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To strengthen the Federal prosecution and seizure of illegal proceeds of international drug dealing and criminal activity, and to provide for the drug testing and treatment of incarcerated offenders and reduce drug trafficking in correctional facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 1998

Mr. LEAHY (for himself, Mr. DASCHLE, Mr. KOHL, Mrs. FEINSTEIN, and Mr. CLELAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To strengthen the Federal prosecution and seizure of illegal proceeds of international drug dealing and criminal activity, and to provide for the drug testing and treatment of incarcerated offenders and reduce drug trafficking in correctional facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Money Laundering Enforcement and Combatting Drugs
6 in Prisons Act of 1998”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTERNATIONAL MONEY LAUNDERING

- Sec. 101. Short title.
- Sec. 102. Illegal money transmitting businesses.
- Sec. 103. Restraint of assets of persons arrested abroad.
- Sec. 104. Access to records in bank secrecy jurisdictions.
- Sec. 105. Civil money laundering jurisdiction over foreign persons.
- Sec. 106. Laundering money through a foreign bank.
- Sec. 107. Specified unlawful activity for money laundering.
- Sec. 108. Criminal forfeiture for money laundering conspiracies.
- Sec. 109. Fungible property in foreign bank accounts.
- Sec. 110. Subpoenas for bank records.
- Sec. 111. Fugitive disentitlement.
- Sec. 112. Admissibility of foreign business records.
- Sec. 113. Charging money laundering as a course of conduct.
- Sec. 114. Venue in money laundering cases.
- Sec. 115. Technical amendment to restore wiretap authority for certain money laundering offenses.

TITLE II—DRUG TESTING AND INTERVENTION FOR INMATES AND PROBATIONERS

- Sec. 201. Short title.
- Sec. 202. Additional requirements for the use of funds under the violent offender incarceration and truth-in-sentencing incentive grant programs.
- Sec. 203. Use of residential substance abuse treatment grants to provide for services during and after incarceration.

3 **TITLE I—INTERNATIONAL** 4 **MONEY LAUNDERING**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Money Laundering
 7 Enforcement Act of 1998”.

8 **SEC. 102. ILLEGAL MONEY TRANSMITTING BUSINESSES.**

9 (a) CIVIL FORFEITURE FOR MONEY TRANSMITTING
 10 VIOLATION.—Section 981(a)(1)(A) of title 18, United
 11 States Code, is amended by striking “or 1957” and insert-
 12 ing “, 1957, or 1960”.

1 (b) SCIENTER REQUIREMENT FOR SECTION 1960
 2 VIOLATION.—Section 1960 of title 18, United States
 3 Code, is amended by adding at the end the following:

4 “(c) SCIENTER REQUIREMENT.—For the purposes of
 5 proving a violation of this section involving an illegal
 6 money transmitting business—

7 “(1) it shall be sufficient for the Government to
 8 prove that the defendant knew that the money trans-
 9 mitting business lacked a license required by State
 10 law; and

11 “(2) it shall not be necessary to show that the
 12 defendant knew that the operation of such a busi-
 13 ness without the required license was an offense
 14 punishable as a felony or misdemeanor under State
 15 law.”.

16 **SEC. 103. RESTRAINT OF ASSETS OF PERSONS ARRESTED**
 17 **ABROAD.**

18 Section 981(b) of title 18, United States Code, is
 19 amended by adding at the end the following:

20 “(3) RESTRAINT OF ASSETS.—

21 “(A) IN GENERAL.—If any person is arrested
 22 or charged in a foreign country in connection with
 23 an offense that would give rise to the forfeiture of
 24 property in the United States under this section or
 25 under the Controlled Substances Act, the Attorney

General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in Rule 43(e) of the Federal Rules of Civil Procedure.

“(B) APPLICATION.—An application for a restraining order under subparagraph (A) shall—

“(i) set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture; and

“(ii) contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.”.

SEC. 104. ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.

Section 986 of title 18, United States Code, is amended by adding at the end the following:

1 “(d) ACCESS TO RECORDS LOCATED ABROAD.—

2 “(1) IN GENERAL.—In any civil forfeiture case,
 3 or in any ancillary proceeding in any criminal for-
 4 feiture case governed by section 413(n) of the Con-
 5 trolled Substances Act (21 U.S.C. 853(n)), the re-
 6 fusals of the claimant to provide financial records lo-
 7 cated in a foreign country in response to a discovery
 8 request or take the action necessary otherwise to
 9 make the records available, shall result in the dis-
 10 missal of the claim with prejudice, if—

11 “(A) the financial records may be mate-
 12 rial—

13 “(i) to any claim or to the ability of
 14 the government to respond to such claim;
 15 or

16 “(ii) in a civil forfeiture case, to the
 17 ability of the government to establish the
 18 forfeitability of the property; and

19 “(B) it is within the capacity of the claim-
 20 ant to waive his or her rights under such se-
 21 crecy laws, or to obtain the financial records
 22 himself or herself, so that the financial records
 23 may be made available.

