separate accounts within the Treasury. Any proceeds remaining from the sale of forfeited property after the payment of expenses will be deposited into the funds. Expenditures from these funds shall be subject to appropriation action. The two funds are established from the enactment date through the end of fiscal year 1987.

The bill authorizes the appropriation of a maximum of \$10 million from each fund each year for the payment of rewards for information, the purchase of evidence, and the redesign of forfeited vehicles for law enforcement functions. The bill also authorizes appropriations of such sums are necessary from the funds for certain other purposes related to forfeitures. At the end of the fiscal years 1984, 1985, and 1986, any amount in the fund in excess of \$10 million will be deposited in the general fund of the Treasury. Under current law, the proceeds from the sale of forfeited property can only be used to pay any expenses associated with that property. The funds will allow the proceeds which remain from the sale of forfeited property to be used to pay any expenses for the sale of other forfeited property.

The bill also provides for substantial increases in the penalties that may be imposed for controlled substances offenses, in the value of merchandise that may be seized by customs officers without judicial forfeiture proceedings, in the amount of the bond posted to contest a forfeiture, and in the amount that may be paid as a reward for information or for the purchase of evidence.

While H.R. 4901 specifically authorizes appropriations totaling \$20 million annually from the two new funds, the bill is likely to result in no significant additional costs to the government and may produce some savings. The bill would affect the number of forfeitures, the receipts from the sale of forfeited property, and the expenses associated with each forfeiture.

The number of forfeitures and resulting receipts should increase for two main reasons. First, the bill allows more property to be forfeited administratively rather than judicially. Administrative forfeitures take about 2-3 months, while judicial forfeitures may take

as long as 24 months. Second, the increase in the maximum amount that may be paid for information is expected to elicit more information and make possible more forfeitures. Sales receipts may therefor be higher, because more forfeitures will be accomplished and because the administrative forfeiture procedures would allow the seized property less time to depreciate, resulting in higher sale value.

The expenses associated with forfeitures may be lower than under current law because of the increase in administrative forfeitures. The shorter time necessary for these forfeitures will result in lower costs for storage, security, and maintenance of seized property.

While the higher payments for information may offset some of these savings, the savings are expected to exceed the increases in payments. There is, however, no clear basis for accurately estimating the magnitude of these increases and decreases.

We also expect that the federal government would receive increased revenues from the higher criminal penalties authorized by the bill. In most instances, maximum fines have been increased tenfold. There is no clear basis for projecting the number or amounts of such fines.

The bill provides that the Secretary of the Treasury may discontinue forfeiture proceedings or turn over seized property to state and local law enforcement agencies to allow those agencies to implement state forfeiture proceedings. These transfers will be at the discretion of the Secretary, and no net cost to state and local governments is expected to occur.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director*.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

* * * * *

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than **[\$25,000, or both.] \$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.** If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than **[\$50,000, or both.] \$500,000, or both if such person is an individual, or to a fine of not more than \$2,000,000 if such person is other than an individual.** Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4), (5), and (6) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than **[\$15,000, or both.] \$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.** If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than **[\$30,000, or both.] \$500,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.** Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than **[\$10,000, or both.] \$100,000, or both if such person is an individual, or to a fine of not more than \$250,000 if such person is other than an individual.** If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person

shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than **[\$20,000, or both.] \$250,000, or both if such person is an individual, or to a fine of not more than \$500,000 if such person is other than an individual.** Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 1 year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than 1 year, a fine of not more than **[\$5,000, or both.] \$10,000, or both if such person is an individual, or to a fine of not more than \$25,000 if such person is other than an individual.** If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than **[\$10,000, or both.] \$25,000, or both if such person is an individual, or to a fine of not more than \$50,000 if such person is other than an individual.**

* * * * *

(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, except as authorized by this title, phencyclidine (as defined in section 310(c)(2)) shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than **[\$25,000, or both.] \$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.** If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than **[\$50,000, or both.] \$500,000, or both if such person is an individual, or to a fine of not more than \$2,000,000 if such person is other than an individual.** Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, **[and in addition, may be fined not more than \$125,000.] a fine of not more than \$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an in-**

dividual. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, [and in addition, may be fined not more than \$250,000.] *a fine of not more than \$500,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.*

* * * * *

(d) Any person who knowingly or intentionally—

(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this title, or

(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this title,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than [\$15,000, or both.] *\$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.*

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is 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) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III;

(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection; or

(9) to distribute or sell piperidine in violation of regulations established under section 310(a)(2), respecting presentation of identification.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than **[\$25,000, or both.] \$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.**

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of **[\$50,000, or both.] \$500,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.**

* * * * *

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

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

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

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III, or (B) to present false or fraudulent

identification where the person is receiving or purchasing piperidine and the person is required to present identification under section 310(a); or

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

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

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than **[\$30,000, or both]** *\$250,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual*; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than **[\$60,000, or both.]** *\$500,000, or both if such person is an individual, or to a fine of not more than \$1,000,000 if such person is other than an individual.*

* * * * *

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a) **[(1)]** Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than **[\$100,000,]** *\$500,000 if such person is an individual, or a fine of not more than \$1,000,000 if such person is other than an individual*, and to the forfeiture prescribed in **[paragraph (2)]** *section 415*; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than **[\$200,000,]** *\$1,000,000 if such person is an individual, or a fine of not more than \$2,000,000 if such person is other than an individual*, and to the forfeiture prescribed in **[paragraph (2).]** *section 415.*

[(2)] Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise 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 con-
 structural rights of any kind affording a source of influence
 over, such enterprise.]

