

United States Code Annotated [Currentness](#)
Title 21. Food and Drugs ([Refs & Annos](#))
Chapter 13. Drug Abuse Prevention and Control ([Refs & Annos](#))
 [↖] [Subchapter I](#). Control and Enforcement
 [↖] [Part C](#). Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances
 → **§ 828. Order forms**

(a) Unlawful distribution of controlled substances

It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant to this section.

(b) Nonapplicability of provisions

Nothing in subsection (a) of this section shall apply to--

(1) the exportation of such substances from the United States in conformity with subchapter II of this chapter;

(2) the delivery of such a substance to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution by the owner of the substance to a third person, this paragraph shall not relieve the distributor from compliance with subsection (a) of this section.

(c) Preservation and availability

(1) Every person who in pursuance of an order required under subsection (a) of this section distributes a controlled substance shall preserve such order for a period of two years, and shall make such order available for inspection and copying by officers and employees of the United States duly authorized for that purpose by the Attorney General, and by officers or employees of States or their political subdivisions who are charged with the enforcement of State or local laws regulating the production, or regulating the distribution or dispensing, of controlled substances and who are authorized under such laws to inspect such orders.

(2) Every person who gives an order required under subsection (a) of this section shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant to this section, and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying by the officers and employees mentioned in paragraph (1) of this subsection.

(d) Issuance

(1) The Attorney General shall issue forms pursuant to subsections (a) and (c)(2) of this section only to persons validly registered under [section 823](#) of this title (or exempted from registration under [section 822\(d\)](#) of this title). Whenever any such form is issued to a person, the Attorney General shall, before delivery thereof, insert therein the

name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances.

(2) The Attorney General may charge reasonable fees for the issuance of such forms in such amounts as he may prescribe for the purpose of covering the cost to the United States of issuing such forms, and other necessary activities in connection therewith.

(e) Unlawful acts

It shall be unlawful for any person to obtain by means of order forms issued under this section controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business in such substances or in the course of his professional practice or research.

CREDIT(S)

(Pub.L. 91-513, Title II, § 308, Oct. 27, 1970, 84 Stat. 1259.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Acts. House Report No. 91-1444 and Conference Report No. 91-1603, see 1970 U.S. Code Cong. and Adm. News, p. 4566.

References in Text

Schedules I and II, referred to in subsec. (a), are set out in § 812(c) of this title.

“Subchapter II of this chapter”, referred to in subsec. (b)(1), was in the original “title III”, meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of §§ 1101 to 1105 of Title III, see Tables.

Effective and Applicability Provisions

Section effective the first day of the seventh calendar month that begins after the day immediately preceding Oct. 27, 1970, see § 704(a) of Pub.L. 91-513, set out as a note under § 801 of this title.

CODE OF FEDERAL REGULATIONS

Forms requirements, see [21 CFR § 1305.01 et seq.](#)

LIBRARY REFERENCES

American Digest System

Drugs and Narcotics ↪61, 68, 73, 102.

Corpus Juris Secundum

[CJS Drugs and Narcotics § 312](#), Dispensing or Distributing--Distributing Without Required Written Order.

RESEARCH REFERENCES

ALR Library

[33 ALR, Fed. 220](#), Federal Criminal Liability of Licensed Physician for Unlawfully Prescribing or Dispensing “Controlled Substance” or Drug in Violation of the Controlled Substances Act ([21 U.S.C.A. §§ 801 et seq.](#))...

[86 ALR 623](#), Construction, as Regards Kind or Character of Treatment, of Restrictive Medical or Surgical License.

Encyclopedias

[8 Am. Jur. Trials 573](#), Defense of Narcotics Cases.

[Am. Jur. 2d Drugs and Controlled Substances § 78](#), Order Forms.

[Am. Jur. 2d Drugs and Controlled Substances § 95](#), Exportation.

[Am. Jur. 2d Drugs and Controlled Substances § 162](#), Generally; Manufacture, Distribution, or Possession of Substances.

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[1](#). Prior law

Legislative history and language of former §§ 4741 et seq. of Title 26 disclosed congressional intention that nonregistrant under former §§ 4751 to 4753 of Title 26 should be able to obtain order form and prepay transfer tax. [Leary v. U.S., U.S.Tex.1969, 89 S.Ct. 1532, 395 U.S. 6, 23 L.Ed.2d 57. Internal Revenue](#)  [4318](#)

Fact that heroin was declared contraband under former § 1402 of Title 18 did not render inapplicable former § 4705 of Title 26 [now covered by this section] which prohibited transfer of certain drugs unless pursuant to written order

on official order form secured by registered dealer from Secretary. [Chisum v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 207, Internal Revenue](#) ↪5259

Former § 1402 of Title 18 which declared heroin contraband could not have been interpreted as declaring all heroin contraband for purposes of former §§ 4701 et seq. of Title 26. [U. S. v. Lawler, C.A.7 \(Ill.\) 1969, 413 F.2d 622](#), certiorari denied [90 S.Ct. 698, 396 U.S. 1046, 24 L.Ed.2d 691, Internal Revenue](#) ↪5251

Prior offenses consisting of violation of federal narcotic laws were covered by former § 174 of this title and said section covered offenses relating to unlawful possession and transfer of marihuana and included the offense of transferring such drug without a written order. [Hollowell v. U. S., C.A.6 \(Ohio\) 1957, 245 F.2d 829, Sentencing And Punishment](#) ↪1257

Section 2591 of Title 26 [I.R.C.1939] making it unlawful to transfer marihuana was not so limited as to apply solely to individuals making a practice of illicitly trading in marihuana, and prohibited even a single transfer made in contravention of its provisions. [U S v. Rosario, S.D.N.Y.1953, 148 F.Supp. 634, Internal Revenue](#) ↪5252

2. Constitutionality



Seller's privilege under [U.S.C.A.Const. Amend. 14](#) against self-incrimination was not violated by obligation under former §§ 4705 and 4742 of Title 26 [now covered by this section] to sell marijuana or heroin only in pursuance of official order form on which seller's name must appear. [Minor v. U. S., U.S.N.Y.1969, 90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283](#). See, also, [Halling v. U.S., C.A.Ga.1971, 440 F.2d 793](#); [U.S. v. Harrison, 1970, 432 F.2d 1328, 139 U.S.App.D.C. 266](#); [U.S. v. Kellerman, C.A.Okl.1970, 432 F.2d 371](#); [U.S. v. Escobedo, C.A.Ill.1970, 430 F.2d 14](#), certiorari denied [91 S.Ct. 1632, 402 U.S. 951, 29 L.Ed.2d 122](#); [Duran v. U.S., C.A.Fla.1970, 426 F.2d 230](#); [U.S. v. Young, C.A.Minn.1970, 422 F.2d 302](#), certiorari denied [90 S.Ct. 1718, 398 U.S. 914, 26 L.Ed.2d 78](#); [Jordan v. U.S., C.A.Cal.1969, 416 F.2d 338](#), certiorari denied [90 S.Ct. 930, 397 U.S. 920, 25 L.Ed.2d 101](#), rehearing denied [90 S.Ct. 1232, 1233, 397 U.S. 1018, 25 L.Ed.2d 433](#); [U.S. v. Spencer, C.A.Ill.1969, 415 F.2d 1301](#); [U.S. v. Lawler, C.A.Ill.1969, 413 F.2d 622](#), certiorari denied [90 S.Ct. 698, 396 U.S. 1046, 24 L.Ed.2d 691](#); [U.S. v. Buie, C.A.N.Y.1969, 407 F.2d 905](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283](#); [U.S. v. Morales, C.A.N.Y.1969, 406 F.2d 1135](#), certiorari denied [90 S.Ct. 933, 397 U.S. 927, 25 L.Ed.2d 106, Criminal Law](#) ↪393(1)


Provisions of former § 4705 of Title 26 [now covered by this section] which required sale of heroin to be in pursuance of official order form in which seller's name had to appear was not unenforceable as part of a revenue measure on basis that it operated to prevent large classes of people from obtaining order forms and hence from acquiring drugs. [Minor v. U. S., U.S.N.Y.1969, 90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283, Internal Revenue](#) ↪5251


Former §§ 4704 and 4705 [now covered by this section] of Title 26, prohibiting sale of narcotic drugs other than in or from original stamped package and sale of narcotic drugs not in pursuance of purchaser's written order, did not unconstitutionally require acts of self-incrimination. [U. S. v. Mills, C.A.D.C.1972, 463 F.2d 291, 149 U.S.App.D.C. 345, Criminal Law](#) ↪393(1)



Former § 4705 of Title 26 [now covered by this section] making it unlawful to sell, etc., narcotic drugs without written order form and prescribing penalty are not impermissible federal invasion of police powers reserved to states by [U.S.C.A.Const. Amend. 10, U. S. v. Smart, C.A.2 \(N.Y.\) 1971, 448 F.2d 931](#), certiorari denied [92 S.Ct. 1269, 405 U.S. 998, 31 L.Ed.2d 467](#), rehearing denied [92 S.Ct. 1781, 406 U.S. 938, 32 L.Ed.2d 139, States](#) ↪4.4(2)


Former § 4705 of Title 26 [now covered by this section] proscribing obtaining narcotic drugs by means of an order

form for any purpose other than conducting a lawful business did not punish one for nonaction, but penalized one who ordered narcotic drugs with intent to sell or otherwise dispose of them illegitimately, and was not void for vagueness. [U. S. v. Netski, C.A.9 \(Nev.\) 1971, 448 F.2d 744](#), certiorari denied [92 S.Ct. 274, 404 U.S. 939, 30 L.Ed.2d 252](#). [Internal Revenue](#)  [5251](#); [Internal Revenue](#)  [5259](#)



With respect to counts charging the sale, barter, exchange, and giving away of drug not in pursuance of a written order, former § 4705 of Title 26 [now covered by this section] requiring transfers to be made pursuant to official order form was not unconstitutional on the ground that full compliance would require self-incrimination as the evidence clearly showed that defendant's customer was not a registered buyer so the possibility of incrimination was purely hypothetical leaving for defendant, if he was to achieve full and literal compliance with that section, only one alternative which was not to sell. [Burgess v. U. S., C.A.D.C.1970, 440 F.2d 226, 142 U.S.App.D.C. 198](#). [Criminal Law](#)  [393\(1\)](#)



Even though illegal dealer in narcotics was exempt from occupational tax imposed by former § 4721 of Title 26 since his supplier might have been a lawful importer who neglected to pay his own occupational tax or sale may have involved narcotics subject to excise tax due from original importer or manufacturer under former § 4701 of Title 26 but unpaid and government had valid interest in obtaining information requested in order form required to be received by person selling heroin, former § 4705 of Title 26 [now covered by this section] requiring seller to receive form was not invalid as in violation of [U.S.C.A.Const. Amend. 10](#) on theory that information sought was not needed in collection of excise and occupational taxes imposed by former §§ 4701 and 4721 of Title 26. [U. S. v. Davidson, C.A.1 \(Mass.\) 1970, 428 F.2d 461](#), certiorari denied [91 S.Ct. 154, 400 U.S. 910, 27 L.Ed.2d 149](#). [States](#)  [4.4\(1\)](#)

Former § 4742 of Title 26 imposing obligation to sell marihuana only pursuant to written order on official order form on which name of seller appears was not objectionable as having no legitimate relation to raising of revenue or to control of interstate or foreign commerce or as constituting a penal statute falling within police powers of several states and therefore in an area forbidden to federal government. [U. S. v. Levy, C.A.1 \(Mass.\) 1970, 428 F.2d 211](#), certiorari denied [91 S.Ct. 64, 400 U.S. 832, 27 L.Ed.2d 63](#). [Internal Revenue](#)  [5251](#); [States](#)  [4.16\(2\)](#)


