

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, 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, organizers, 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 sen-

tence 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) of this title or section 960(b)(1) 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.

**(g)<sup>1</sup> to (p) Repealed. Pub. L. 109-177, title II, § 221(2), Mar. 9, 2006, 120 Stat. 231**

**(q) Repealed. Pub. L. 109-177, title II, §§ 221(4), 222(c), Mar. 9, 2006, 120 Stat. 231, 232**

**(r) Repealed. Pub. L. 109-177, title II, § 221(3), Mar. 9, 2006, 120 Stat. 231**

**(s) Special provision for methamphetamine**

For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting "200" for "300", and paragraph (2)(B) shall be applied by substituting "\$5,000,000" for "\$10 million dollars".

(Pub. L. 91-513, title II, § 408, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 98-473, title II, §§ 224(b), formerly § 224(c), 305, Oct. 12, 1984, 98 Stat. 2030, 2050; Pub. L. 99-570, title I, §§ 1005(b)(2), 1252, 1253, Oct. 27, 1986, 100 Stat. 3207-6, 3207-14; Pub. L. 100-690, title VI, § 6481, title VII, § 7001, Nov. 18, 1988, 102 Stat. 4382, 4387; Pub. L. 103-322, title XXXIII, §§ 330003(e), 330009(d), 330014, Sept. 13, 1994, 108 Stat. 2141, 2143, 2146; Pub. L. 104-132, title I, § 108, title IX, § 903(b), Apr. 24, 1996, 110 Stat. 1226, 1318; Pub. L. 109-177, title II, §§ 221,

222(c), title VII, § 733, Mar. 9, 2006, 120 Stat. 231, 232, 270.)

REFERENCES IN TEXT

Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), referred to in subsec. (d), is act July 15, 1932, ch. 492, 47 Stat. 696, as amended, which is not classified to the Code.

AMENDMENTS

2006—Subsec. (e)(2). Pub. L. 109-177, § 221(1), substituted "(1)(B)" for "(1)(b)".

Subsecs. (g) to (p). Pub. L. 109-177, § 221(2), struck out subsecs. (g) to (p) which related to hearing and sentencing procedures in death penalty cases and sentencing in capital cases in which the death penalty is not sought or imposed.

Subsec. (q). Pub. L. 109-177, §§ 221(4), 222(c), struck out subsec. (q) which related to appeal in capital cases and counsel for financially unable defendants.

Subsec. (r). Pub. L. 109-177, § 221(3), struck out subsec. (r) which provided for refusal by State and Federal correctional employees to participate in executions.

Subsec. (s). Pub. L. 109-177, § 733, added subsec. (s).

1996—Subsec. (q)(9). Pub. L. 104-132, § 108, amended par. (9) generally. Prior to amendment, par. (9) read as follows: "Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore, under paragraph (10). Upon a finding that timely procurement of such services could not practically await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc."

Subsec. (q)(10). Pub. L. 104-132, § 903(b), amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of paragraphs (4) through (9)."

1994—Subsec. (b)(2)(A). Pub. L. 103-322, § 330003(e), substituted "subsection (c)(1) of this section" for "subsection (d)(1) of this section".

Subsec. (n)(11). Pub. L. 103-322, § 330014, made technical amendment to reference to section 859 of this title to correct reference to corresponding section of original act.

Subsec. (q)(8). Pub. L. 103-322, § 330009(d), substituted "applications for writ" for "applications, for writ".

1988—Subsec. (a). Pub. L. 100-690, § 6481(a), increased minimum term of imprisonment for first violations to 20 from 10 years and for subsequent violations to 30 from 20 years.

Subsecs. (c), (d). Pub. L. 100-690, § 6481(b), redesignated subsecs. (d) and (e) as (c) and (d), respectively.

Subsec. (e). Pub. L. 100-690, § 7001(a)(2), added subsec. (e). Former subsec. (e) redesignated (d).

Pub. L. 100-690, § 7001(a)(1), which directed redesignation of former subsec. (e) as (f), could not be executed because of prior redesignation of former subsec. (e) as (d) by Pub. L. 100-690, § 6481(b), which resulted in there not being a subsec. (f).