* * * * *

[(d) The district courts of the United States (including courts in
 the territories or possessions of the United States having jurisdic-
 tion under subsection (a)) shall have jurisdiction to enter such re-
 straining orders or prohibitions, or to take such other actions, in-
 cluding the acceptance of satisfactory performance bonds, in con-
 nection with any property or other interest subject to forfeiture
 under this section, as they shall deem proper.]

* * * * *

ALTERNATIVE FINE

*SEC. 413. In lieu of a fine otherwise authorized by this part, a de-
 fendant who derives profits or other proceeds from an offense may
 be fined not more than twice the gross profits or other proceeds.*

GENERAL PROVISIONS RELATING TO FINES

*SEC. 414. (a) In determining whether to impose a fine under this
 part, and the amount, time, and method of payment of a fine, the
 court shall—*

*(1) give primary consideration to the need to deprive the de-
 fendant of profits or other proceeds from the offense;*

*(2) consider the defendant's income, earning capacity, and fi-
 nancial resources;*

*(3) consider the burden that the fine will impose on the de-
 fendant and on any person who is legally or financially depend-
 ent on the defendant; and*

(4) consider any other pertinent equitable factor.

*(b) As a condition of a fine, the court may require that payment be
 made in installments or within any period that is not longer than
 the maximum applicable term of probation or imprisonment, which-
 ever is longer. If not otherwise required by such a condition, pay-
 ment of a fine shall be due immediately.*

*(c) If a fine is imposed on an organization, it is the duty of each
 individual authorized to make disbursements for the organization
 to pay the fine from assets of the organization.*

*(d)(1) A defendant who has paid part of a fine, may petition the
 court for extension of the time for payment, modification of the
 method of payment, or remission of all or part of the unpaid por-
 tion.*

*(2) The court may enter an appropriate order under this subsec-
 tion, if it finds that—*

*(A) the circumstances that warranted the fine in the amount
 imposed, or payment by the time or method specified, no longer
 exist; or*

*(B) it is otherwise unjust to require payment of the fine in the
 amount imposed or by the time or method specified.*

CRIMINAL FORFEITURE

SEC. 415. (a) If an indictment or information alleges that property is subject to forfeiture under this section, the United States may request an order for seizure of such property in the same manner as provided for a search warrant. The court shall order seizure if there is probable cause to believe that—

(1) the property is subject to forfeiture; and

(2) an order restraining transfer of the property is not sufficient to ensure availability of the property for forfeiture.

(b) Any person who is convicted of a felony under this title or title III shall forfeit to the United States such person's interest in—

(1) any property constituting or derived from gross profits or other proceeds obtained from the offense;

(2) any property used, or intended to be used, to commit the offense; and

(3) in the case of a conviction under section 408 of this title, in addition to the property described in paragraphs (1) and (2), such person's interest in, claim against, or property or contractual right of any kind affording a source of control over, the continuing criminal enterprise.

(c) The court shall order forfeiture of property referred to in subsection (b) if the trier of fact determines beyond a reasonable doubt that such property is subject to forfeiture.

(d) The United States shall, to the maximum extent practicable, provide notice of the provisions of subsections (e), (f), and (g) to any person with an alleged interest in property forfeited under subsection (c) and shall, in the manner prescribed by the Attorney General, provide public notice of the forfeiture.

(e)(1) Not later than 60 days after the date of an order under subsection (c) any person with an alleged interest in the property may petition the Attorney General for remission or mitigation of the forfeiture.

(2) Not later than 90 days after the filing of a petition under paragraph (1), the Attorney General shall make a written determination with respect to the petition. Except as provided in subsection (f), the property shall be disposed of pursuant to such determination, which shall not be subject to review.

(3) A period specified in this subsection may be extended by the court for good cause shown.

(f)(1) Any person (other than a defendant convicted of the offense on which the forfeiture is based) may petition the court for remission or mitigation of the forfeiture. A petition under this subsection shall be filed not later than 60 days after the date of the order under subsection (c), or, if a petition is filed under subsection (e), not later than 60 days after the date of the determination of the Attorney General.

(2) The court shall grant appropriate relief if, after a hearing, the petitioner establishes by a preponderance of the evidence that—

(A) at the time of the offense the petitioner had an interest in the property that was separate from or superior to the interest of the defendant; or

(B) in the case of an interest acquired for value after the offense, when acquiring the interest the petitioner did not know

or have reason to know of the offense or of any order restraining transfer of the property.