Former §§ 4705 and 4742 of Title 26 [now covered by this section] prohibiting transfer of marijuana without first securing required order form did not violate privilege against self-incrimination under [U.S.C.A.Const. Amend. 5](#). [Alvarez v. U. S., C.A.5 \(Fla.\) 1970, 426 F.2d 301](#). See, also, [Wood v. U.S., C.A.Nev.1971, 436 F.2d 589](#); [U.S. v. Weathers, C.A.Pa.1970, 431 F.2d 1258](#); [U.S. v. McKnight, C.A.Ill.1970, 427 F.2d 75](#), certiorari denied [91 S.Ct. 124, 400 U.S. 880, 27 L.Ed.2d 118](#); [U.S. v. Bradley, C.A.Ill.1970, 426 F.2d 148](#); [U.S. v. Wong, C.A.Cal.1970, 425 F.2d 1077](#); [Ramseur v. U.S., C.A.Tenn.1970, 425 F.2d 413](#); [U.S. v. Soriano, C.A.Fla.1970, 423 F.2d 1123](#); [Estrella-Ortega v. U.S., C.A.Ariz.1970, 423 F.2d 509](#); [Wallace v. U.S., C.A.Fla.1970, 421 F.2d 1390](#); [U.S. v. Watson, C.A.Cal.1970, 421 F.2d 1357](#); [U.S. v. Williams, C.A.Mo.1970, 421 F.2d 529](#); [McConney v. U.S., C.A.Cal.1969, 421 F.2d 248](#), certiorari denied [91 S.Ct. 39, 400 U.S. 821, 27 L.Ed.2d 49](#), rehearing denied [91 S.Ct. 351, 400 U.S. 961, 27 L.Ed.2d 270](#); [U.S. v. Mastrianni, C.A.Conn.1969, 420 F.2d 483](#); [U.S. v. Kelly, C.A.N.Y.1969, 420 F.2d 26](#); [McClain v. U.S., C.A.Cal.1969, 417 F.2d 489](#), certiorari denied [90 S.Ct. 996, 397 U.S. 965, 25 L.Ed.2d 257](#), rehearing denied [90 S.Ct. 1352, 397 U.S. 1059, 25 L.Ed.2d 680](#); [U.S. v. Buie, C.A.N.Y.1969, 407 F.2d 905](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283](#); [Sanchez v. U.S., C.A.Tex.1968, 400 F.2d 92](#), certiorari denied [91 S.Ct. 1622, 402 U.S. 945, 29 L.Ed.2d 114](#); [U.S. v. Minor, C.A.N.Y.1968, 398 F.2d 511](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283](#); [U.S. v. Oliveros, C.A.N.Y.1968, 398 F.2d 349](#), certiorari denied [90 S.Ct. 2248, 399 U.S. 929, 26 L.Ed.2d 796](#); [Barrett v. U.S., D.C.Minn.1969, 307 F.Supp. 973](#); [Fields v. U.S., D.C.Va.1968, 287 F.Supp. 606](#). [Criminal Law](#)  [393\(1\)](#)


Former § 4704 of Title 26 which forbade purchasing, selling, dispensing or distributing heroin not in or from original tax stamped packages and former § 4705 of Title 26 [now covered by this section] which forbade selling, barter-


ing, exchanging or giving heroin except pursuant to a written order on a form issued by the Secretary of the Treasury were not unconstitutional on theory that they were not truly revenue measures. [Wilson v. U. S., C.A.3 \(Pa.\) 1970, 426 F.2d 246](#). [Internal Revenue](#)  [5251](#); [Internal Revenue](#)  [4306](#)


Former § 4705 of Title 26 [now covered by this section] prohibiting selling of narcotic drugs without written order forms required by law was not unconstitutional as violating privilege against self-incrimination or as not reasonably related to taxing authority conferred on Congress by Constitution. [U. S. v. Johnson, C.A.9 \(Cal.\) 1970, 423 F.2d 621](#), certiorari denied [90 S.Ct. 1500, 397 U.S. 1063, 25 L.Ed.2d 685](#). [Criminal Law](#)  [393\(1\)](#); [Internal Revenue](#)  [5251](#)


Former § 174 of this title which established offense of selling cocaine without order form was constitutional. [Kay v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 1007](#). [Internal Revenue](#)  [5251](#)

Former § 4705 of Title 26 [now covered by this section] which prohibited transfer of certain drugs unless pursuant to written order on official order form, secured by registered dealer from secretary, was not invalid on theory that it was penal rather than taxing statute and thus beyond power of Congress to enact. [Chisum v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 207](#). [Internal Revenue](#)  [5251](#)

Former § 4705 of Title 26 [now covered by this section] prohibiting transfer of heroin unless pursuant to written order on official order form, secured by registered dealer from secretary did not violate transferor's right against self-incrimination on theory that form, when completed as required by that section, contained incriminating information, had to be kept available for inspection by law enforcement officers, and had to be filed with Secretary. [Chisum v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 207](#). [Criminal Law](#)  [393\(1\)](#)

Former §§ 4705 and 4742 of Title 26 [now covered by this section] making it unlawful to transfer narcotics and marijuana without a written order of the Secretary of the Treasury were constitutional. [Thompson v. U. S., C.A.5 \(Fla.\) 1970, 421 F.2d 174](#). See, also, [Taylor v. U.S., C.A.Mo.1970, 423 F.2d 1289](#); [U.S. v. Carlisle, D.C.Okl.1969, 303 F.Supp. 627](#), affirmed [418 F.2d 921](#). [Internal Revenue](#)  [5251](#)

Former § 4705 of Title 26 [now covered this section] which prohibited sale of narcotics except in pursuance of order on form issued by Secretary of the Treasury was constitutional on ground that because Congress declared heroin contraband no legitimate revenue-collection purpose remained by which to justify application of taxing statute to heroin, since former § 1402 of Title 18 expressly required only the surrender of heroin lawfully accumulated prior to 1956. [U. S. v. Lawler, C.A.7 \(Ill.\) 1969, 413 F.2d 622](#), certiorari denied [90 S.Ct. 698, 396 U.S. 1046, 24 L.Ed.2d 691](#). [Internal Revenue](#)  [5251](#)

Even if former § 1402 of Title 18 declaring heroin contraband were to be interpreted as declaring all possession of heroin illegal, that would not render unconstitutional former § 4705 of Title 26 [now covered by this section] prohibiting sale of heroin except in pursuance of order on form issued by Secretary of the Treasury since the unlawfulness of an activity does not prevent its taxation. [U. S. v. Lawler, C.A.7 \(Ill.\) 1969, 413 F.2d 622](#), certiorari denied [90 S.Ct. 698, 396 U.S. 1046, 24 L.Ed.2d 691](#). [Internal Revenue](#)  [5251](#)

Prosecution of retail druggist for violation of the narcotic laws, under former § 4705 of Title 26 [now covered by this section] which prohibited suspension of sentence or granting of probation if conviction were had, rather than under the "dispensing from" provision of former § 4704 of Title 26 under which defendant would have been eligible for suspension of sentence or probation upon conviction, did not unconstitutionally deprive trial judge of discretion in sentencing. [Black v. U. S., C.A.5 \(Tex.\) 1968, 405 F.2d 187](#), certiorari denied [89 S.Ct. 1477, 394 U.S. 990, 22](#)

[L.Ed.2d 765. Criminal Law](#) ↪29(8); [Sentencing And Punishment](#) ↪1848

3. Construction

If former § 4705 of Title 26 [now covered by this section] providing that no sale of narcotic drugs could be made except to one who furnished appropriate written order form served distinct Congressional purpose and could be meaningfully enforced apart from other statutes allegedly posing self-incrimination dilemma, it was incumbent upon court of appeals to consider it as isolated enactment in order to avoid adjudication of serious constitutional issue. [U. S. v. Minor, C.A.2 \(N.Y.\) 1968, 398 F.2d 511](#), certiorari granted [89 S.Ct. 2000, 395 U.S. 932, 23 L.Ed.2d 447](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283. Constitutional Law](#) ↪975

It is not function of court of appeals to anticipate changes of doctrine and thus render ineffective vital statutory scheme designed by Congress to regulate potentially dangerous traffic in narcotic drugs. [U. S. v. Minor, C.A.2 \(N.Y.\) 1968, 398 F.2d 511](#), certiorari granted [89 S.Ct. 2000, 395 U.S. 932, 23 L.Ed.2d 447](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283. Constitutional Law](#) ↪961

4. Purpose

Effect of § 2554 of Title 26 [I.R.C.1939] relating to acquisition of certain drugs by written order forms for purpose other than use, sale, or distribution in lawful business or practice of pharmacy profession, was to forestall acquisition of such drugs by persons who would sell them without prescribed order forms or their equivalent and thus interfere with tax inspection scheme which the keeping of such records was designed to facilitate. [U. S. v. Hymowitz, C.A.2 \(N.Y.\) 1952, 196 F.2d 819. Internal Revenue](#) ↪5259

Section 2591(a) of Title 26 [I.R.C.1939] inhibiting the transfer of marihuana, was designed to eliminate drug traffic at its source, so far as possible, and it was not rendered invalid by its application, in such respect, to both peddlers and addicts. [U. S. v. Taylor, D.C.Minn.1953, 116 F.Supp. 439](#), appeal dismissed [214 F.2d 351. Internal Revenue](#) ↪5251

5. Retroactive effect of judicial decisions

Principles announced in Supreme Court decision holding that where compliance with transfer tax provisions of former § 4741 of Title 26 would have exposed defendant to prosecution under state narcotics laws, plea of self-incrimination was complete defense in prosecution for noncompliance are to be given prospective application only. [U. S. v. Scardino, C.A.5 \(Ga.\) 1969, 414 F.2d 925. Courts](#) ↪100(1)

6. Savings provision

Repeal of former § 4705 of Title 26 [now covered by this section] proscribing sale of cocaine after commission of offense did not preclude prosecution and conviction in view of saving clause. [U. S. v. Lopez, C.A.9 \(Cal.\) 1972, 458 F.2d 382. Criminal Law](#) ↪15

7. Rules and regulations

Regulations promulgated under former §§ 4741 et seq. of Title 26 which required comparison of signatures were contrary to such sections and beyond scope of regulation-making authority delegated by Congress. [Leary v. U.S., U.S.Tex.1969, 89 S.Ct. 1532, 395 U.S. 6, 23 L.Ed.2d 57. Internal Revenue](#) ↪4307

To the extent that any regulation which would require seller of narcotic to participate in or insure his own incrimination through the order form requirement might jeopardize constitutionality of former § 4705 of Title 26 [now covered by this section] prohibiting sale of narcotics to a purchaser who had not obtained an order form from Treasury Department, the regulation would have to give way. [U. S. v. Lawler, C.A.7 \(Ill.\) 1969, 413 F.2d 622](#), certiorari denied [90 S.Ct. 698, 396 U.S. 1046, 24 L.Ed.2d 691](#). [Internal Revenue](#) ☞ [5259](#)

8. Persons required to obtain order forms

One who acts as principal by buying narcotics from supplier and selling to buyer, or as coprincipal by joining supplier in selling to buyer, or as agent of supplier by effecting supplier's sale to buyer is under duty to make sale pursuant to written order form required, even if he is also buyer's agent. [U. S. v. Barcella, C.A.1 \(Mass.\) 1970, 432 F.2d 570](#). [Internal Revenue](#) ☞ [5259](#)

One who was strictly agent of buyer when he delivered drugs to buyer without obtaining order form generally required by former § 4705 of Title 26 [now covered by this section] for sale of narcotic drugs was not in violation of such provisions, but if he was playing any other role in transaction, either as alternative or in addition to his role as agent for buyer, procuring agency defense was not available. [U. S. v. Barcella, C.A.1 \(Mass.\) 1970, 432 F.2d 570](#). [Controlled Substances](#) ☞ [47](#)


Conviction of defendant of unlawfully transferring marijuana not in pursuance of written order required by this title was not invalid on theory that the sales were made to federal undercover agents exempt from order form requirements, inasmuch as former § 4742 of Title 26 [now covered by this section] confined exemption to agents lawfully engaged in making purchase for defined purposes, not including undercover buys. [U. S. v. Kellerman, C.A.10 \(Okla.\) 1970, 432 F.2d 371](#). [Internal Revenue](#) ☞ [5259](#)


Purchase of marijuana by state undercover agent to close down one avenue to illegal traffic of marijuana and not made for Department of State, Public Health Service, or for any hospital or prison was not within government and state officials exception to former § 4742 of Title 26 [now covered by this section] prohibiting transfer of marijuana unless made pursuant to official order form. [U. S. v. Soriano, C.A.5 \(Fla.\) 1970, 423 F.2d 1123](#). [Internal Revenue](#) ☞ [5259](#)