24 “(2) PRIVILEGE.—Nothing in this subsection
 25 shall be construed to affect the rights of a claimant

1 to refuse production of any records on the basis of
 2 any privilege guaranteed by the Constitution of the
 3 United States or any other provision of Federal
 4 law.”.

5 **SEC. 105. CIVIL MONEY LAUNDERING JURISDICTION OVER**
 6 **FOREIGN PERSONS.**

7 Section 1956(b) of title 18, United States Code, is
 8 amended—

9 (1) by redesignating paragraphs (1) and (2) as
 10 subparagraphs (A) and (B), respectively, and indent-
 11 ing each subparagraph appropriately;

12 (2) by striking “(b) Whoever” and inserting the
 13 following:

14 “(b) CIVIL PENALTIES.—

15 “(1) IN GENERAL.—Whoever”; and

16 (3) by adding at the end the following:

17 “(2) JURISDICTION.—For purposes of adju-
 18 dicating an action filed or enforcing a penalty or-
 19 dered under this section, the district courts of the
 20 United States shall have jurisdiction over any for-
 21 eign person, including any financial institution au-
 22 thorized under the laws of a foreign country, that
 23 commits an offense under subsection (a) involving a
 24 financial transaction that occurs in whole or in part
 25 in the United States, if service of process upon such

foreign person is made in accordance with the Federal Rules of Civil Procedure or the laws of the foreign country in which the foreign person is found.

“(3) SATISFACTION OF JUDGMENT.—In any action described in paragraph (2), the court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.”.

SEC. 106. LAUNDERING MONEY THROUGH A FOREIGN BANK.

Section 1956(c)(6) of title 18, United States Code, is amended to read as follows:

“(6) the term ‘financial institution’ includes—

“(A) any financial institution described in section 5312(a)(2) of title 31, or the regulations promulgated thereunder; and

“(B) any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));”.

SEC. 107. SPECIFIED UNLAWFUL ACTIVITY FOR MONEY LAUNDERING.

(a) IN GENERAL.—Section 1956(c)(7) of title 18, United States Code, is amended—

1 (1) in subparagraph (B)—

2 (A) by striking clause (ii) and inserting the
3 following:

4 “(ii) any act or acts constituting a
5 crime of violence;”; and

6 (B) by adding at the end the following:

7 “(iv) fraud, or any scheme to defraud,
8 committed against a foreign government or
9 foreign governmental entity;

10 “(v) bribery of a public official, or the
11 misappropriation, theft, or embezzlement
12 of public funds by or for the benefit of a
13 public official;

14 “(vi) smuggling or export control vio-
15 lations involving munitions listed in the
16 United States Munitions List or tech-
17 nologies with military applications as de-
18 fined in the Commerce Control List of the
19 Export Administration Regulations; or

20 “(vii) an offense with respect to which
21 the United States would be obligated by a
22 multilateral treaty either to extradite the
23 alleged offender or to submit the case for
24 prosecution, if the offender were found
25 with the territory of the United States;”;

1 (2) in subparagraph (D)—

2 (A) by inserting “section 541 (relating to
3 goods falsely classified),” before “section 542”;

4 (B) by inserting “section 922(l) (relating
5 to the unlawful importation of firearms), sec-
6 tion 924(m) (relating to firearms trafficking),”
7 before “section 956”;

8 (C) by inserting “section 1030 (relating to
9 computer fraud and abuse),” before “1032”;
10 and

11 (D) by inserting “any felony violation of
12 the Foreign Agents Registration Act of 1938
13 (22 U.S.C. 611 et seq.),” before “or any felony
14 violation of the Foreign Corrupt Practices Act”;
15 and

16 (3) in subparagraph (E), by inserting “the
17 Clean Air Act (42 U.S.C. 6901 et seq.),” after “the
18 Safe Drinking Water Act (42 U.S.C. 300f et seq.),”.

19 **SEC. 108. CRIMINAL FORFEITURE FOR MONEY LAUNDER-**
20 **ING CONSPIRACIES.**

21 Section 982(a)(1) of title 18, United States Code, is
22 amended by inserting “or a conspiracy to commit any such
23 offense,” after “of this title,”.

1 **SEC. 109. FUNGIBLE PROPERTY IN FOREIGN BANK AC-**
 2 **COUNTS.**

3 Section 984(d) of title 18, United States Code, is
 4 amended by adding at the end the following:

5 “(3) In this subsection, the term ‘financial institu-
 6 tion’ includes a foreign bank, as defined in section 1(b)(7)
 7 of the International Banking Act of 1978 (12 U.S.C.
 8 3101(7)).”.