(g) A petition to the Attorney General or the court under this section shall be verified and shall set forth the relief sought, the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of interest, and any additional facts and circumstances supporting remission or mitigation.

(h)(1) Except as provided in paragraph (2), the customs laws relating to disposition of seized or forfeited property shall apply to property under this section, to the extent that such laws are not inconsistent with this section.

(2) The duties of the Secretary of the Treasury with respect to dispositions of property under the customs laws shall be performed under paragraph (1) by the Attorney General, except to the extent that such duties arise from forfeitures effected under the customs laws.

(i) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

(j) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(k)(1) In addition to any order authorized by subsection (j), the court may, before the filing of an indictment or information, enter an order restraining the transfer of property that is or may be subject to forfeiture.

(2) An order shall be entered under this subsection if the court determines that—

(A) there is a substantial probability that the United States will prevail on the issue of forfeiture;

(B) there is a substantial probability that failure to enter the order will result in unavailability of the property for forfeiture; and

(C) the need to assure availability of the property outweighs the hardship on any person against whom the order is to be entered.

(3)(A) Except as provided in subparagraph (B), an order under this subsection shall be entered only after notice to persons appearing to have an interest in the property and opportunity for a hearing.

(B) A temporary order under this subsection may be entered upon application of the United States, without notice or opportunity for a hearing, if an information or indictment has not been filed and the United States demonstrates that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, except that the court may extend the effective period of the order for not more than 10 days for good cause shown and for a longer period with the consent of each person affected by the order.

(l) There may be a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is

subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

- (1) such property was acquired by such person during the offense or within a reasonable time after the offense; and
- (2) there was no likely source for such property other than the offense.

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

PROCEDURES

* * * * *

FORFEITURES

SEC. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.

* * * * *

(7) If the offense involved is a felony, all land and buildings used, or intended for use, for holding or storage of property described in paragraph (1) or (2) or for cultivation of any plant that is such property, except that no land or building shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

The court may order forfeiture of less than the whole of any land or building under paragraph (7) if the owner establishes that forfeiture of the whole would be grossly disproportionate to the severity of the offense or to the extent of the use or intended use. If land under paragraph (7) is used or intended to be used for cultivation, the court shall order forfeiture of only the portion of the tract so used or intended to be used, and if the cultivation is dispersed over less than all of the tract, the court may order forfeiture of a portion of the tract equal to the areas used or intended to be used for cultivation.

* * * * *

(d) (1) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under

this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(2) In addition to the venue under section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture under this section, a proceeding for forfeiture may be brought in the judicial district in which the defendant is found or in which the prosecution is brought.

(e) Whenever property is forfeited under this title the Attorney General may—

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or
- (4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. **[The]** *Except as provided in subsection (h) of this section, the Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.*

* * * * *

(h) During the period beginning on the date of the enactment of this subsection, and ending on September 30, 1987, the Attorney General shall forward to the Treasurer of the United States for deposit in the Department of Justice Forfeiture Fund any amounts of moneys and proceeds remaining after payment of expenses of proceedings for forfeiture under subsection (e) of this section.

(i) The filing of an indictment or information alleging a violation of this title or title III that is related to a civil forfeiture proceeding under this section shall, upon motion of the United States or a claimant in that proceeding, and for good cause shown, stay the civil forfeiture proceeding.

* * * * *

CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

* * * * *

PART A—IMPORTATION AND EXPORTATION

DEFINITIONS

* * * * *

PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 1002, 1003, or 1007, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b)(1) In the case of a violation under subsection (a) with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than **[\$25,000, or both.] \$500,000, or both if such person is an individual, or shall be fined not more than \$1,000,000 if such person is other than an individual.** If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

(2) In the case of a violation under subsection (a) with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than **[\$15,000, or both.] \$500,000, or both if such person is an individual, or shall be fined not more than \$1,000,000 if such person is other than an individual.** If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(3) *In the case of a violation under subsection (a) involving more than 1,000 pounds of marihuana, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than \$250,000, or both if such person is an individual, or shall be fined not more than \$1,000,000 if such person is other than an individual.*

PROHIBITED ACTS B—PENALTIES

SEC. 1011. Any person who violates section 1004 shall be subject to the following penalties:

(1) Except as provided in paragraph (2), 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) shall apply to any civil penalty assessed under this paragraph.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed know-

ingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than ~~[\$25,000]~~ \$50,000 or both.

* * * * *

APPLICABILITY OF SECTION 413 AND SECTION 414

SEC. 1017. Sections 413 and 414 shall apply with respect to fines under this part to the same extent that such sections apply with respect to fines under part D of title II. For purposes of such application, any reference in such section 413 or 414 to "this part" shall be deemed to be a reference to part A of title III.