Defendant, who was charged with narcotics violations, was not deprived of due process on theory that it had been impossible for him to secure order form from narcotics agent, in view of fact that narcotics agents were not exempt from registration requirements and were required to use order forms. [Chisum v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 207](#). [Constitutional Law](#) ☞ [4509\(9\)](#); [Controlled Substances](#) ☞ [6](#)


Under federal narcotics laws providing that no sale of narcotics may be made except to one who furnishes appropriate written order form, purchaser of controlled substance and not seller is under compulsion to apply for and obtain requisite order form. [U. S. v. Minor, C.A.2 \(N.Y.\) 1968, 398 F.2d 511](#), certiorari granted [89 S.Ct. 2000, 395 U.S. 932, 23 L.Ed.2d 447](#), affirmed [90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283](#). [Internal Revenue](#) ☞ [5259](#)

Provision of former § 4705 of Title 26 [now covered by this section] making it unlawful to sell narcotic drug without written order was not limited in its application to those who were formerly required to register and pay tax. [Diggs v. U. S., C.A.5 \(La.\) 1965, 352 F.2d 327](#). [Internal Revenue](#) ☞ [5259](#)


The phrase “any person” in provision of former § 4705 of Title 26 [now covered by this section] that it was unlawful for “any person” to sell, barter, exchange, or give away any of the mentioned drugs, except in pursuance of a written order, included all persons and not merely an importer, manufacturer, producer, or compounder. [Taylor v. U. S., C.A.8 \(Mo.\) 1956, 229 F.2d 826](#), certiorari denied [76 S.Ct. 1055, 351 U.S. 986, 100 L.Ed. 1500](#). [Internal Revenue](#)  [5259](#)


Section 2554 of Title [I.R.C.1939], which made it an offense to dispense designated drugs except in pursuance of a written order on an official form, applied to physicians, dentists and veterinary surgeons except when they brought themselves within the specific exemption. [Mitchell v. U. S., C.C.A.10 \(Okla.\) 1944, 143 F.2d 953](#). [Internal Revenue](#)  [5259](#)


9. Preservation and availability of order forms


Requirements of former § 4742 of Title 26 [now covered by this section] relating to preservation and inspection of order forms were not within “required records” doctrine in that defendant was required simply to provide information unrelated to any records he may have maintained, there were no public aspects to information sought, and requirements were directed to selective group inherently suspect of criminal activities. [U. S. v. Covington, S.D. Ohio 1968, 282 F.Supp. 886, 16 Ohio Misc. 236, 44 O.O.2d 477, 45 O.O.2d 181](#), probable jurisdiction noted [89 S.Ct. 238, 393 U.S. 910, 21 L.Ed.2d 197](#), affirmed [89 S.Ct. 1559, 395 U.S. 57, 23 L.Ed.2d 94, 50 O.O.2d 35](#). [Criminal Law](#)  [393\(1\)](#)


10. Elements of offense--Generally



In prosecution for an unlawful sale of heroin hydrochloride, it was not incumbent on the government to prove that the purchase was not made with a written order on prescribed form. [U. S. v. Bishop, C.A.7 \(Ill.\) 1972, 457 F.2d 260](#). [Controlled Substances](#)  [68](#)

In prosecution for sale of narcotics, it was not incumbent on government to prove that purchase was not made with a written order on prescribed form. [U. S. v. Peterson, C.A.7 \(Ill.\) 1970, 424 F.2d 1357](#), certiorari denied [91 S.Ct. 357, 400 U.S. 958, 27 L.Ed.2d 266](#). [Controlled Substances](#)  [68](#)

Act of transferring marijuana without receiving requisite government form is unlawful, notwithstanding fact that the transferee does not have the necessary form. [Johnson v. U. S., C.A.9 \(Nev.\) 1968, 404 F.2d 1069](#), certiorari denied [89 S.Ct. 1761, 395 U.S. 912, 23 L.Ed.2d 224](#). [Internal Revenue](#)  [5259](#)

In narcotics prosecution, it was not incumbent upon government to allege or prove that defendant had not received written Treasury order from accomplice. [U. S. v. Palmiotto, C.A.2 \(N.Y.\) 1965, 347 F.2d 223](#). [Internal Revenue](#)  [5285](#)

Identity of purchaser was not element of offense of possession and sale of narcotic drug knowing it to have been illegally imported or of sale of narcotic drug not pursuant to required order form. [U. S. v. Rosa, C.A.2 \(Conn.\) 1965, 343 F.2d 123](#). [Controlled Substances](#)  [34](#)

Motive with which one may have engaged in selling, or in conspiring to effect sales, of narcotic drugs without obtaining prescribed order form is immaterial. [Davis v. U. S., C.A.8 \(Mo.\) 1962, 306 F.2d 317](#), certiorari denied [83 S.Ct. 734, 372 U.S. 920, 9 L.Ed.2d 725](#). [Conspiracy](#)  [28\(3\)](#); [Controlled Substances](#)  [33](#)

Former §§ 4705 and 4742 of Title 26 [now covered by this section] did not create the offense of engaging in the business of selling forbidden drugs, but penalized any sale made in the absence of either of the qualifying requirements set forth in former § 4705 or former § 4704 of Title 26. [U. S. v. Johnson, C.A.7 \(Ill.\) 1956, 235 F.2d 159](#), certiorari denied [77 S.Ct. 567, 352 U.S. 1006, 1 L.Ed.2d 551](#). [Internal Revenue](#) ↪5259

Name of purchaser is not essential element of offense of unlawful sale of narcotics without prescribed order form. [Scott v. U. S., D.C.N.J.1964, 231 F.Supp. 360](#), affirmed [342 F.2d 813](#). [Internal Revenue](#) ↪5259

11. ---- Demand and production of order form, elements of offense

In prosecution for transferring controlled substance without first securing required order form, notice and demand upon defendant to produce order form was not unreasonable as matter of law. [Alvarez v. U. S., C.A.5 \(Fla.\) 1970, 426 F.2d 301](#). [Internal Revenue](#) ↪5259

Failure of narcotics agent to produce upon request order form contemplated by former § 4705 of Title 26 [now covered by this section] would not excuse transfer of controlled substance without obtaining written order on the prescribed form. [U. S. v. Wong, C.A.9 \(Cal.\) 1970, 425 F.2d 1077](#). [Internal Revenue](#) ↪5259

Where accused in prosecution for illegal possession of narcotics was in jail and unwarned, notice and demand for order form required by former § 4705 of Title 26 [now covered by this section] showing payment of special transfer tax was not unreasonable as matter of law. [Miller v. U.S., C.A.5 \(Tex.\) 1959, 273 F.2d 279](#), certiorari denied [80 S.Ct. 756, 362 U.S. 928, 4 L.Ed.2d 747](#). [Internal Revenue](#) ↪5290

Under former § 4742 of Title 26 proscribing transfer of controlled substances without a written order from the transferee, demand by the government to produce the order form required by said section is not an essential element of the crime, and government therefore could not be deemed to have failed to prove its case against a defendant charged under said section, by failing to introduce evidence of a demand upon defendant for such order form. [Hill v. U.S., C.A.9 \(Cal.\) 1958, 261 F.2d 483](#). [Internal Revenue](#) ↪5259

Under § 2591 of Title 26 [I.R.C.1939] making it unlawful for any person not within specified exceptions to transfer marihuana except in pursuance of written order of person to whom marihuana was transferred on form issued in blank by Secretary of Treasury and requiring payment of tax on specified rates on all transfers of marihuana, failure to produce order forms on reasonable notice and demand of Collector was not an element of an offense under said section. [Cratty v. U.S., App.D.C.1947, 163 F.2d 844, 82 U.S.App.D.C. 236](#). [Internal Revenue](#) ↪5259

To authorize conviction of defendant of making an illegal transfer of marihuana in violation of § 2596 of Title 26 [I.R.C.1939], to government was not required to prove that a formal demand had been made on defendant for a written order of transfer, but it was sufficient to establish that a request for the order form was made subsequent to the transfer and that defendant had no such order form. [Hensley v. U. S., App.D.C.1947, 160 F.2d 257, 82 U.S.App.D.C. 14](#), certiorari denied [67 S.Ct. 1305, 331 U.S. 817, 91 L.Ed. 1835](#), rehearing denied [67 S.Ct. 1530, 331 U.S. 867, 91 L.Ed. 1871](#). [Internal Revenue](#) ↪5259

12. ---- Knowledge or intent, elements of offense

Criminal intent is not an element of offense of selling narcotic drugs in violation of the federal narcotics laws; hence, government is not required to prove that special order form was offered to a potential violator in order to obtain conviction under former § 4705 of Title 26 [now covered by this section] making it unlawful for any person to

sell, etc. any narcotic drug except pursuant to written order on a form issued by Secretary of the Treasury or his delegate. [U. S. v. Wilburn, C.A.10 \(Colo.\) 1977, 549 F.2d 734. Controlled Substances 35; Controlled Substances 68](#)

Under former § 4705(a) of Title 26 [now covered by this section] making it unlawful to sell a narcotic without required Treasury order forms, it was unnecessary to prove either actual possession of narcotic or knowledge of illegal importation. [U. S. v. Ramirez, C.A.9 \(Cal.\) 1972, 463 F.2d 1199. Controlled Substances 68](#)

To constitute violation of former § 4705 of Title 26 [now covered by this section] requiring that seller of narcotic obtain written order form from buyer, it was sufficient that defendant knowingly participated in selling narcotics and that he failed to obtain an order form; it was not necessary that he knew specifically about the order form requirement or that he had specific intent to violate that former section. [U. S. v. Hillman, C.A.9 \(Cal.\) 1972, 461 F.2d 1081. Internal Revenue 5259](#)

Knowledge of order form requirement was not necessary element of crime of selling cocaine without an order form. [U. S. v. Nieves, C.A.2 \(N.Y.\) 1971, 451 F.2d 836. Internal Revenue 5259](#)

Knowledge of narcotic drug's illegal importation was not necessary element of offense of selling the drug without complying with written order form requirement of former § 4705 of Title 26 [now covered by this section]. [U. S. v. Revuelta, C.A.9 \(Nev.\) 1971, 437 F.2d 50. Internal Revenue 5259](#)

Knowledge of illegal transportation was an essential element of receiving illegally imported narcotics under prior provisions but even under prior provisions was not an essential element of selling narcotics not in pursuance of written order on prescribed form. [Aggers v. U. S., C.A.8 \(Mo.\) 1966, 366 F.2d 744, certiorari denied 87 S.Ct. 719, 385 U.S. 1010, 17 L.Ed.2d 548. Controlled Substances 39; Internal Revenue 5259](#)

Criminal intent is not element of offense of selling narcotic drugs without receiving the prescribed order form. [Davis v. U. S., C.A.8 \(Mo.\) 1962, 306 F.2d 317, certiorari denied 83 S.Ct. 734, 372 U.S. 920, 9 L.Ed.2d 725. Controlled Substances 35](#)

Neither illegal importation nor knowledge thereof was an element of selling narcotic drugs without written order form, and claimed right to explain possession of narcotics to rebut inference flowing from possession is irrelevant. [Yearwood v. U. S., S.D.N.Y.1969, 294 F.Supp. 748. Internal Revenue 5259](#)

13. Separate and distinct offenses

Possession of narcotics and sale of narcotics were two distinct offenses and did not merge. [Hackett v. U.S., C.A.6 \(Mich.\) 1965, 348 F.2d 883, certiorari denied 86 S.Ct. 651, 382 U.S. 1029, 15 L.Ed.2d 541, rehearing denied 86 S.Ct. 1280, 383 U.S. 973, 16 L.Ed.2d 313. Criminal Law 30](#)

Transportation of narcotics and sale of narcotics were separate offenses for which separate sentences might be imposed, even if they grew out of same transaction. [Williams v. U. S., C.A.8 \(Mo.\) 1961, 292 F.2d 157. Criminal Law 29\(8\); Sentencing And Punishment 524](#)

Former § 4705 of Title 26 [now covered by this section] prohibiting sale, barter, exchange or gift of narcotic drugs without appropriate order form and former § 4771 of Title 26 prohibiting purchase, sale, dispensation or distribution

of narcotic drugs without appropriate tax-paid stamps and former § 174 of this title prohibiting illegal importation of narcotic drugs denounced three separate offenses. [Kelley v. U. S., C.A.D.C.1960, 275 F.2d 10, 107 U.S.App.D.C. 122. Criminal Law](#) ⚡29(8); [Criminal Law](#) ⚡29(5.5)

