

Pub. L. 100-690, §6456, struck out "The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana."

1986—Subsec. (a). Pub. L. 99-570, §1105(a), inserted "Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year."

Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term".

Subsec. (b). Pub. L. 99-570, §1105(b), inserted "Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana."

Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term".

1984—Subsecs. (a), (b). Pub. L. 98-473, §503(b)(3), substituted "Except as provided in section 845a of this title, any" for "Any".

Pub. L. 98-473, §224(b), which directed amendment of this section effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99-570, §1005(b)(1).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

### § 860. Distribution or manufacturing in or near schools and colleges

#### (a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana.

#### (b) Second offenders

Any person who violates section 841(a)(1) of this title or section 856 of this title by distribut-

ing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 841(b) of this title for a first offense, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

#### (c) Employing children to distribute drugs near schools or playgrounds

Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally—

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 841 of this title.

#### (d) Suspension of sentence; probation; parole

In the case of any mandatory minimum sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

#### (e) Definitions

For the purposes of this section—

(1) The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swings, and teeterboards.

(2) The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18

years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term "swimming pool" includes any parking lot appurtenant thereto.

(Pub. L. 91-513, title II, § 419, formerly § 405A, as added Pub. L. 98-473, title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069; amended Pub. L. 99-570, title I, §§ 1004(a), 1104, 1105(c), 1841(b), 1866(b), (c), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11, 3207-52, 3207-55; Pub. L. 99-646, § 28, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 100-690, title VI, §§ 6452(b)(1), 6457, 6458, Nov. 18, 1988, 102 Stat. 4371, 4373; renumbered § 419 and amended Pub. L. 101-647, title X, §§ 1002(b), 1003(b), title XII, § 1214, title XV, § 1502, title XXXV, § 3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4833, 4836, 4932; Pub. L. 103-322, title XIV, § 140006, title XXXII, § 320107, title XXXIII, § 330009(a), Sept. 13, 1994, 108 Stat. 2032, 2111, 2143.)

#### CODIFICATION

Section was classified to section 845a of this title prior to renumbering by Pub. L. 101-647.

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, § 320107, substituted "playground, or housing facility owned by a public housing authority, or within" for "playground, or within".

Subsec. (b). Pub. L. 103-322, §§ 320107, 330009(a), substituted "playground, or housing facility owned by a public housing authority, or within" for "playground, or within" and inserted a period at end of penultimate sentence.

Subsecs. (c) to (e). Pub. L. 103-322, § 140006, added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1990—Subsec. (a). Pub. L. 101-647, § 1502(1), inserted "or a playground," after "university," and struck out "playground," after "within 100 feet of a".

Pub. L. 101-647, § 1214(1)(C), substituted "a person shall be sentenced under this subsection to a term of imprisonment of not less than one year" for "a term of imprisonment under this subsection shall be not less than one year".

Pub. L. 101-647, § 1214(1)(B), inserted "A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection."

Pub. L. 101-647, § 1214(1)(A), which directed the amendment of par. (1) by striking out "or a fine, or both," could not be executed because those words did not appear. See note below.

Pub. L. 101-647, § 1003(b)(1), which directed the substitution of "subject to (1) twice the maximum punishment authorized by section 841(b) of this title" for "punishable (1) by a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title", was executed by making the substitution for "punishable (1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 841(b) of this title" to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101-647, § 3599L, substituted "has become final" for "have become final".

Pub. L. 101-647, § 1502(2), inserted "or a playground," after "university," and struck out "playground," after "within 100 feet of a".

Pub. L. 101-647, § 1214(2)(B), inserted after first sentence "A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to

any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years".

Subsec. (b)(1)(B). Pub. L. 101-647, § 1214(2)(A), which directed the amendment of subpar. (B) by striking "or a fine up to three times that" through "or both", could not be executed because the language did not appear after execution of the intervening amendment by Pub. L. 101-647, § 1003(b)(2). See below.

Pub. L. 101-647, § 1003(b)(2), substituted "three times the maximum punishment authorized by section 841(b) of this title for a first offense" for "a term of imprisonment of up to three times that authorized by section 841(b) of this title for a first offense, or a fine up to three times that authorized by section 841(b) of this title for a first offense, or both".

Subsec. (c). Pub. L. 101-647, § 1214(3), inserted "mandatory minimum" after "In the case of any", struck out "subsection (b)" after "imposed under", struck out "of" before "this section" in a reference to "of this section" which was editorially added before "imposition or", and substituted "An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section" for "An individual convicted under subsection (b) of this section shall not be eligible for parole under chapter 311 of title 18 until the individual has served the minimum sentence required by such subsection".