* * * * *

COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

* * * * *

TABLE OF CONTENTS

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

* * * * *

PART D—OFFENSES AND PENALTIES

- Sec. 401. Prohibited acts A—penalties.
- Sec. 402. Prohibited acts B—penalties.
- Sec. 403. Prohibited acts C—penalties.
- Sec. 404. Penalty for simple possession; conditional discharge and expunging of records for first offense.
- Sec. 405. Distribution to persons under age twenty-one.
- Sec. 406. Attempt and conspiracy.
- Sec. 407. Additional penalties.
- Sec. 408. Continuing criminal enterprise.
- Sec. 409. Dangerous special drug offender sentencing.
- Sec. 410. Information for sentencing.
- Sec. 411. Proceedings to establish previous convictions.
- Sec. 412. Application of treaties and other international agreements.
- Sec. 413. *Alternative fine.*
- Sec. 414. *General provisions relating to fines.*
- Sec. 415. *Criminal forfeiture.*

* * * * *

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

Sec. 1000. Short title.

PART A—IMPORTATION AND EXPORTATION

- Sec. 1001. Definitions.
- Sec. 1002. Importation of controlled substances.
- Sec. 1003. Exportation of controlled substances.
- Sec. 1004. Transshipment and in-transit shipment of controlled substances.
- Sec. 1005. Possession on board vessels, etc., arriving in or departing from United States.

Sec. 1006. Exemption authority.
 Sec. 1007. Persons required to register.
 Sec. 1008. Registration requirements.
 Sec. 1009. Manufacture or distribution for purposes of unlawful importation.
 Sec. 1010. Prohibited acts A—penalties.
 Sec. 1011. Prohibited acts B—penalties.
 Sec. 1012. Second or subsequent offenses.
 Sec. 1013. Attempt and conspiracy.
 Sec. 1014. Additional penalties.
 Sec. 1015. Applicability of part E. of title II.
 Sec. 1016. Authority of Secretary of Treasury.
 Sec. 1017. Applicability of section 413 and section 414.

* * * * *

TITLE 28, UNITED STATES CODE

* * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * *

CHAPTER 31—THE ATTORNEY GENERAL

Sec. 501. Executive department.

* * * * *

530A. Department of Justice Forfeiture Fund.

* * * * *

§ 530A. Department of Justice Forfeiture Fund

(a) There is established in the Treasury a fund to be known as the Department of Justice Forfeiture Fund (hereinafter in this section referred to as the "fund"), which shall be available to the Attorney General, subject to appropriation, during the period beginning on the date of the enactment of this section and ending on September 30, 1987. The fund shall be available with respect to the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), section 1963(c) of title 18, United States Code, and section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) for payment (to the extent that such payment is not otherwise provided for by law—

(1) of expenses of forfeiture and sale, including expenses of seizure and detention;

(2) of rewards for information resulting in a conviction or forfeiture;

(3) of liens against forfeited property;

(4) of amounts with respect to remission and mitigation;

(5) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration or the Immigration and Naturalization Service; and

(6) for purchase of evidence of any violation.

(b)(1) Any reward under subsection (a)(2) of this section shall be paid at the discretion of the Attorney General or his delegate, except

that the authority to pay a reward of \$10,000 or more may be delegated only to the Administrator of the Drug Enforcement Administration or the Commissioner of Immigration and Naturalization. Any such reward shall not exceed \$250,000, except that a reward for information resulting in a forfeiture, shall not exceed the lesser of \$250,000 or one-quarter of the amount realized by the United States from the property forfeited.

(2) Any amount under subsection (a)(6) of this section shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay \$100,000 or more may be delegated only to the Administrator of the Drug Enforcement Administration or the Commissioner of Immigration and Naturalization. No such payment shall exceed \$250,000.

(c) There shall be deposited in the fund during the period beginning on the date of the enactment of this section and ending on September 30, 1987—

(1) the proceeds (after payment of expenses of forfeiture and sale) from forfeiture under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), and section 274 of the Immigration and Nationality Act (8 U.S.C. 1324);

(2) the proceeds (after payment of expenses of forfeiture and sale) from forfeiture under section 1963(c) of title 18, United States Code, in any case in which the racketeering activity consists of a narcotic or other dangerous drug offense referred to in section 1961(1)(A) of such title; and

(3) earnings on amounts invested under subsection (d) of this section.

(d) Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

(f)(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, such sums as may be necessary under subsection (a) of this section, except that not more than \$10,000,000 are authorized to be appropriated from the fund under paragraphs (2), (5), and (6) of such subsection for each such fiscal year.

(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of \$10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.

* * * * *

TARIFF ACT OF 1930

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * *

PART V—ENFORCEMENT PROVISIONS

* * * * *

SEC. 589. ENFORCEMENT AUTHORITY OF CUSTOMS OFFICERS.