Congress by the enactment of former § 4705 of Title 26 [now covered by this section] penalizing the sale, barter or giving away of narcotic drugs except under certain circumstances, and former § 174 of this title penalizing the fraudulent importation of drugs into the United States and former § 4704 of Title 26 penalizing the purchase, sale or distribution of narcotic drugs except in packages marked as prescribed by such section, created three separate offenses, each having different evidentiary requirements, authorizing separate and consecutive sentences, though offenses arise from the common transaction. [Gore v. U.S., C.A.D.C.1957, 244 F.2d 763, 100 U.S.App.D.C. 315](#), certiorari granted [78 S.Ct. 335, 355 U.S. 903, 2 L.Ed.2d 259](#), affirmed [78 S.Ct. 1280, 357 U.S. 386, 2 L.Ed.2d 1405](#), rehearing denied [79 S.Ct. 13, 358 U.S. 858, 3 L.Ed.2d 92. Criminal Law](#) ⚡29(8)

Charges of selling morphine sulphate without written order on prescribed form and charges of having obtained morphine sulphate by means of a prescribed form for purpose other than use, sale, or distribution in conduct of lawful business or legitimate practice of profession of pharmacy stated separate and distinct offenses. [U. S. v. Hymowitz, C.A.2 \(N.Y.\) 1952, 196 F.2d 819. Criminal Law](#) ⚡29(8)

14. Conspiracy

That all transactions between physician and mail order house from which he procured narcotics for illegal resales were carried on by mail did not bar conviction of mail order house for “conspiracy” to violate §§ 2553 and 2554 of Title 26 [I.R.C.1939], notwithstanding that accused's overt acts consisted solely of sales which, but for their volume, frequency, and prolonged repetition, coupled with accused's unlawful intent to further physician's project, would have been wholly lawful. [Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy](#) ⚡26

15. Indictment--Generally

Failure of indictment charging defendant with selling narcotic drug without written order to contain additional words “of the person to whom such article is sold” did not detract from defendant's ability to defend himself and did not vitiate conviction. [U. S. v. Medina, C.A.1 \(Puerto Rico\) 1971, 455 F.2d 209. Internal Revenue](#) ⚡5285

Where members of grand jury must have understood from character of testimony of agent of narcotics bureau that he was not testifying of his own knowledge as to what went on inside apartment under surveillance, indictment charging unlawful sale of narcotics was not subject to dismissal on theory that it was based on hearsay testimony of surveilling agent rather than direct testimony of agent who made purchase of narcotics in the apartment. [U. S. v. Beltram, C.A.2 \(N.Y.\) 1968, 388 F.2d 449](#), certiorari denied [88 S.Ct. 1273, 390 U.S. 1017, 20 L.Ed.2d 168](#), certiorari denied [88 S.Ct. 1860, 391 U.S. 955, 20 L.Ed.2d 869. Indictment And Information](#) ⚡10.2(2)

Lack of identification of buyer in indictment charging unlawful sale of narcotics did not render the indictment insufficient. [Snowden v. U. S., C.A.5 \(La.\) 1967, 384 F.2d 357](#), certiorari denied [88 S.Ct. 1075, 390 U.S. 966, 19 L.Ed.2d 1169](#). See, also, [Dunham v. U.S., C.A.Ky.1965, 348 F.2d 590](#); [Bush v. U.S., C.A.Or.1964, 338 F.2d 400](#); [U.S. v. Lamar, C.A.Mich.1964, 337 F.2d 349](#); [U.S. v. Dickerson, C.A.Ky.1964, 337 F.2d 343. Controlled Substances](#) ⚡66

Fact that lines had been drawn through citations of specific statutes in counts of indictment charging defendant with

violation of former §§ 4742, 4744 and 4755 of Title 26 and that two counts had been interlineated to allege “violation of the laws of the United States” did not afford ground for reversal of conviction, in absence of showing that defendant was misled to prejudice of his defense either in trial court or on appeal. [Todd v. U. S., C.A.10 \(Okla.\) 1965, 345 F.2d 299. Criminal Law ↪ 1167\(1\)](#)

Allegations in five-count indictment charging petitioner with violating former § 4742 of Title 26 [now covered by this section] on particular day in particular area, and further setting forth amount of narcotics involved along with overt act alleged to be violative of that section were sufficiently definite and specific to inform petitioner of nature of charges against him. [Patterson v. U. S., C.A.10 \(Okla.\) 1965, 344 F.2d 693. Indictment And Information ↪ 71.4\(7\)](#)

Indictments which stated all the elements of offense of unlawful transfer of a narcotic or drug without written order and gave the date, the city where transaction occurred, and either the weight, in case of heroin, or number of cigarettes, in case of marijuana, were not fatally defective for failure to give name of transferee. [Dario Sanchez v. U. S., C.A.1 \(Puerto Rico\) 1965, 341 F.2d 379, certiorari denied 85 S.Ct. 1775, 381 U.S. 940, 14 L.Ed.2d 704, certiorari denied 85 S.Ct. 1786, 381 U.S. 945, 14 L.Ed.2d 708. Controlled Substances ↪ 66](#)

An indictment was not deficient on theory it was so lacking in particularity that defendant could not plead it as a bar to a subsequent prosecution for the same offense, where indictment charged either aiding or abetting the transfer or the transferring of a single specific quantity of marijuana, and the evidence showed that a single transaction in one particular quantity of marijuana was involved. [Foster v. U. S., C.A.10 \(Okla.\) 1964, 339 F.2d 188. Indictment And Information ↪ 71.4\(7\)](#)

Under former § 4705 of Title 26 [now covered by this section], which prohibited a sale of narcotics except in pursuance of written order on a form to be issued in blank for that purpose “by the Secretary or his delegate,” failure to state in counts of indictment after the word “Secretary” the additional words “or his delegate” was not fatally defective since any form issued by authorized delegate of Secretary of Treasury could properly be considered a form issued by Secretary. [Pellom v. U. S., C.A.8 \(Mo.\) 1964, 333 F.2d 766. Controlled Substances ↪ 62](#)

Inasmuch as defendant was specifically charged with conspiring to sell, barter, exchange or give away narcotic drugs without a written order, reference to general conspiracy statute, [§ 371 of Title 18](#), in indictment was miscitation and former § 4705 of Title 26 [now covered by this section] was controlling. [Tanksley v. U. S., C.A.8 \(Minn.\) 1963, 321 F.2d 647. Conspiracy ↪ 43\(1\)](#)

Where indictment charged illegal sale of narcotics by defendant and codefendant, and evidence clearly established that both participated in transaction there was sufficient association of codefendant with sale to support guilty verdict. [Humphries v. U. S., C.A.8 \(Mo.\) 1962, 310 F.2d 377. Internal Revenue ↪ 5295](#)

Indictment charging defendant with selling heroin was not fatally defective for failing to charge that, in making sales or conspiring to effect them, defendant had knowingly and wilfully undertaken to violate former § 4705 of Title 26 [now covered by this section]. [Davis v. U. S., C.A.8 \(Mo.\) 1962, 306 F.2d 317, certiorari denied 83 S.Ct. 734, 372 U.S. 920, 9 L.Ed.2d 725. Controlled Substances ↪ 64](#)

In prosecution for violation of former §§ 4742 and 4744 of Title 26 the indictment did not have to negative the permitted exemptions, but the burden was upon the defendant indicted for violation of these sections to bring himself within the exemption he claimed. [Smith v. U. S., C.A.D.C.1959, 269 F.2d 217, 106 U.S.App.D.C. 26, certiorari denied 80 S.Ct. 130, 361 U.S. 865, 4 L.Ed.2d 108. Indictment And Information ↪ 111\(1\); Internal Revenue ↪](#)

[5291.1](#)

Indictment charging defendant with conspiring to acquire marihuana without paying transfer tax, to transfer marihuana without written order required by former §§ 4741 and 4742 of Title 26 and to receive, conceal, sell and facilitate transportation, concealment and sale of unlawfully imported marihuana was not defective because of absence of allegations of a conspiracy to commit specifically designated offenses. [Schnautz v. U.S., C.A.5 \(Tex.\) 1959, 263 F.2d 525](#)

, certiorari denied [79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260](#). [Conspiracy](#) ↪ [43\(6\)](#)

Indictment charging defendant among other things with conspiring to enter into illegal sales and transportation of marihuana was not objectionable on ground that it did not charge that conspirators “unlawfully” entered into conspiracy and that they “knowingly and wilfully” entered into conspiracy. [Schnautz v. U.S., C.A.5 \(Tex.\) 1959, 263 F.2d 525](#), certiorari denied [79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260](#). [Conspiracy](#) ↪ [43\(1\)](#); [Conspiracy](#) ↪ [43\(4\)](#)

Indictment charging defendant with conspiring to acquire marihuana without paying transfer tax, to transfer marihuana without written order required by former §§ 4741 and 4742 of Title 26, and to receive, conceal, sell and facilitate transportation, concealment and sale of unlawfully imported marihuana was not objectionable on ground that it charged a conspiracy to commit three offenses, when each of such offenses was a felony. [Schnautz v. U.S., C.A.5 \(Tex.\) 1959, 263 F.2d 525](#), certiorari denied [79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260](#). [Indictment And Information](#) ↪ [125\(5.5\)](#)

Indictment which charged sale of specific quantity of heroin by defendant on specific date without appropriate written order therefor and further described offense in wording of former § 4705 of Title 26 [now covered by this section] sufficiently charged elements of unlawful sale of narcotics. [Scott v. U. S., D.C.N.J.1964, 231 F.Supp. 360](#), affirmed [342 F.2d 813](#). [Indictment And Information](#) ↪ [110\(3\)](#)

[16](#). ---- Joinder of offenses, indictment

Where substantially all proof offered on invalid counts for sale of cocaine and conspiracy was also admissible on count for selling cocaine without proper order forms, no prejudice could have resulted from trial of all counts in indictment, and, constitutionality of former § 4705 of Title 26 [now covered by this section] having been upheld, convictions for selling cocaine without proper order forms were sustained. [U. S. v. Jenkins, C.A.2 \(N.Y.\) 1970, 427 F.2d 149](#). [Criminal Law](#) ↪ [1655\(8\)](#)

Defendant was not prejudiced by joinder of two charges of unlawful transfer of marihuana where charges were based on transfers to the same person, although on different dates, and under the circumstances, the offenses were subject to joinder in the same indictment. [Terry v. U. S., C.A.5 \(Ga.\) 1962, 310 F.2d 715](#). [Criminal Law](#) ↪ [1167\(2\)](#)

Substantive counts of indictment charging defendant with receiving, concealing, facilitating transportation of, and selling heroin in violation of former § 174 of this title and former § 4705 of Title 26 [now covered by this section] and of conspiracy to violate such sections were not misjoined although codefendants were charged with separate offenses not participated in by defendant, where conspiracy count, the connecting link of the substantive counts, was proved. [U. S. v. Wright, C.A.7 \(Ill.\) 1962, 309 F.2d 735](#), certiorari denied [83 S.Ct. 873, 372 U.S. 929, 9 L.Ed.2d 733](#). [Indictment And Information](#) ↪ [127](#)

Information which contained counts charging violation of former § 4704 of Title 26 relating to labeling and packag-

ing, former § 4705 of Title 26 [now covered by this section] and former § 174 of this title which prohibited importation or bringing of narcotics into United States contrary to law did not contain duplicitous counts. [Orrie v. U. S., C.A.8 \(Mo.\) 1962, 302 F.2d 695](#), certiorari denied [83 S.Ct. 124, 371 U.S. 864, 9 L.Ed.2d 101](#).