9 **SEC. 110. SUBPOENAS FOR BANK RECORDS.**

10 Section 986(a) of title 18, United States Code, is
 11 amended—

12 (1) by striking “section 1956, 1957, or 1960 of
 13 this title, section 5322 or 5324 of title 31, United
 14 States Code” and inserting “section 981 of this
 15 title”;

16 (2) by inserting “before or” before “after”; and

17 (3) by striking the last sentence.

18 **SEC. 111. FUGITIVE DISENTITLEMENT.**

19 (a) IN GENERAL.—Chapter 163 of title 28, United
 20 States Code, is amended by adding at the end the follow-
 21 ing:

22 **“§ 2467. Fugitive disentitlement**

23 “Any person who, in order to avoid criminal prosecu-
 24 tion, purposely leaves the jurisdiction of the United States,
 25 declines to enter or reenter the United States to submit
 26 to the jurisdiction of the United States, or otherwise

1 evades the jurisdiction of a court of the United States in
 2 which a criminal case is pending against the person, may
 3 not use the resources of the courts of the United States
 4 in furtherance of a claim in any related civil forfeiture ac-
 5 tion or a claim in any third-party proceeding in any relat-
 6 ed criminal forfeiture action.”.

7 (b) CONFORMING AMENDMENT.—The analysis for
 8 chapter 163 of title 28, United States Code, is amended
 9 by adding at the end the following:

“2467. Fugitive disentitlement.”.

10 **SEC. 112. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.**

11 (a) IN GENERAL.—Chapter 163 of title 28, United
 12 States Code, is amended by adding at the end the follow-
 13 ing:

14 **“§ 2468. Foreign records**

15 “(a) DEFINITIONS.—In this section—

16 “(1) the term ‘business’ includes business, insti-
 17 tution, association, profession, occupation, and call-
 18 ing of every kind whether or not conducted for prof-
 19 it;

20 “(2) the term ‘foreign certification’ means a
 21 written declaration made and signed in a foreign
 22 country by the custodian of a record of regularly
 23 conducted activity or another qualified person, that
 24 if falsely made, would subject the maker to criminal
 25 penalty under the law of that country;

1 “(3) the term ‘foreign record of regularly con-
2 ducted activity’ means a memorandum, report,
3 record, or data compilation, in any form, of acts,
4 events, conditions, opinions, or diagnoses, main-
5 tained in a foreign country; and

6 “(4) the term ‘official request’ means a letter
7 rogatory, a request under an agreement, treaty or
8 convention, or any other request for information or
9 evidence made by a court of the United States or an
10 authority of the United States having law enforce-
11 ment responsibility, to a court or other authority of
12 a foreign country.

13 “(b) ADMISSIBILITY.—In a civil proceeding in a court
14 of the United States, including a civil forfeiture proceeding
15 and a proceeding in the United States Claims Court and
16 the United States Tax Court, unless the source of infor-
17 mation or the method or circumstances of preparation in-
18 dicate lack of trustworthiness, a foreign record of regu-
19 larly conducted activity (or a duplicate of such record),
20 obtained pursuant to an official request, shall not be ex-
21 cluded as evidence by the hearsay rule if a foreign certifi-
22 cation, also obtained pursuant to the same official request
23 or subsequent official request that adequately identifies
24 such foreign record, attests that—

1 “(1) the foreign record was made, at or near
2 the time of the occurrence of the matters set forth,
3 by (or from information transmitted by) a person
4 with knowledge of those matters;

5 “(2) the foreign record was kept in the course
6 of a regularly conducted business activity;

7 “(3) the business activity made such a record
8 as a regular practice; and

9 “(4) if the foreign record is not the original, the
10 record is a duplicate of the original.

11 “(c) FOREIGN CERTIFICATION.—A foreign certifi-
12 cation under this section shall authenticate a record or
13 duplicate described in subsection (b).

14 “(d) NOTICE.—

15 “(1) IN GENERAL.—As soon as practicable
16 after a responsive pleading has been filed, a party
17 intending to offer in evidence under this section a
18 foreign record of regularly conducted activity shall
19 provide written notice of that intention to each other
20 party.

21 “(2) OPPOSITION.—A motion opposing admis-
22 sion in evidence of a record under paragraph (1)
23 shall be made by the opposing party and determined
24 by the court before trial. Failure by a party to file
25 such motion before trial shall constitute a waiver of

1 objection to such record, except that the court for
 2 cause shown may grant relief from the waiver.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
 4 chapter 163 of title 28, United States Code, is amended
 5 by adding at the end the following:

“2468. Foreign records.”.