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

- (1) carry a firearm;*
- (2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;*
- (3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and*
- (4) perform any other law enforcement duty that the Secretary of the Treasury may designate.*

* * * * *

SEC. 602. SEIZURE—REPORT TO CUSTOMS OFFICER.

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, *aircraft*, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

SEC. 605. SAME—CUSTODY.

All vessels, vehicles, *aircraft*, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

SEC. 606. SAME—APPRAISEMENT.

The appropriate customs officer shall require the appraiser to determine the domestic value, at the time and place of appraisement,

of any vessel, vehicle, *aircraft*, merchandise, or baggage seized under the customs laws.

[SEC. 607. SAME—VALUE \$10,000 OR LESS.

[If such value of such vessel, vehicle, merchandise, or baggage does not exceed \$10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 610 and 612 of this Act, merchandise the importation of which is prohibited shall be held not to exceed \$10,000 in value.]

SEC. 607. SEIZURE; VALUE \$100,000 OR LESS, PROHIBITED MERCHANDISE, TRANSPORTING CONVEYANCES.

(a) If—

(1) *the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed \$100,000;*

(2) *such seized merchandise is merchandise the importation of which is prohibited; or*

(3) *such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance;*

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the term "controlled substance" has the meaning given that term in section 102 of the Controlled Substance Act (21 U.S.C. 802).

SEC. 608. SAME—CLAIMS—JUDICIAL CONDEMNATION.

Any person claiming such vessel, vehicle, *aircraft*, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing at such claim, and the giving of a bond to the United States in the penal sum of \$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250, with sureties to be approved by the such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, the such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

SEC. 609. SAME—SUMMARY FORFEITURE AND SALE.

(a) If no such claim is filed or bond given within the twenty days hereinbefore specified, the collector shall declare the vessel, vehicle, *aircraft*, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise aban-

done to the United States is sold or otherwise disposed of the same according to law, and (except as provided in subsection (b) of this section) shall deposit the proceeds of sale, after deducting the actual expenses of seizure, publication and sale, in the Treasury of the United States.

(b) During the period beginning on the date of the enactment of this subsection and ending on September 30, 1987, the appropriate customs officer shall deposit the proceeds of sale (after deducting such expenses) in the Customs Forfeiture Fund.

SEC. 610. SAME—[VALUE MORE THAN \$10,000] JUDICIAL FORFEITURE PROCEEDINGS.

[If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than \$10,000,] If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607 of this Act, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

SEC. 611. SAME—SALE UNLAWFUL.

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

SEC. 612. SAME—SUMMARY SALE.

(a) Whenever it appears to the appropriate customs officer that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and [the value of] such vessel, vehicle, aircraft, merchandise, or baggage [as determined under section 606 of this Act, does not exceed \$10,000,] is subject to section 607 of this Act, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auc-

tion under regulations to be prescribed by the Secretary of the Treasury. If [such value of] such vessel, vehicle, *aircraft*, merchandise, or baggage [exceeds \$10,000] *is not subject to section 607 of this Act*, such officer, shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, *aircraft*, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, *aircraft*, merchandise, or baggage so sold would have been subject to such claim.

(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than \$500, such officer may proceed forthwith to order destruction or other appropriate disposition of such property under regulations prescribed by the Secretary of the Treasury.

SEC. 613. DISPOSITION OF PROCEEDS OF FORFEITED PROPERTY.

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, *aircraft*, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. [If no application] *Except as provided in subsection (c), if no application* for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited [with the Treasurer of the United States as a customs or navigation fine] *in the general fund of the Treasury of the United States.*

(b) If merchandise is forfeited under section 592 of this Act, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a) (1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 613A of this Act incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) *During the period beginning on the date of the enactment of this subsection and ending on September 30, 1987, the proceeds of sale (after deduction of expenses and costs under subsection (a) (1) and (2) of this section) shall be deposited in the Customs Forfeiture Fund, except that if this section is applied to a law that is not enforced or administered by the United States Customs Service, the proceeds of sale shall be disposed of in accordance with such law or in accordance with subsection (a) of this section if a method of disposition is not specified in such law.*

SEC. 613A. CUSTOMS FORFEITURE FUND.

(a) *There is established in the Treasury of the United States a fund to be known as the Customs Forfeiture Fund (hereinafter in this section referred to as the "fund"), which shall be available to the United States Customs Service, subject to appropriation, during the period beginning on the date of the enactment of this section and ending on September 30, 1987. The fund shall be available with respect to any law enforced or administered by the United States Customs Service for payment (to the extent that such payment is not reimbursed under section 524 of this Act)—*

(1) *of expenses of forfeiture and sale, including expenses of seizure and detention;*

(2) *of awards of compensation to informers under section 619 of this Act;*

(3) *for satisfaction of—*

(A) *liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and*

(B) *other liens against forfeited property;*

(4) *of amounts authorized by law with respect to remission and mitigation;*

(5) *for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service;*

(6) *for purchase of evidence of any violation; and*

(7) *of claims of parties in interest to property disposed of under section 612(b) of this Act, in the amounts applicable to such claims at the time of seizure.*

(b) *Payment under paragraphs (3) and (4) of subsection (a) of this section shall not exceed the value of the property at the time of the seizure.*

(c) *There shall be deposited in the fund during the period beginning on the date of the enactment of this section, and ending on September 30, 1987, all proceeds from forfeiture under any law enforced or administered by the United States Customs Service (after*

reimbursement of expenses under section 524 of this Act) and all earnings on amounts invested under subsection (d) of this section.