Charges in indictment of fraudulently receiving narcotic drug after importation and selling drug not in pursuance to written order on form by Secretary of Treasury were not multiplicitous. [U. S. v. Withers, N.D.Ill.1969, 303 F.Supp. 641](#). [Indictment And Information](#) ↪127

Motion to dismiss indictment charging defendants with fraudulently and knowingly receiving and concealing narcotic drug with knowledge that it had been imported and unlawfully selling same would be denied where defendants were sufficiently apprised of nature of offense charged against them, there was no uncertainty, and all requirements of procedure were met. [U. S. v. Withers, N.D.Ill.1969, 303 F.Supp. 641](#). [Indictment And Information](#) ↪144.2

Counts of indictment charging that defendant did sell, barter, exchange, or give away narcotic drugs without a written order form was not duplicitous because counts were expressed in conjunctive and charged that defendants did sell and exchange heroin. [U. S. v. Isabella, D.C.Mass.1962, 210 F.Supp. 281](#). [Indictment And Information](#) ↪125(20)

17. ---- Variance, indictment

No variance existed between indictment of defendant for violation of former § 4705 of Title 26 [now covered by this section] and former § 174 of this title relating to narcotics and proofs as to government's claim that defendant "aided and abetted" in commission of crimes charged in the indictment. [U.S. v. Heard, C.A.6 \(Mich.\) 1971, 443 F.2d 856](#), certiorari denied [92 S.Ct. 86, 404 U.S. 850, 30 L.Ed.2d 89](#). [Indictment And Information](#) ↪174

Indictment in prosecution for violation of former § 4705 of Title 26 [now covered by this section] which alleged an offense occurring "on or about July 23, 1966", did not contain a fatal variance on grounds that government claimed and offered evidence to show that actual physical participation by defendant occurred on July 21, 1966, where counsel for government, at former trial for same offense, pointed out that indictment charged that the offense had been committed "on or about" a specific date, after which he warned jury that proof would not be confined to date charged in the indictment, so that defendants had knowledge at least one year in advance of the second trial that July 21, 1966 was a date as pertinent to the charges as July 23, 1966. [U.S. v. Heard, C.A.6 \(Mich.\) 1971, 443 F.2d 856](#), certiorari denied [92 S.Ct. 86, 404 U.S. 850, 30 L.Ed.2d 89](#). [Indictment And Information](#) ↪176

Alleged variance between allegations of indictment for heroin sales and proof with respect to amounts of heroin sold was not ground for reversal where indictment fully informed defendant of specific charges against him and he was fully protected from any other prosecution for same offense and could not have been misled. [U. S. v. Mann, C.A.5 \(Tex.\) 1970, 432 F.2d 53](#). [Criminal Law](#) ↪1167(1)

18. Pleas

Colloquy between court and three defendants, entering pleas of guilty to bringing marijuana into the United States in violation of the then applicable Marijuana Tax Act, § 4744 of Title 26, showed that its provisions had been violated and the statutory proviso relating to production of order form for allegedly imported marijuana was wholly inapposite, contrary to claim that record was inadequate to demonstrate that a factual basis for plea existed and that court's failure to apprise defendant of order form provision affected adequacy of plea procedures. [Burroughs v. U. S., C.A.5 \(Tex.\) 1975, 515 F.2d 824](#). [Criminal Law](#) ↪273(4.1)

On record, it could not be said as matter of law, in light of defendant's allegation that he was not advised by court or counsel and did not know, at time of guilty plea, that conviction for sale of narcotics under former § 4705 of Title 26 [now covered by this section] would make him ineligible for probation or parole, that [rule 11, Federal Rules of Criminal Procedure](#), Title 18, as to acceptance of guilty plea was complied with and that defendant's plea was made voluntarily, with understanding of the nature of the charge and the consequences of the plea, and, therefore, motion to vacate convictions and sentences could not be denied without evidentiary hearing. [Jenkins v. U. S., C.A.10 \(Okla.\) 1970, 420 F.2d 433. Criminal Law ↪1655\(3\)](#)

Where defendant was charged with crime of selling improperly labeled and packaged drugs which did not, under former § 4704 of Title 26 carry a mandatory prison sentence, and also with crime of selling narcotics contrary to provision of former § 4705 of Title 26 [now covered by this section] requiring written order on a form issued in blank for that purpose by the Secretary of the Treasury, which carries a mandatory prison sentence, and United States District Attorney offered to dismiss latter charge if the defendant would enter a plea of guilty to former charge, an unconstitutional burden was not placed upon defendant's exercise of his right to demand a jury trial under [U.S.C.A.Const. Amend. 6](#) and his right not to plead guilty under [U.S.C.A.Const. Amend. 5. U. S. v. Lewis, E.D.Pa.1969, 300 F.Supp. 1171. Constitutional Law ↪4590; Jury ↪31.3\(1\)](#)

Evidence in proceeding to vacate sentence failed to support defendant's claim that his plea of guilty to charges of narcotics violations was not voluntarily entered with understanding of its consequence or that court did not address him personally to determine voluntariness and understanding of consequences. [Simon v. U. S., E.D.La.1967, 269 F.-Supp. 738, affirmed 397 F.2d 813. Criminal Law ↪1618\(3\)](#)


Even if unavailability of probation and parole is "consequence" of narcotics offender's plea of guilty, within [rule 11, Federal Rules of Criminal Procedure](#), Title 18, that court shall not accept plea of guilty without first determining that plea is made voluntarily with understanding of nature of charge and consequences of plea, defendant convicted of narcotics violations was not entitled to vacation of sentence, on ground that neither his counsel, prosecuting attorney, court, nor anyone else had explained such fact to him where defendant admittedly was aware of the consequence prior to and at time of his plea. [Simon v. U. S., E.D.La.1967, 269 F.Supp. 738, affirmed 397 F.2d 813. Criminal Law ↪1482](#)


19. Defenses--Generally

Fact that substance sold contained only .04 percent heroin did not preclude conviction on charge of selling heroin not in pursuance of written order. [U. S. v. Sudduth, C.A.10 \(Colo.\) 1972, 458 F.2d 1222, certiorari denied 93 S.Ct. 200, 409 U.S. 871, 34 L.Ed.2d 122. Controlled Substances ↪33](#)


Former § 4705 of Title 26 [now covered by this section] prohibiting sale of narcotics except pursuant to written order did not require that order be obtained before delivery of narcotics, and defendant in narcotic sale prosecution was entitled to argue theory that conduct of officer, who was to pay defendant upon second officer's signal that narcotic had been delivered, in striking defendant prevented defendant from demanding written order from officer. [U. S. v. Marken, C.A.9 \(Cal.\) 1972, 457 F.2d 186. Internal Revenue ↪5259](#)


In prosecution for conspiracy to sell a narcotic drug not in pursuance of a written order, contemplated use of an order form is affirmative defense. [U. S. v. Bradley, C.A.1 \(Mass.\) 1972, 455 F.2d 1181, certiorari granted 92 S.Ct. 2438, 407 U.S. 908, 32 L.Ed.2d 682](#), affirmed [93 S.Ct. 1151, 410 U.S. 605, 35 L.Ed.2d 528. Conspiracy ↪38](#)



Degree of potential harm or lack thereof in marijuana would be no defense to charge of unlawfully transferring marijuana not in pursuance of written order. [U. S. v. Kellerman, C.A.10 \(Okla.\) 1970, 432 F.2d 371. Controlled Substances](#)  49


Under § 2596 of Title 26 [I.R.C.1939], one indicted for transferring stated quantity of marijuana cigarettes without use of written order on required form could not defend on ground that cigarettes he was charged with transferring were contraband and that hence he was not a person required to register and pay a tax since whether he was required to register and pay a tax was immaterial under said section. [Morales v. United States, C.A.1 \(Puerto Rico\) 1951, 187 F.2d 518. Internal Revenue](#)  5259

20. ---- Double jeopardy, defenses


Where defendants were originally indicted for selling narcotics without required order form and were convicted and had served time before their judgments were vacated, a second trial on new indictments charging sales in violation of former § 4704 of Title 26, charges stemming out of the same sales as involved in prior indictment, did not violate double jeopardy clause of [U.S.C.A.Const. Amend. 5. U. S. v. Ewell, U.S.Ind.1966, 86 S.Ct. 773, 383 U.S. 116, 15 L.Ed.2d 627. Double Jeopardy](#)  146

Defendant, who was convicted in 1957 under four-count indictment charging substantive violations of narcotic laws, was not placed in double jeopardy when prosecuted in 1962 for conspiring to violate narcotic laws during period commencing Jan. 1, 1952 and continuing to date of return of indictment on Sept. 2, 1959. [U. S. v. Jones, C.A.7 \(Ill.\) 1964, 334 F.2d 809, certiorari denied 85 S.Ct. 707, 379 U.S. 993, 13 L.Ed.2d 613. Double Jeopardy](#)  151(5)

Imposition of cumulative sentences upon prisoner for fraudulently facilitating transportation of narcotics, for sale of narcotics without proper written order, and for purchase of improperly labeled and packaged narcotics was proper, as former §§ 4704 and 4705 of Title 26 and former § 174 of this title created different offenses, and fact the same item of narcotic drugs was involved in the violations charged did not give rise to double jeopardy. [Pellom v. U. S., C.A.8 \(Mo.\) 1963, 321 F.2d 646. Double Jeopardy](#)  146; [Sentencing And Punishment](#)  606

Government could sustain second indictment, charging offense of selling illegally imported heroin, with self-same evidence needed to prove first indictment, charging sale of heroin without written order, and it could not be said, for double jeopardy purposes, that second indictment charged different offense than first indictment. [United States v. Sabella, C.A.2 \(N.Y.\) 1959, 272 F.2d 206. Double Jeopardy](#)  146

21. ---- Entrapment, defenses

Government met its burden, in prosecution for violation of former § 4705 of Title 26 [now covered by this section] of proving beyond a reasonable doubt that defendant was not entrapped where defendant's version of facts demonstrated little more than mere solicitation, while prosecution alleged that three requests for drugs, without censurable pressure of any sort, led to immediate affirmative responses on part of defendant and to subsequent sales of heroin. [U. S. v. Rodrigues, C.A.1 \(Mass.\) 1970, 433 F.2d 760, certiorari denied 91 S.Ct. 950, 401 U.S. 943, 28 L.Ed.2d 224. Criminal Law](#)  569

22. ---- Self-incrimination, defenses

Although unregistered buyer's refusal to comply with requirements of former § 4705 of Title 26 [now covered by

this section] that he apply for order form and announce his intention to purchase marijuana might have stemmed from his fear of incrimination, buyer's personal privilege could not be raised by seller as an excuse for evading the clear statutory requirement that he sell only in pursuance of written order on official form. [Minor v. U. S., U.S.N.Y.1969, 90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283. Internal Revenue](#) ⚡5259

Where compliance with former § 4741 of Title 26 would have exposed defendant to prosecution under state narcotics laws, plea of self-incrimination was complete defense in prosecution for noncompliance. [Leary v. U.S., U.S.-Tex.1969, 89 S.Ct. 1532, 395 U.S. 6, 23 L.Ed.2d 57](#). See, also, [U.S. v. Romero, D.C.Okl.1969, 302 F.Supp. 1370. Criminal Law](#) ⚡393(1)

Defendant's conviction for violation of former provision prohibiting sale of narcotics except pursuant to official order form obtained by buyer was not unconstitutional on the ground that it was violative of defendant's privilege against self-incrimination. [Skipworth v. U. S., C.A.3 \(Pa.\) 1975, 508 F.2d 598. Criminal Law](#) ⚡393(1)

Seller's constitutional right against self-incrimination is not violated by statutory obligation to sell heroin only pursuant to official order form on which seller's name must appear. [U. S. v. Castanon, C.A.9 \(Cal.\) 1972, 453 F.2d 932, certiorari denied 92 S.Ct. 1788, 406 U.S. 922, 32 L.Ed.2d 122. Criminal Law](#) ⚡393(1)

Where it appeared that defendant and his counsel decided that, rather than defend charge of unlawfully transferring marihuana, they would attempt to persuade United States to file information charging defendant with acquiring marihuana without having paid tax due thereon, in return for an agreement to plead guilty to latter charge, defendant would be held to have knowingly and intentionally waived any possible defense to information charging latter violation, including allegation that defendant, at time of guilty plea, did not realize, because at that time the Leary case had not yet been decided, that timely and proper assertion of privilege against self-incrimination would have been a complete defense to the latter charge. [Ouilette v. U. S., C.A.10 \(Colo.\) 1970, 435 F.2d 21. Criminal Law](#) ⚡273.4(1)

Privilege under [U.S.C.A.Const. Amend. 5](#), against self-incrimination barred prosecution of defendant for unlawful possession as transferee of marijuana. [U. S. v. Kellerman, C.A.10 \(Okla.\) 1970, 432 F.2d 371. Criminal Law](#) ⚡393(1)