1988—Subsec. (a). Pub. L. 100-690, §§ 6457, 6458(a), inserted "possessing with intent to distribute," after "distributing" and "or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility," after "university".

Subsec. (b). Pub. L. 100-690, §§ 6452(b)(1), 6457, 6458(a), inserted "possessing with intent to distribute," after "distributing", and "or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility," after "university", substituted "a prior conviction" for "a prior conviction or convictions", and inserted at end "Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title."

Subsec. (d). Pub. L. 100-690, § 6458(b), added subsec. (d).

1986—Subsec. (a). Pub. L. 99-570, §§ 1104(a), (b), 1105(c), 1841(b)(1), inserted "or section 856 of this title" and "or manufacturing", substituted "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university" for "a public or private elementary or secondary school", struck out "involving the same controlled substance and schedule" after "for a first offense", and inserted "Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana."

Pub. L. 99-570, § 1004(a), substituted "term of supervised release" for "special parole term".

Subsec. (b). Pub. L. 99-646 which directed that "parole" be inserted after "(2) at least three times any special" could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, § 1866(b), which directed that "term of supervised release" be substituted for "special term" could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, §§ 1104(a), 1841(b)(2), inserted reference to section 856 of this title, inserted "or manufacturing" after "distributing" and substituted "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university" for "a public or private elementary or secondary school".

Pub. L. 99-570, § 1104(c), amended cls. (1) and (2) generally. Prior to amendment, cls. (1) and (2) read as fol-

lows: “(1) by a term of imprisonment of not less than three years and not more than life imprisonment and (2) at least three times any special term authorized by section 841(b) of this title for a second or subsequent offense involving the same controlled substance and schedule.”

Subsec. (c). Pub. L. 99-570, §1866(c), substituted reference to chapter 311 of title 18 for reference to section 4202 of that title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

**§ 860a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside**

Whoever violates section 841(a)(1) of this title by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.

(Pub. L. 91-513, title II, §419a, as added Pub. L. 109-177, title VII, §734(a), Mar. 9, 2006, 120 Stat. 270.)

**§ 861. Employment or use of persons under 18 years of age in drug operations**

**(a) Unlawful acts**

It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this subchapter or subchapter II;

(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this subchapter or subchapter II by any Federal, State, or local law enforcement official; or

(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this subchapter or subchapter II.

**(b) Penalty for first offense**

Any person who violates subsection (a) is subject to twice the maximum punishment otherwise authorized and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

**(c) Penalty for subsequent offenses**

Any person who violates subsection (a) after a prior conviction under subsection (a) of this section has become final, is subject to three times the maximum punishment otherwise authorized

and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

**(d) Penalty for providing or distributing controlled substance to underage person**

Any person who violates subsection (a)(1) or (2)<sup>1</sup>

(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than \$50,000, or both, in addition to any other punishment authorized by this section.

**(e) Suspension of sentence; probation; parole**

In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18<sup>2</sup> until the individual has served the mandatory term of imprisonment as enhanced by this section.

**(f) Distribution of controlled substance to pregnant individual**

Except as authorized by this subchapter, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this subchapter. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).

(Pub. L. 91-513, title II, §420, formerly §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10; amended Pub. L. 100-690, title VI, §§6452(b)(1), 6459, 6470(d), Nov. 18, 1988, 102 Stat. 4371, 4373, 4378; renumbered §420 and amended Pub. L. 101-647, title X, §§1002(c), 1003(c), title XXXV, §3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4932.)

REFERENCES IN TEXT

Section 4202 of title 18, referred to in subsec. (e), which, as originally enacted in Title 18, Crimes and Criminal Procedure, related to eligibility of prisoners for parole, was repealed and a new section 4202 enacted as part of the repeal and enactment of a new chapter 311 (§4201 et seq.) of Title 18, by Pub. L. 94-233, §2, Mar. 15, 1976, 90 Stat. 219. For provisions relating to the eligibility of prisoners for parole, see section 4205 of Title 18. Pub. L. 98-473, title II, §§218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), chapter 311 of Title 18 is repealed, subject to remaining effective for five years after Nov. 1, 1987,

<sup>1</sup> So in original. Probably should be followed by a dash.

<sup>2</sup> See References in Text note below.