(d) Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

(f)(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, such sums as may be necessary under subsection (a) of this section, except that not more than \$10,000,000 are authorized to be appropriated from the fund under paragraphs (2), (5), and (6) of such subsection for each such fiscal year.

(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of \$10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.

SEC. 614. RELEASE OF SEIZED PROPERTY.

If any person claiming an interest in any vessel, vehicle, *aircraft*, merchandise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, *aircraft*, merchandise, or baggage as determined under section 606 of this Act, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, *aircraft*, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 613 of this Act.

SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.

In all suits or actions (other than those arising under section 592 of this Act) brought for the forfeiture of any vessel, vehicle, *aircraft*, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, *aircraft*, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a [vessel or vehicle] *vessel, vehicle, or aircraft*, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

SEC. 616. TRANSFER OF FORFEITED PROPERTY.

(a) *The Secretary of the Treasury may discontinue forfeiture proceedings under this Act in favor of forfeiture under State law. If a complaint for forfeiture is filed under this Act, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.*

(b) *If forfeiture proceedings are discontinued or dismissed under this section—*

(1) *the United States may transfer the seized property to the appropriate State or local official; and*

(2) *notice of the discontinuance or dismissal shall be provided to all known interested parties.*

(c) *The Secretary of the Treasury may transfer any property forfeited under this Act to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.*

(d) *The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.*

* * * * *

SEC. 618. REMISSION OR MITIGATION OF PENALTIES.

Whenever any person interested in any vessel, vehicle, *aircraft*, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce, if under the navigation laws, before the sale of such vessel, vehicle, *aircraft*, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, *aircraft*, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed **[\$50,000]** *\$250,000* in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, *aircraft*, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed **[\$50,000]** *\$250,000* in any case.

* * * * *

INTERNAL REVENUE CODE OF 1954

* * * * *

Subtitle F—Procedure and Administration

* * * * *

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

SUBCHAPTER A. Examination and inspection.
 SUBCHAPTER B. General powers and duties.
 SUBCHAPTER D. Possessions.

Subchapter A—Examination and Inspection

Sec. 7601. Canvass of districts for taxable persons and objects.
 Sec. 7602. Examination of books and witnesses.
 Sec. 7603. Service of summons.
 Sec. 7604. Enforcement of summons.
 Sec. 7605. Time and place of examination.
 Sec. 7606. Entry of premises for examination of taxable objects.
[Sec. 7607. Additional authority for Bureau of Customs.]
 Sec. 7608. Authority of internal revenue enforcement officers.
 Sec. 7609. Special procedures for third-party summonses.
 Sec. 7610. Fees and costs for witnesses.
 Sec. 7611. Cross references.

* * * * *

[SEC. 7607. ADDITIONAL AUTHORITY FOR BUREAU OF CUSTOMS.

[Officers of the customs (as defined in section 401(1) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(1)), may—

[(1) carry firearms, execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States, and

[(2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.]

* * * * *

ADDITIONAL VIEWS OF THE COMMITTEE ON THE
JUDICIARY ON H.R. 4901

We heartily join our colleagues in support of forfeiture reform legislation and submit these additional views to clarify our belief that the Comprehensive Drug Penalty Reform Act of 1983, H.R. 4901, would be more effective if amended to include a substitute assets provision and amendments to the Racketeering Influenced Corrupt Practices Act, as supported by the Administration and the Senate.

The one hundred billion dollars that Americans will spend in 1984 on illegal drugs is the impetus for forfeiture reform. The profit potential of drug trafficking is so large that existing fines are merely a cost of doing business. Recognition that the drug trade will not be affected unless the profit is removed from the crime has led to the development of forfeiture as a form of penalty. The existing forfeiture laws, however, net only \$5 million annually.

Under current law, assets valued at more than \$10,000 must be forfeited in civil or criminal court. Due to court docket backlogs, it often takes years before these seized assets are forfeited and can be sold. Existing law prohibits adequate reimbursement to custodian agencies for the costs of proper care of these assets. As a result, the agencies have invested their appropriated funds in their primary missions rather than in the care of seized assets.