Former § 4742 of Title 26 [now covered by this section] which prohibited transfer of marihuana except pursuant to transferee's written order on official form did not expose transferors to real and appreciable risks of self-incrimination, in view of unlikelihood that purchasers would comply with transferor's insistence on compliance with law. [San-tos v. U. S., C.A.7 \(Ind.\) 1970, 426 F.2d 244, certiorari denied 91 S.Ct. 127, 400 U.S. 882, 27 L.Ed.2d 120, certiorari denied 91 S.Ct. 450, 400 U.S. 991, 27 L.Ed.2d 439](#). See, also, [Ouilette v. U.S., C.A.Colo.1970, 435 F.2d 21; U.S. v. Stork, C.A.Colo.1970, 421 F.2d 180, certiorari denied 90 S.Ct. 1704, 398 U.S. 910, 26 L.Ed.2d 70; Powell v. U.S., C.A.Cal.1969, 420 F.2d 799; U.S. v. Priest, C.A.Colo.1970, 419 F.2d 570; Marshall v. U.S., C.A.Cal.1969, 409 F.2d 925; U.S. v. Romero, D.C.Okl.1969, 302 F.Supp. 1370; Ramseur v. U.S., D.C.Tenn.1968, 285 F.Supp. 1020, affirmed 425 F.2d 413. Criminal Law](#) ⚡393(1)

Rule that timely assertion of privilege under [U.S.C.A.Const. Amend. 5](#) precludes conviction of a transferee, under former § 4744 of Title 26 which established presumption of marijuana tax violation based on fact of possession, did not apply to prosecution for unlawfully transferring marijuana except in pursuance of a written order. [U. S. v. Finley, C.A.10 \(Colo.\) 1970, 421 F.2d 172. Criminal Law](#) ⚡393(1)

Requirement of transferor's name in order form for marihuana violates transferor's privilege against self-incrimina-

tion requiring reversal of conviction of transferring marihuana without obtaining written order form from transferee. [U. S. v. Reynolds, C.A.7 \(Ill.\) 1969, 416 F.2d 951. Criminal Law](#) ↪393(1)

Where defendant was not an importer, manufacturer, producer or compounder of narcotics and therefore had no duty to pay commodity tax under former §§ 4701 et seq. of Title 26 and defendant was charged with violating former § 4704 of Title 26 prohibiting dealing in narcotics lacking the necessary tax stamps, conviction was not invalid on ground of any self-incriminatory aspects of those former sections. [U. S. v. Walker, C.A.5 \(Fla.\) 1969, 414 F.2d 876, certiorari denied 90 S.Ct. 1514, 397 U.S. 1070, 25 L.Ed.2d 694. Criminal Law](#) ↪393(1)

Where provisions of former § 4701 et seq. of Title 26 that required registration of acquisition of narcotic drugs by special classes of persons and payment of occupational tax on such drugs were not applicable to defendant, his conviction of purchasing cocaine not in original stamped package did not violate his privilege against self-incrimination, notwithstanding claim that he could only establish his innocence by proof that he had satisfied such provisions. [U. S. v. Castro, C.A.1 \(Puerto Rico\) 1969, 413 F.2d 891, certiorari denied 90 S.Ct. 974, 397 U.S. 950, 25 L.Ed.2d 132. Criminal Law](#) ↪393(1)

For a plea of self-incrimination to operate as allegedly complete defense to prosecutions for buying marijuana and selling marijuana, defense must be timely raised. [U. S. v. Carlisle, W.D.Okla.1969, 303 F.Supp. 627, affirmed 418 F.2d 921. Criminal Law](#) ↪393(1)

Conviction for unlawfully selling narcotics, upon plea of guilty, would not be vacated on grounds that petitioner was compelled to incriminate himself, where former § 4705 of Title 26 [now covered by this section] under which conviction was had required no registration by petitioner, relied on no section that did, and such conviction was not predicated on requirement that petitioner register in any manner, but only provided that it should be unlawful for any person to sell narcotics except in pursuance of a written order from person to whom same was sold. [Nunley v. U. S., W.D.Okla.1968, 288 F.Supp. 58. Criminal Law](#) ↪1450

Defendant could assert constitutional privilege against self-incrimination as total defense to prosecution for being transferee of and acquiring marihuana without having paid transfer tax, since statutory requirements, with the many exclusions, are primarily directed as persons inherently suspect of criminal activities, and those who pay tax are subject to having their names published in list made available to interested prosecuting authorities. [U. S. v. Covington, S.D.Ohio 1968, 282 F.Supp. 886, 16 Ohio Misc. 236, 44 O.O.2d 477, 45 O.O.2d 181, probable jurisdiction noted 89 S.Ct. 238, 393 U.S. 910, 21 L.Ed.2d 197](#), affirmed [89 S.Ct. 1559, 395 U.S. 57, 23 L.Ed.2d 94, 50 O.O.2d 35. Criminal Law](#) ↪393(1)

23. Bill of particulars

If defendant charged with unlawful sale of narcotics desires name of alleged purchaser, it may be obtained upon request for bill of particulars. [Scott v. U. S., D.C.N.J.1964, 231 F.Supp. 360, affirmed 342 F.2d 813. Indictment And Information](#) ↪121.2(7)

24. Delay in prosecution

Denial of motion to dismiss based an unreasonable 24-day delay between date on which complaint, which charged defendant with, more than three months previously, selling capsules containing cocaine other than in or from original stamped package and with selling capsules not in pursuance of purchaser's written order, was sworn out and date on which arrest warrant was served on defendant, who had been in custody on another charge during such period,

who contended that delay prejudiced him because he could not remember where he was during time narcotics transaction took place, and who assertedly had been seen several times before sale and twice thereafter by officer to whom cocaine was allegedly sold, was not abuse of discretion. [U. S. v. Mills, C.A.D.C.1972, 463 F.2d 291, 149 U.S.App.D.C. 345. Arrest](#) ⚡67

Four-month delay between violation of former § 4705 of Title 26 [now covered by this section] and time of arrest did not deny defendant due process. [Wallace v. U. S., C.A.5 \(Fla.\) 1970, 421 F.2d 1390.](#)

Delay of 10 1/2 months between defendant's alleged selling of a narcotic drug in violation of former § 4705 of Title 26 [now covered by this section] and date of complaint charging him with offense was not denial of due process where evidence indicated that defendant had sources of supply for narcotics in Mexico and California, so that it would seem reasonable that an extended police investigation might be required. [U. S. v. Evans, C.A.7 \(Ill.\) 1967, 385 F.2d 824. Constitutional Law](#) ⚡4535

25. Pretrial publicity

Defendant charged with unlawful purchase and sale of heroin without the required written order was not deprived of a fair trial by newspaper, radio and television publicity in view of totality of the circumstances, and thus denial of his motions for continuance and change of venue because of adverse, pretrial publicity was not error. [McWilliams v. U. S., C.A.8 \(Mo.\) 1968, 394 F.2d 41, certiorari denied 89 S.Ct. 643, 393 U.S. 1044, 21 L.Ed.2d 593. Criminal Law](#) ⚡126(2); [Criminal Law](#) ⚡591

26. Comments or conduct of court

Where there was good reason to believe that constitutional privilege against self-incrimination was being misused to create unjustified inference favorable to party calling witness, prosecutor could legitimately note this in argument and trial judge, exercising his traditional power to fairly summarize and comment upon evidence, could suggest possible misuse of privilege. [U. S. v. Cenicerros, C.A.9 \(Cal.\) 1970, 427 F.2d 685. Criminal Law](#) ⚡656(1); [Criminal Law](#) ⚡2133

In prosecution of defendant for unlawfully transferring marijuana, court properly asked prosecution witness, to eliminate any confusion about matter of government form, whether defendant asked the witness if he had the government form which was necessary to make marijuana transfer lawful. [Johnson v. U. S., C.A.9 \(Nev.\) 1968, 404 F.2d 1069, certiorari denied 89 S.Ct. 1761, 395 U.S. 912, 23 L.Ed.2d 224. Internal Revenue](#) ⚡5259

Where defendant and codefendant made motions for acquittal in prosecution for unlawful sale of narcotics without required order form, after both sides had rested, trial court's comments in explanation of why trial court was going to deny motions that case against defendant was based, not on conspiracy between defendant and codefendant, but on theory of joint liability for a joint venture or partnership were not prejudicial to defendant, on ground that trial court acted as advocate for United States to prejudice of defendant. [U. S. v. Cruz, C.A.2 \(N.Y.\) 1965, 351 F.2d 555. Criminal Law](#) ⚡1166.22(2)

Remarks of trial judge at time of imposition of sentence on defendant convicted of sale of narcotics without required order form were not so fraught with personal bias as to constitute denial of due process, though remarks were emphatic, were couched in vernacular, and were personally offensive to defendant. [Montgomery v. U. S., C.A.10 \(N.M.\) 1965, 344 F.2d 955. Constitutional Law](#) ⚡4715

Trial court's statement in narcotics prosecution in response to defense counsel's request for a five minute recess that trial had to be finished because judge was due in another city the following morning, but that recess request would be granted, but a recess could not be had later in day, did not cause an undue sense of haste in minds of jurors in view of weight of testimony which was such that jury would have had little difficulty in arriving at a guilty verdict, once they credited testimony of government's witnesses, which they evidently did. [Dunbar v. U. S., C.A.9 \(Or.\) 1965, 342 F.2d 979. Criminal Law ¶655\(1\)](#)

27. Comments or conduct of counsel

Defendant in narcotics violation case was not prejudiced because prosecutor referred to him as a "big fish" where trial court immediately struck the characterization on objection. [Rolon Marxuach v. U. S., C.A.1 \(Puerto Rico\) 1968, 398 F.2d 548, certiorari denied 89 S.Ct. 454, 393 U.S. 982, 21 L.Ed.2d 443. Criminal Law ¶2205](#)

28. Presumptions

Conviction for sale of cocaine without order form and in other than the original stamped package was not invalid on theory that jury might have applied presumption, under former § 174 of this title of illegal importation and knowledge thereof from possession of narcotics. [Gibson v. U. S., C.A.3 \(N.J.\) 1970, 424 F.2d 490. Controlled Substances ¶68; Internal Revenue ¶5291.1](#)

Presumption that trial judge knew and applied proper standard in evaluating and rejecting insanity defense interposed by defendant, charged with unlawful sale and receipt of designated quantities of heroin, was not overcome by evidence. [U. S. v. Williams, C.A.7 \(Ill.\) 1967, 372 F.2d 76, certiorari denied 88 S.Ct. 112, 389 U.S. 880, 19 L.Ed.2d 172. Criminal Law ¶260.11\(2\)](#)


In prosecution for transporting and concealing marihuana, written notice and demand made by agent of Bureau of Narcotics on defendant to produce an official order form covering transfer of marihuana was properly admitted in evidence and set in motion presumption of guilt on failure of defendant to produce order form within time specified in notice, though notice inadvertently referred to pertinent sections of the Internal Revenue Code [1939], which were ineffective, rather than to the pertinent provisions of former §§ 4741 et seq. of Title 26. [Calderon v. U.S., C.A.10 \(Colo.\) 1959, 269 F.2d 416. Internal Revenue ¶5291.1; Internal Revenue ¶5294](#)

29. Inferences


Clandestine circumstances and statements of defendants indicating knowledge on their part that contemplated sale was illegal were sufficient to warrant inferences that defendant specifically intended with full knowledge of illegality to transfer narcotics in violation of former § 4705 of Title 26 [now covered by this section] requiring use of written order form. [U. S. v. Bradley, C.A.1 \(Mass.\) 1972, 455 F.2d 1181, certiorari granted 92 S.Ct. 2438, 407 U.S. 908, 32 L.Ed.2d 682, affirmed 93 S.Ct. 1151, 410 U.S. 605, 35 L.Ed.2d 528. Internal Revenue ¶5295](#)


Jury could infer, from fact that defendants conspired to engage in the illegal purchase and sale of heroin, that the order form required by former § 4705 of Title 26 would not be demanded of the buyer. [U. S. v. Butler, C.A.10 \(Okla.\) 1971, 446 F.2d 975. Conspiracy ¶44.2](#)