6 **SEC. 113. CHARGING MONEY LAUNDERING AS A COURSE OF**
 7 **CONDUCT.**

8 Section 1956(h) of title 18, United States Code, is
 9 amended—

10 (1) by striking “(h) Any person” and inserting
 11 the following:

12 “(h) CONSPIRACY; MULTIPLE VIOLATIONS.—

13 “(1) CONSPIRACY.—Any person”; and

14 (2) by adding at the end the following:

15 “(2) MULTIPLE VIOLATIONS.—Any person who
 16 commits multiple violations of this section or section
 17 1957 that are part of the same scheme or continuing
 18 course of conduct may be charged, at the election of
 19 the Government, in a single count in an indictment
 20 or information.”.

21 **SEC. 114. VENUE IN MONEY LAUNDERING CASES.**

22 Section 1956 of title 18, United States Code, is
 23 amended by adding at the end the following:

24 “(i) VENUE.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), a prosecution for an offense under this
 3 section or section 1957 may be brought in any dis-
 4 trict in which the financial or monetary transaction
 5 is conducted, or in which a prosecution for the un-
 6 derlying specified unlawful activity could be brought.

7 “(2) EXCEPTION.—A prosecution for an at-
 8 tempt or conspiracy offense under this section or
 9 section 1957 may be brought in the district in which
 10 venue would lie for the completed offense under
 11 paragraph (1), or in any other district in which an
 12 act in furtherance of the attempt or conspiracy took
 13 place.”.

14 **SEC. 115. TECHNICAL AMENDMENT TO RESTORE WIRETAP**
 15 **AUTHORITY FOR CERTAIN MONEY LAUNDER-**
 16 **ING OFFENSES.**

17 Section 2516(1)(g) of title 18, United States Code,
 18 is amended by striking “of title 31, United States Code
 19 (dealing with the reporting of currency transactions)” and
 20 inserting “or 5324 of title 31 (dealing with the reporting
 21 and illegal structuring of currency transactions)”.

1 **TITLE II—DRUG TESTING AND**
 2 **INTERVENTION FOR INMATES**
 3 **AND PROBATIONERS**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “Combatting Drugs
 6 in Prisons Act of 1998”.

7 **SEC. 202. ADDITIONAL REQUIREMENTS FOR THE USE OF**
 8 **FUNDS UNDER THE VIOLENT OFFENDER IN-**
 9 **CARCERATION AND TRUTH-IN-SENTENCING**
 10 **INCENTIVE GRANT PROGRAMS.**

11 Section 20105(b) of the Violent Crime Control and
 12 Law Enforcement Act of 1994 (42 U.S.C. 13705(b)) is
 13 amended—

14 (1) by striking “(b) To be eligible” and insert-
 15 ing the following:

16 “(b) ADDITIONAL REQUIREMENTS.—

17 “(1) ELIGIBILITY FOR A GRANT.—To be eligi-
 18 ble”;

19 (2) by striking “a State shall provide assur-
 20 ances” and inserting the following: “a State shall—

21 “(A) provide assurances”;

22 (3) by striking the period at the end and insert-
 23 ing “; and”; and

24 (4) by adding at the end the following:

1 “(B) not later than September 1, 1998,
2 have established and implemented, consistent
3 with guidelines issued by the Attorney General,
4 a program of drug testing and intervention for
5 appropriate categories of convicted offenders
6 during periods of incarceration and criminal
7 justice supervision, with sanctions (including
8 denial or revocation of release) for positive drug
9 tests.

10 “(2) USE OF FUNDS.—Notwithstanding section
11 20102, amounts received by a State pursuant to sec-
12 tion 20103 or section 20104 may be—

13 “(A) applied to the cost of offender drug
14 testing and appropriate intervention programs
15 during periods of incarceration and criminal
16 justice supervision, consistent with guidelines
17 issued by the Attorney General;

18 “(B) used by a State to pay the costs of
19 providing to the Attorney General a baseline
20 study, which shall be consistent with guidelines
21 issued by the Attorney General, on the prison
22 drug abuse problem in the State; and

23 “(C) used by a State to develop policies,
24 practices, or laws establishing, in accordance
25 with guidelines issued by the Attorney General,

1 a system of sanctions and penalties to address
 2 drug trafficking within and into correctional fa-
 3 cilities under the jurisdiction of the State.”.

4 **SEC. 203. USE OF RESIDENTIAL SUBSTANCE ABUSE TREAT-**
 5 **MENT GRANTS TO PROVIDE FOR SERVICES**
 6 **DURING AND AFTER INCARCERATION.**

7 Section 1901 of part S of the Omnibus Crime Control
 8 and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is
 9 amended by adding at the end the following:

10 “(c) ADDITIONAL USE OF FUNDS.—Each State that
 11 demonstrates that the State has established 1 or more res-
 12 idential substance abuse treatment programs that meet
 13 the requirements of this part may use amounts made
 14 available under this part for drug treatment and to impose
 15 appropriate sanctions for positive drug tests, both during
 16 incarceration and after release.”.

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