On July 15, 1983, the GAO issued a report, *Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement*. The GAO report documents monetary losses due to serious problems with current Federal procedures for storing, forfeiting, and selling seized conveyances. GAO has determined that as of April 1983, Federal law enforcement agencies were holding over 4,518 seized conveyances—3,665 cars, 692 boats, and 161 airplanes—worth \$82 million when seized. GAO's evaluation reveals, however, that due to lengthy forfeiture proceedings, inadequate security and a lack of maintenance, seized conveyances—plagued by deterioration, vandalism, and theft—frequently sell for only a fraction of their value at the time they were taken.

The new expedited and efficient procedures as well as the strengthened law enforcement authority in H.R. 4901 will improve the ability of the Department of Justice to forfeit assets in an increasing and cost effective manner. In doing so, the federal law enforcement effort will increase the financial risk to traffickers and reduce drug trafficking profits. We believe however, that the inclusion of the following two concepts would greatly enhance this effort.

SUBSTITUTE ASSETS

Unfortunately, the Committee defeated, by a vote of 12-17, a substitute assets provision offered by Mr. Lungren that would have eliminated the trafficker's ability to elude the forfeiture penalty.

In a criminal forfeiture trial, the government must prove that specified property of the defendant was used or obtained in such a way as to render it subject to forfeiture under the applicable statute. If, after the entry of the special verdict of forfeiture, however, it is found that those specified assets have been removed, concealed or transferred by the defendant so that they are no longer available to satisfy the forfeiture judgment, the substitute asset amendment would allow the court to order the defendant to forfeit other of his assets in substitution. Thus, by applying a substitute assets provision, we would ensure that defendants could not avoid criminal forfeiture by hiding the tainted assets at the time of conviction.

Since the criminal forfeiture is intended to be a punitive measure on the convicted felon, forfeiture of substitute assets is necessary to ensure that the defendant's cleverness is not used to make forfeiture illusory. Where the original asset cannot be separated from the criminal, the second best alternative is the forfeiture of substitute assets.

The substitute assets penalty is designed to complement the existing provisions of H.R. 4901, and plug the loopholes inherent in the bill. We support the creation of an alternative fine of up to twice the gross profit or proceeds of the offense as contained in H.R. 4901, but we recognize its limitations. The imposition and the amount of this new fine are discretionary with the court. Where the fine is imposed it cannot be collected until all appeals are complete and by then the defendant has had plenty of time to dispose of or otherwise hide his assets from the collectors. These practical frustrations are compounded by the difficulty in enforcing fine collection judgements in state court where the United States is relegated to the status of an ordinary creditor.

According to the Department of Justice:

The total balance of unpaid criminal fines is immense. Presently, there are more than twenty-one thousand (21,058) cases in which criminal fines have not been fully paid. As of May of this year, the aggregate outstanding balance of unpaid fines amounted to nearly one hundred and thirty-two million dollars (\$131,917,602). It should first be pointed out that one-fourth of these twenty-one thousand outstanding cases (5,787) are over ten years old. They offer little prospect of collection. In approximately eighty percent of this over ten year old group of cases, the location of the debtor is no longer known. In most the remaining cases in this category, the debtor has no assets upon which to levy.

Statement of Deputy Assistant Attorney General, James I. K. Knapp, Page 1, before the House of Representatives, Committee on the Judiciary, concerning criminal fine collection, August 3, 1983.

The debate on this issue focused on the ability of the judge to condition a portion of the sentence on the payment of the fine. We

reject this idea as a potential success factor for several reasons. First, drug traffickers should serve full prison sentences in addition to forfeiting their assets, and not as an alternative. Any diminution of sentence conditioned upon fine payment distorts the punishment necessitated by the serious nature of the crime. More importantly, a fine and conditional sentence can only be imposed on a person able to pay the fine. The trafficker needs only to delay the fine collection and sentence by appeals long enough to hide his wealth and appear a pauper when the collection process finally begins.

The Committee should also recognize the impact this amendment has on state and local law enforcement communities. Under H.R. 4901, these local enforcement agencies can receive forfeited assets, but cannot receive any collected fines. The donation of seized assets will make a tremendous positive impact on local law enforcement efforts whose budgets are stretched beyond belief. These local governments often invest a tremendous percentage of their limited resources in these joint drug enforcement cases, and they should also participate in the forfeiture process; the value of their assistance cannot be overemphasized.

Another provision in H.R. 4901 that was argued to be an alternative to the substitute assets amendment is the rebuttable presumption that all assets which come into being during the criminal enterprise or within a reasonable time thereafter, are presumed to come from the criminal enterprise. Although we recognize the valuable role that the rebuttable presumption may play in locating forfeitable assets, we believe it does not prevent the defendant from hiding those assets.

Debate on the substitute assets provisions was clouded by the inference that Constitutional principles prohibited this amendment. We find no support for this Constitutional challenge. Similarly, the Department of Justice supports the forfeiture substitute assets as a Constitutionally sound remedy.

Article III, Section 3, Clause 2 states: "The Congress shall have the Power to declare the Punishment of Treason but no Attainder of Treason shall work Corruption of Blood or Forfeiture except during the life to the Person attainted."