In prosecution for sale of narcotic drug without obtaining written order form, jury could infer, as to sale in which defendant was not shown to have received commission, that he retained or received portion of sales price as profit or commission from supplier and was therefore not acting solely as procuring agent for buyer. [U. S. v. Barcella, C.A.1](#)


[\(Mass.\) 1970, 432 F.2d 570. Internal Revenue](#)  [5295](#)


30. Admissibility of evidence


In view of government chemist's testimony that substance obtained from defendants was authentic cocaine and not pseudo-cocaine, such substance was admissible in prosecution under former § 4705 of Title 26 [now covered by this section] making it unlawful to sell, etc., any narcotic drug except pursuant to written order on a form issued by Secretary of the Treasury. [U. S. v. Wilburn, C.A.10 \(Colo.\) 1977, 549 F.2d 734. Criminal Law](#)  [404.60](#)


In prosecution on two-count indictment, charging defendant with transferring cocaine without obtaining from the transferee an order form, as required by former § 4705 of Title 26 [now covered by this section], the jury's finding of not guilty as to first count did not negate any reliance placed by trial judge on that transaction in allowing into evidence inculpatory hearsay relating to second transaction. [U. S. v. Randall, C.A.9 \(Cal.\) 1974, 491 F.2d 1317. Criminal Law](#)  [419\(1.5\)](#)

Where prior activity at same apartment, involving not only similar contraband but also an incriminating conversation in defendant's presence pertaining to cocaine, was coupled with later sequence of events, i.e., the placing of telephone call, the almost immediate reception of a second call, the arrival soon thereafter of defendant, the meeting between declarant and defendant, and, finally, the delivery of cocaine by declarant to undercover agent, a sufficient basis was established, in prosecution for transferring cocaine without obtaining from the transferee an order form, as required by former § 4705 of Title 26 [now covered by this section], to admit the hearsay statement, incriminating to defendant, made by her alleged accomplice to the agent. [U. S. v. Randall, C.A.9 \(Cal.\) 1974, 491 F.2d 1317. Criminal Law](#)  [427\(5\)](#)

Evidence of morphine sulphate tablets received in prosecution for sale of morphine not in pursuance of written order did not go beyond scope of government's bill of particulars which referred to both dilaudid and morphine sulphate. [U. S. v. Goldman, C.A.1 \(Mass.\) 1971, 450 F.2d 873. Indictment And Information](#)  [121.5](#)

Where a defendant charged with sale of narcotic drug without obtaining written order form seeks to maintain procuring agency defense, it may well be appropriate to permit government to introduce same evidence which it could bring forward to rebut defense of entrapment. [U. S. v. Barcella, C.A.1 \(Mass.\) 1970, 432 F.2d 570. Controlled Substances](#)  [69](#)

Trial court properly allowed government to impeach credibility of defendant, charged with transfer of marijuana without written order, by showing prior conviction for violation of federal narcotic laws. [U. S. v. Escobedo, C.A.7 \(Ill.\) 1970, 430 F.2d 14, certiorari denied 91 S.Ct. 1632, 402 U.S. 951, 29 L.Ed.2d 122. Witnesses](#)  [337\(21\)](#)

In prosecution for conspiracy to sell narcotics without written order, it was not error to admit statements of codefendant made to federal undercover agents during transaction in question outside presence of defendant, since they were made in furtherance of the conspiracy of which defendant was a member. [Holsen v. U. S., C.A.5 \(Ala.\) 1968, 392 F.2d 292, certiorari denied 89 S.Ct. 640, 393 U.S. 1029, 21 L.Ed.2d 573. Criminal Law](#)  [423\(5\)](#)

In prosecution for illegal sale of narcotics and for conspiracy to effect such sale, testimony of government witness to effect that he had been told by codefendant, in an effort to suppress witness' testimony, that defendant had threatened to shoot such witness, was hearsay and inadmissible as against defendant, and permitting such testimony without restrictive limitation, although inadvertently, constituted prejudicial error. [United States v. Ramos, C.A.2 \(N.Y.\) 1959,](#)

[268 F.2d 878. Criminal Law](#) ↪ [419\(10\)](#); [Criminal Law](#) ↪ [1169.1\(9\)](#)

In prosecution for illegal sale of narcotics and for conspiracy to effect such sale, admission of testimony of government agent as to conversation which he had overheard between codefendant and government witness on eve of trial and after defendant had been arrested, and which incriminated defendant as well as codefendant, was not an error of which defendant could complain, in view of admissibility of such evidence against codefendant, and in view of specific admonition to jury to disregard impact of such evidence on defendant. [United States v. Ramos, C.A.2 \(N.Y.\) 1959, 268 F.2d 878. Criminal Law](#) ↪ [673\(4\)](#)

In prosecution for violation of § 2590 et seq. of Title 26 [I.R.C.1939], testimony of deputy collector concerning demand made upon defendant to produce order forms required by law was admissible although demand was not made before indictment. [Henry v. U.S., C.A.9 \(Hawai'i\) 1951, 186 F.2d 521](#), certiorari denied [71 S.Ct. 735, 341 U.S. 915, 95 L.Ed. 1350. Internal Revenue](#) ↪ [5294](#)

In prosecution for violation of § 2590 et seq. of Title 26 [I.R.C.1939], testimony concerning demand made upon defendant to produce order forms required by § 2591 [I.R.C.1939], was not objectionable on ground that time given to produce forms was not reasonable under circumstance, where demand had been made on Sept. 27, 1949 and trial had not begun until Jan. 5, 1950. [Henry v. U.S., C.A.9 \(Hawai'i\) 1951, 186 F.2d 521](#), certiorari denied [71 S.Ct. 735, 341 U.S. 915, 95 L.Ed. 1350. Internal Revenue](#) ↪ [5294](#)

31. Weight and sufficiency of evidence

Government failed to prove essential element of heroin sale charge where exhibit contained two vials, only one of which was said to contain heroin sold, and expert's testimony that substance was heroin referred only to second vial. [U. S. v. Graham, C.A.5 \(Fla.\) 1972, 464 F.2d 1073](#), certiorari denied [93 S.Ct. 341, 409 U.S. 987, 34 L.Ed.2d 252. Internal Revenue](#) ↪ [5295](#)

Evidence was not insufficient to sustain defendant's conviction for aiding and abetting sale of a narcotic without required Treasury order forms on theory that government failed to prove that anyone had committed the substantive offense, where undercover agent, who met with defendant and another to negotiate the deal, testified that he did not have the order forms and that other individual, who exchanged a package containing heroin with agent, did not inquire about them. [U. S. v. Ramirez, C.A.9 \(Cal.\) 1972, 463 F.2d 1199. Internal Revenue](#) ↪ [5295](#)

Evidence in prosecution for selling capsules containing cocaine other than in or from original stamped package and for selling capsules not in pursuance of purchaser's written order warranted submission of case to jury. [U. S. v. Mills, C.A.D.C.1972, 463 F.2d 291, 149 U.S.App.D.C. 345. Internal Revenue](#) ↪ [5316](#)

Evidence was insufficient to prove that defendant made any transfer of marijuana without an order form or that he aided and abetted any one who did so. [U. S. v. Alvarez, C.A.9 \(Cal.\) 1972, 462 F.2d 176. Internal Revenue](#) ↪ [5295](#)

Though actual transfers of cocaine were made by others, evidence as to conversations respecting sales of cocaine between defendant and undercover agent and as to defendant's transportation of the couriers to the scene of the transfers, where he remained nearby, was sufficient to sustain conviction for selling cocaine without obtaining a written order form from the buyer. [U. S. v. Hillman, C.A.9 \(Cal.\) 1972, 461 F.2d 1081. Internal Revenue](#) ↪ [5295](#)

In prosecution for selling narcotic drugs not pursuant to written order form issued by Treasury evidence supported

jury finding that defendants were not simply procuring agents for government's representatives, although prosecutions were based on sale of drugs to federal agent. [U. S. v. Simon, C.A.8 \(Minn.\) 1971, 453 F.2d 111.](#)

Totality of circumstances, clandestine nature of transaction, devious manner of communication and of meeting, and secretive arrangements were sufficient to establish a violation of former § 4705 of Title 26 [now covered by this section] prohibiting sale of a narcotic drug except in pursuance of a written order. [U. S. v. Williams, C.A.9 \(Cal.\) 1970, 435 F.2d 642](#), certiorari denied [91 S.Ct. 1241, 401 U.S. 995, 28 L.Ed.2d 533](#). [Internal Revenue](#) ↪5295

Evidence was insufficient to sustain conviction on count charging that defendant sold heroin to federal agent without obtaining from him a written order on a form issued for that purpose by the Secretary of the Treasury. [U. S. v. Judd, C.A.9 \(Cal.\) 1970, 432 F.2d 770](#). [Internal Revenue](#) ↪5295

Where, in prosecution for sale of narcotic drug without obtaining a written order form, there was discrepancy between date written on envelopes in which drug was kept and government chemist's testimony as to date when he tested contents, but there was other evidence identifying exhibits, discrepancy went only to weight of testimony and not to admissibility. [U. S. v. Barcella, C.A.1 \(Mass.\) 1970, 432 F.2d 570](#). [Criminal Law](#) ↪404.60

Testimony of undercover agent that he had purchased marihuana from defendant on two occasions and did not give defendant required order form therefor was sufficient to support defendant's conviction of transferring marihuana without required written order form from the transferee. [Powell v. U. S., C.A.9 \(Cal.\) 1969, 420 F.2d 799](#). [Internal Revenue](#) ↪5295

Evidence sustained convictions for transferring marihuana without having paid tax thereon and without a written order from the Secretary of the Treasury. [Thompson v. U. S., C.A.5 \(Fla.\) 1968, 403 F.2d 209](#), on rehearing [421 F.2d 174](#). [Internal Revenue](#) ↪5295

Evidence sustained conviction for selling narcotics without written order form. [U. S. v. Jackson, C.A.2 \(N.Y.\) 1968, 390 F.2d 317](#), certiorari denied [88 S.Ct. 2304, 392 U.S. 935, 20 L.Ed.2d 1394](#), rehearing denied [89 S.Ct. 75, 393 U.S. 899, 21 L.Ed.2d 192](#). [Internal Revenue](#) ↪5295

Evidence was sufficient to show that narcotics undercover agent did not have original order for allegedly unlawful transfers of narcotics to him by defendant. [U. S. v. Hooks, C.A.3 \(Pa.\) 1966, 359 F.2d 584](#). [Controlled Substances](#) ↪82

Evidence was sufficient to sustain conviction for violating provision of former §§ 4705 and 4742 of Title 26 [now covered by this section] which prohibited transfer of marijuana except pursuant to writing on a prescribed form. [West v. U. S., C.A.8 \(Neb.\) 1966, 359 F.2d 50](#), certiorari denied [87 S.Ct. 131, 385 U.S. 867, 17 L.Ed.2d 94](#). See, also, [U.S. v. Hovsepian, C.A.Cal.1971, 442 F.2d 416](#); [Robinson v. U.S., C.A.La.1968, 396 F.2d 397](#); [U.S. v. Jackson, C.A.N.Y.1968, 390 F.2d 317](#), certiorari denied [88 S.Ct. 2304, 392 U.S. 935, 20 L.Ed.2d 1394](#), rehearing denied [89 S.Ct. 75, 393 U.S. 899, 21 L.Ed.2d 192](#); [U.S. v. Faustin, C.A.N.Y.1967, 371 F.2d 820](#), certiorari denied [87 S.Ct. 2062, 387 U.S. 935, 18 L.Ed.2d 998](#); [Browning v. U.S., C.A.Cal.1966, 366 F.2d 420](#); [U.S. v. Ward, C.A.Ind.1966, 360 F.2d 909](#); [U.S. v. Hooks, C.A.Pa.1966, 359 F.2d 584](#); [U.S. v. Williams, C.A.Ill.1959, 271 F.2d 434](#), certiorari denied [80 S.Ct. 589, 361 U.S. 961, 4 L.Ed.2d 543](#); [Gilmore v. U.S., C.A.Tex.1955, 228 F.2d 121](#). [Controlled Substances](#) ↪82

