

alty under this section, the income and net assets of an individual shall be considered.

**(c) Prior conviction**

A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance.

**(d) Limitation on number of assessments**

A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

**(e) Assessment**

A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

**(f) Compromise**

The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

**(g) Judicial review**

If the Attorney General issues an order pursuant to subsection (e) of this section after a hearing described in such subsection, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

**(h) Civil action**

If an individual does not request a hearing pursuant to subsection (e) of this section and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) of this section seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28. Such interest shall accrue from the expiration of the 30-day period described in subsection (g) of this section. In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

**(i) Limitation**

The Attorney General may not under this section<sup>1</sup> commence proceeding against an indi-

vidual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a) of this section.

**(j) Expungement procedures**

The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years if—

- (1) the individual has not previously been assessed a civil penalty under this section;
- (2) the individual has paid the assessment;
- (3) the individual has complied with any conditions imposed by the Attorney General;
- (4) the individual has not been convicted of a Federal or State offense relating to a controlled substance; and
- (5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

(Pub. L. 91-513, title II, §405, formerly Pub. L. 100-690, title VI, §6486, Nov. 18, 1988, 102 Stat. 4384, renumbered §405 of Pub. L. 91-513, and amended Pub. L. 101-647, title X, §1002(g)(1), (2), Nov. 29, 1990, 104 Stat. 4828.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 91-513 was renumbered section 418 and is classified to section 859 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, §1002(g)(2)(A), made technical amendments to references to sections 841(b)(1)(A) and 844 of this title to correct references to corresponding provisions of original act.

Subsecs. (c), (j)(4). Pub. L. 101-647, §1002(g)(2)(B), (C), struck out “as defined in section 802 of this title” after “controlled substance”.

**§§ 845 to 845b. Transferred**

CODIFICATION

Section 845, Pub. L. 91-513, title II, §405, Oct. 27, 1970, 84 Stat. 1265, as amended, which related to distribution of controlled substances to persons under age twenty-one, was renumbered §418 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(a)(1), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 859 of this title.

Section 845a, Pub. L. 91-513, title II, §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069, and amended, which related to distribution or manufacturing of controlled substances in or near schools and colleges, was renumbered §419 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(b), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 860 of this title.

Section 845b, Pub. L. 91-513, title II, §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10, and amended, which related to employment or use of persons under 18 years of age in drug operations,

<sup>1</sup> So in original. Probably should be “section”.

was renumbered §420 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(c), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 861 of this title.

#### § 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91-513, title II, §406, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 100-690, title VI, §6470(a), Nov. 18, 1988, 102 Stat. 4377.)

#### AMENDMENTS

1988—Pub. L. 100-690 substituted “shall be subject to the same penalties as those prescribed for the offense” for “is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense”.

#### § 847. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Pub. L. 91-513, title II, §407, Oct. 27, 1970, 84 Stat. 1265.)

#### § 848. Continuing criminal enterprise

##### (a) Penalties; forfeitures

Any person who engages in a continuing criminal enterprise 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 not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title; 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 30 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title.

##### (b) Life imprisonment for engaging in continuing criminal enterprise

Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a) of this section, if—

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (c)(1) of this section involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B) of this title, or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organiz-

ers, or leaders, received \$10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 841(b)(1)(B) of this title.

##### (c) “Continuing criminal enterprise” defined

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

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter—

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

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

##### (d) Suspension of sentence and probation prohibited

In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and the Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), shall not apply.

##### (e) Death penalty

(1) In addition to the other penalties set forth in this section—

(A) any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A)<sup>1</sup> of this title or section 960(b)(1)<sup>1</sup> of this title who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and

(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II of this chapter who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer’s official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.

(2) As used in paragraph (1)(B), the term “law enforcement officer” means a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.

<sup>1</sup> See References in Text note below.