Subsecs. (g) to (r). Pub. L. 100-690, § 7001(b), added subsecs. (g) to (r).

1986—Subsec. (a). Pub. L. 99-570, § 1252, substituted "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," for "to a

<sup>1</sup> So in original. Section does not contain a subsec. (f), see 1988 Amendment note below.

fine of not more than \$100,000," and "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," for "to a fine of not more than \$200,000."

Subsecs. (b) to (e). Pub. L. 99-570, §1253, added subsec. (b) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively, which resulted in there not being a subsec. (c).

1984—Subsec. (a). Pub. L. 98-473, §305, struck out par. (1) designation, substituted references to section 853 of this title for references to paragraph (2) in two places, and struck out par. (2) which related to forfeitures to the United States by any person convicted under par. (1).

Subsec. (d). Pub. L. 98-473, §305(b), struck out subsec. (d) relating to jurisdiction of courts of the United States.

Subsec. (e). Pub. L. 98-473, §224(b), as renumbered by Pub. L. 99-570, §1005(b)(2), which directed the amendment of subsec. (c) of this section by striking out "and section 4202 of title 18 of the United States Code", was executed by striking out that language in subsec. (e) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 99-570, §1253, which redesignated subsec. (c) as (e). See 1986 Amendment note above.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 903(b) of Pub. L. 104-132 effective as to cases commenced or appeals perfected on or after Apr. 24, 1996, see section 903(c) of Pub. L. 104-132, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 224(b) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, 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.

#### GAO STUDY OF COST OF EXECUTIONS

Section 7002 of title VII of Pub. L. 100-690, directed Comptroller General to conduct a study of cost of executions and report to Congress, prior to repeal by Pub. L. 104-66, title I, §1091(d), Dec. 21, 1995, 109 Stat. 722.

### § 849. Transportation safety offenses

#### (a) Definitions

In this section—

"safety rest area" means a roadside facility with parking facilities for the rest or other needs of motorists.

"truck stop" means a facility (including any parking lot appurtenant thereto) that—

(A) has the capacity to provide fuel or service, or both, to any commercial motor vehicle (as defined in section 31301 of title 49), operating in commerce (as defined in that section); and

(B) is located within 2,500 feet of the National System of Interstate and Defense Highways or the Federal-Aid Primary System.

#### (b) First offense

A person who violates section 841(a)(1) of this title or section 856 of this title by distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck stop or safety rest area is (except as provided in subsection (b)<sup>1</sup> of this section) subject to—

(1) twice the maximum punishment authorized by section 841(b) of this title; and

(2) twice any term of supervised release authorized by section 841(b) of this title for a first offense.

#### (c) Subsequent offense

A person who violates section 841(a)(1) of this title or section 856 of this title by distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a)<sup>2</sup> of this section have become final is subject to—

(1) 3 times the maximum punishment authorized by section 841(b) of this title; and

(2) 3 times any term of supervised release authorized by section 841(b) of this title for a first offense.

(Pub. L. 91-513, title II, §409, as added Pub. L. 103-322, title XVIII, §180201(b)(1), Sept. 13, 1994, 108 Stat. 2046.)

#### PRIOR PROVISIONS

A prior section 849, Pub. L. 91-513, title II, §409, Oct. 27, 1970, 84 Stat. 1266; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, related to dangerous special drug offender sentencing, prior to repeal by Pub. L. 98-473, title II, §219(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, eff. Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal.

### § 850. Information for sentencing

Except as otherwise provided in this subchapter or section 242a(a)<sup>1</sup> of title 42, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence under this subchapter or subchapter II of this chapter.

(Pub. L. 91-513, title II, §410, Oct. 27, 1970, 84 Stat. 1269.)

#### REFERENCES IN TEXT

Section 242a of title 42, referred to in text, was repealed by Pub. L. 106-310, div. B, title XXXII, §3201(b)(1), Oct. 17, 2000, 114 Stat. 1190.

### § 851. Proceedings to establish prior convictions

#### (a) Information filed by United States Attorney

(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information

<sup>2</sup> So in original. Probably should be subsection "(b)".

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

<sup>1</sup> So in original. Probably should be subsection "(c)".