This clause prohibits the government from forfeiting all of a person's real and personal property as punishment of a crime as well as prohibiting the family of such person from ever owning such property. Since forfeiture of substitute assets would apply only one time and would not affect the defendant's ability to own other property during his lifetime or affect the property rights of relatives, the amendment does not violate the clause. *Grande v. United States*, 620 F.2d 1026 (4 Cir. 1980) at 1037-1039.

Similarly, the eighth amendment to the Constitution is not violated by a substitute assets provision. It states: "Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted."

Substitute assets is a novel concept because the asset at issue is not in and of itself tainted by the criminal conduct. However, the government is required to prove that the original asset was in fact

tainted and the forfeiture of the substitute is carefully tied to the value of the original tainted asset. Thus, the traditionally required nexus between the criminal activity and the tainted property is found and it is the defendant's own actions which frustrate the forfeiture of the tainted property.

Courts have routinely upheld the Constitutionality of existing forfeiture law. *United States v. Grande*, 620 F.2d 1026 (4 Cir. 1980) at 1037-1039; *United States v. Huber*, 603 F.2d 387 (2 Cir. 1979) at 396-397; *United States v. Theris*, 474 F. Supp. 134 (N.D. Ga. 1979) at 140-145. Discussions of the outer bounds of Constitutional application of forfeiture is limited to dicta in which the focus of the courts has been limited to RICO cases involving the potential forfeiture of legitimate business interests in addition to forfeitable criminal enterprises. *U.S. v. Huber*, 603 F.2d at 397; *U.S. v. Marubeni*, 611 F.2d 763 (9 Cir. 1980) at 769, 770, footnote 12.

We do not disagree with this theoretical dicta that forfeiture of both criminal and untainted assets RICO could violate the eighth amendment. We simply find this dicta irrelevant to the substitute asset provision. Substitute assets are proposed to be subject to forfeiture in place of and not in addition to tainted property. Second, unlike the theoretical discussions in the case law, the forfeiture of substitute assets is statutorily limited to the value of the tainted asset which cannot be forfeited, and is therefore keyed to the magnitude of the defendant's criminal drug trafficking activity.

For these reasons, forfeiture of substitute assets does not violate the eighth amendment by being excessive, nor does forfeiture of substitute assets amount to forfeiture of estate under Article III, Section 3, Clause 2. We believe that the substitute assets amendment, withstands Constitutional challenge and is integral to the success of our efforts to attach the economic base of major drug trafficking enterprises.

RICO AMENDMENTS

The Comprehensive Drug Penalty Act of 1984, H.R. 4901, creates a drug forfeiture fund and places assets from the Racketeering Influenced Corrupt Organizations Act, 18 U.D.C. Sections 1961-1968, (RICO) drug cases in the fund. H.R. 4901 also makes several important improvements to the forfeiture process under the Continuing Criminal Enterprise Forfeiture Statute in our drug laws, 21 U.S.C. Section 848. This forfeiture statute and RICO were both adopted in 1970 and included almost identical forfeiture provisions. Since the problems experienced under these statutes is similar, analogous improvements should be made in both statutes. For this reason, we planned to support at the request of the Department of Justice, an amendment to improve the forfeiture provisions of RICO. This amendment would have codified the Supreme Court holding in *Russello v. United States*, — U.S. — (Nov. 1, 1983), that proceeds and profits from a racketeering activity can be forfeited. Second, the amendment would have permitted the Department of Justice to protect the property from being hidden by the defendant when forfeiture is imminent. Finally, the amendment permitted the forfeiture of substitute assets when the forfeitable assets are hidden from the court by the defendant.

More importantly, without these amendments, H.R. 4901 cannot address the problems we face in taking law enforcement action against high level drug traffickers. The higher level drug trafficking activity often also involves public corruption, murder, and money laundering, which is why the organized Crime Drug Enforcement Task Forces were created. This compilation of crimes is better prosecuted under RICO. Thus, by excluding RICO from consideration, we have severely hampered our ability to forfeit the assets of those traffickers we want to punish the most—those at the top of the trafficking organizations.

Irrespective of the value of this amendment, which was to be offered by Mr. Shaw, we were advised that its consideration would be barred by the finding that these RICO forfeiture amendments were non-germane to H.R. 4901, the Drug Forfeiture Reform Bill.

This amendment, however, and the substitute asset amendment have received tremendous bipartisan support in Senator Biden's forfeiture bill, S. 948. GAO also recommends amendments to the RICO forfeiture and substitute assets provisions. *Asset Forfeiture—A Seldom Used Tool in Combatting Drug Trafficking*, April 10, 1981, 66D-81-51, Pg. 41. We urge this Committee to adopt the Senate RICO and substitute assets provisions when H.R. 4901 is the subject of a conference.

HAMILTON FISH, Jr.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.
DAN LUNGREN.
F. JAMES SENSENBRENNER, Jr.
GEORGE W. GEKAS.
MIKE DEWINE.

○