Apology of defendant charged with unlawful sale of narcotics for his supplier's unprecedented delay supported finding that defendant had previously been associated with his connection in selling narcotics and that he was seller

rather than procuring agent. [U. S. v. Winfield, C.A.2 \(N.Y.\) 1965, 341 F.2d 70. Internal Revenue](#) ↪5295

Evidence that sale of narcotics was made in defendant's presence to government agent admitted to apartment by defendant and that seller on being asked by agent about future purchases implied that agent could deal with defendant, showed that defendant was passive spectator to sale but was insufficient to sustain her conviction as aider and abettor. [U.S. v. Duff, C.A.6 \(Mich.\) 1964, 332 F.2d 702. Internal Revenue](#) ↪5295

Evidence, in prosecution for violation of narcotic laws, adequately established chain of possession of narcotics, although delivery by agents to government chemist was not authenticated by receipt. [Abramson v. U. S., C.A.5 \(Fla.\) 1964, 326 F.2d 565, certiorari denied 84 S.Ct. 1636, 377 U.S. 957, 12 L.Ed.2d 500. Internal Revenue](#) ↪5295

In prosecution for receiving and facilitating transportation and concealment of heroin and selling heroin, testimony to effect that defendant had made prior purchases and sales of narcotics and had knowledge of narcotics trade and that he profited on transactions in money or gasoline, was sufficient to raise an issue as to whether defendant was a mere conduit or purchasing agent who obtained the narcotics with money supplied by government informer at no profit to himself. [Walker v. U.S., C.A.5 \(Tex.\) 1960, 285 F.2d 52. Internal Revenue](#) ↪5319

[32. Availability of witnesses](#)

Evidence in prosecution for selling illegally imported cocaine, selling drug without necessary Treasury form, and selling drug in violation of the labelling and packaging provisions of former § 4704 of Title 26 established that defendant had access to all relevant reports and statements of government agents, informer was available to defendant as trial witness and that there was no prejudicial error in the charge. [U. S. v. Gibson, C.A.3 \(N.J.\) 1967, 377 F.2d 521. Criminal Law](#) ↪627.6(4); [Criminal Law](#) ↪666(1); [Criminal Law](#) ↪1172.1(1)

[33. Calling and production of witnesses](#)

Where government in opening statement in prosecution for sale of narcotics disclosed the existence of an informant but defense did not move for production of informer until close of government's case, trial court did not err in refusing motion to produce informer, who, according to testimony, did not take a material part in the sale of narcotics to government agent and who had been known to defendant since childhood. [U. S. v. Paz-Sierra, C.A.2 \(N.Y.\) 1966, 367 F.2d 930, certiorari denied 87 S.Ct. 962, 386 U.S. 935, 17 L.Ed.2d 807. Criminal Law](#) ↪627.10(7.1)


[34. Examination of witnesses](#)

Although defendant on direct examination in prosecution for violation of narcotics laws opened the door with respect to his prior conviction of manslaughter by describing the nature of the circumstances of killing as accidental, reference by prosecutor, on cross-examination, to what autopsy report of victim showed with respect to the fact that victim had three bullet holes in her body and a broken nose was improper since report was not in evidence, but any prejudice from the improper question was minimal since jury knew that defendant had pleaded guilty to crime of manslaughter and court promptly instructed jury to dismiss any thoughts about autopsy report. [U. S. v. Sawyer, C.A.2 \(N.Y.\) 1972, 469 F.2d 450. Criminal Law](#) ↪1170.5(5); [Witnesses](#) ↪350


Defendant accused of illegal transfer of marihuana was not improperly limited in cross-examination of government expert on composition of substance alleged to be marihuana, and court properly paraphrased language of former § 4705 of Title 26 [now covered by this section] in its instructions to jury defining marihuana. [Waker v. U. S., C.A.1](#)


[\(Mass.\) 1965, 352 F.2d 623. Criminal Law](#)  [489](#); [Criminal Law](#)  [772\(6\)](#)

[35. Impeachment of witnesses](#)


Record on appeal from conviction of sale, facilitation, transportation and concealment of heroin and of sale of heroin without obtaining properly issued written order did not indicate, with respect to contention that trial counsel should have insisted that informant be produced on chance that he might have impeached agent on his testimony regarding foreign source of heroin in question, that informant, who probably would have been hostile, would have given such evidence. [U. S. v. Garcia, C.A.9 \(Cal.\) 1971, 450 F.2d 287. Criminal Law](#)  [1119\(1\)](#)


[36. Disclosure of identity of informers](#)


Refusal to require government to disclose identity of informer as to one defendant charged with violation of former § 4742 of Title 26 [now covered by this section] and former § 4744 of Title 26 was not error in view of in camera record revealing that disclosure of the informer's identity would not have been helpful or essential to the fair determination of the cause. [U. S. v. Jackson, C.A.3 \(Pa.\) 1967, 384 F.2d 825](#), certiorari denied [88 S.Ct. 2292, 392 U.S. 932, 20 L.Ed.2d 1390](#), certiorari denied [88 S.Ct. 2294, 392 U.S. 933, 20 L.Ed.2d 1391. Criminal Law](#)  [627.10\(3\)](#)


Failure to require disclosure by government of informer's identity in prosecution for violation of former § 4742 of Title 26 [now covered by this section] and former § 4744 of Title 26 was not error where informer had disappeared and there was no evidence showing that the informer would have offered testimony in support of the defense. [U. S. v. Jackson, C.A.3 \(Pa.\) 1967, 384 F.2d 825](#), certiorari denied [88 S.Ct. 2292, 392 U.S. 932, 20 L.Ed.2d 1390](#), certiorari denied [88 S.Ct. 2294, 392 U.S. 933, 20 L.Ed.2d 1391. Criminal Law](#)  [627.10\(3\)](#)


[37. Questions for jury](#)

Although there were conflicts in testimony in prosecution for selling cocaine, such conflicts raised factual questions which were for jury to determine. [Rodriguez v. U. S., C.A.5 \(Fla.\) 1973, 473 F.2d 1042. Internal Revenue](#)  [5316](#)

Weight to be given testimony of informer and user of narcotic drugs was for jury in prosecution for possession of a narcotic drug and sale of such drug to informer without a written order form. [U. S. v. Frazier, C.A.10 \(Okla.\) 1970, 434 F.2d 238. Controlled Substances](#)  [94](#)

In prosecution for sale of narcotic drug without obtaining written order form, evidence presented jury question whether defendant was acting solely as procuring agent for buyer. [U. S. v. Barcella, C.A.1 \(Mass.\) 1970, 432 F.2d 570. Controlled Substances](#)  [94](#)

Whether defendant was entrapped into transferring marijuana without a written order by an informer who was cooperating with an undercover agent in an effort to obtain favorable consideration for an offense which he had committed or whether informer and agent merely gave defendant an opportunity to commit an offense to which he was previously disposed were questions for jury. [U. S. v. Finley, C.A.10 \(Colo.\) 1970, 421 F.2d 172. Criminal Law](#)  [739.1\(2\)](#)

Disagreement between informer and undercover agent on some of details of transactions which led to prosecution of defendant for transferring marijuana without a written order at most raised a credibility question for jury. [U. S. v. Finley, C.A.10 \(Colo.\) 1970, 421 F.2d 172. Criminal Law](#)  [742\(1\)](#)

Evidence was sufficient to present to jury a question of defendant's guilt as an aider and abettor of codefendant in transfer of a quantity of marijuana not pursuant to written order in view of testimony showing defendant's presence during negotiations during which he made suggestions as to how transaction should be consummated. [U. S. v. Priest, C.A.10 \(Colo.\) 1970, 419 F.2d 570. Controlled Substances](#) ⚡94

Whether defendant was full-fledged partner in venture of selling heroin to government agent, whether there was working relationship between defendant and codefendant and whether they shared dominion and control over the drugs were jury questions, in prosecution for sale of heroin. [Cazares-Ramirez v. U. S., C.A.5 \(Tex.\) 1969, 406 F.2d 228, certiorari denied 90 S.Ct. 933, 397 U.S. 926, 25 L.Ed.2d 106. Internal Revenue](#) ⚡5319

Any conflicts or discrepancies in testimony were for fact-finder to resolve in prosecution for selling narcotic drugs without mandatory written order form required by former § 4705 of Title 26 [now covered by this section]. [U. S. v. Minor, C.A.2 \(N.Y.\) 1968, 398 F.2d 511, certiorari granted 89 S.Ct. 2000, 395 U.S. 932, 23 L.Ed.2d 447, affirmed 90 S.Ct. 284, 396 U.S. 87, 24 L.Ed.2d 283. Criminal Law](#) ⚡260.11(5)

Credibility of evidence was for jury in prosecution for selling illegally imported cocaine and for selling drug without necessary Treasury form. [U. S. v. Gibson, C.A.3 \(N.J.\) 1967, 377 F.2d 521. Controlled Substances](#) ⚡94; [Internal Revenue](#) ⚡5316

In prosecution for illegal sales of paregoric, evidence presented a question for the trier of fact as to whether defendant was entrapped into committing such offenses, or whether government officers merely afforded defendant an opportunity to commit the offenses. [Roth v. U.S., C.A.8 \(Mo.\) 1959, 270 F.2d 655, certiorari denied 80 S.Ct. 368, 361 U.S. 931, 4 L.Ed.2d 352. Criminal Law](#) ⚡739.1(2)

In prosecution for making illegal transfers of marihuana without prescribed written order form, question of defendant's guilt was for jury. [Shurman v. U. S., C.A.5 \(Tex.\) 1956, 233 F.2d 272. Internal Revenue](#) ⚡5319

Where, in prosecution for making illegal transfers of marihuana, defendant's testimony was sufficient to create a jury issue on his basic defense of entrapment, question whether his testimony was unreasonable was primarily for jury to resolve upon correct instructions from court. [Shurman v. U. S., C.A.5 \(Tex.\) 1956, 233 F.2d 272. Criminal Law](#) ⚡739.1(2)


Whether testimony of defendants was sufficient to establish defense of entrapment to charges of conspiracy and selling narcotics without written orders required by former §§ 4705 and 4742 of Title 26 [now covered by this section] was question for jury. [U. S. v. Clarke, E.D.Pa.1963, 220 F.Supp. 905. Criminal Law](#) ⚡739.1(2)


38. Instructions


Refusal to charge jury on defense of entrapment in prosecution for selling cocaine without an order form and conspiring to do so in violation of federal narcotics laws was justified based on the entire record. [U. S. v. Gonzalez, C.A.2 \(N.Y.\) 1972, 460 F.2d 1286. Criminal Law](#) ⚡772(6)




Before instruction that defendant charged with dealing in narcotics not in pursuance of written order form is not guilty if he is found to be mere agent of the buyers is given, there must be some evidence that the defendant's involvement was confined solely to acting as the agent of the recipients, physically handling drugs whose ownership had already passed to such recipient and hence not personally engaging in the statutorily proscribed sale, barter, exchange or gift. [U. S. v. MacDonald, C.A.1 \(Mass.\) 1972, 455 F.2d 1259, certiorari denied 92 S.Ct. 2070, 406 U.S.](#)


[962, 32 L.Ed.2d 350](#), certiorari denied [92 S.Ct. 2073, 406 U.S. 962, 32 L.Ed.2d 350](#). [Controlled Substances](#) 98


The only defendant charged with selling cocaine without an order form who made a timely request for a charge on entrapment was not entitled to such charge, even if inducement had been established, since it was uncontradicted that defendants were willing to supply cocaine in large quantities and of excellent quality, they furnished telephone number at which they could be reached, they engaged in evasive tactics, they arranged for the sales in clandestine places, and only evidence negating propensity was one abortive transaction which demonstrated that defendants did not have propensity to sell cocaine to a person they knew to be a federal agent. [U. S. v. Nieves, C.A.2 \(N.Y.\) 1971, 451 F.2d 836](#). [Criminal Law](#) 772(6)


In prosecution for receiving, concealing and selling heroin and for unlawfully transferring heroin without a written order form, wherein defendants did not object to instruction as to existence of "common plan", even though instruction was somewhat ambiguous, it did not, in light of other instructions given and evidence that defendant was in possession of heroin, constitute plain error. [U. S. v. Smith, C.A.9 \(Cal.\) 1971, 451 F.2d 595](#). [Criminal Law](#) 1038.1(6)



Where accomplice's testimony is not corroborated, cautionary instruction must be given if requested. [U. S. v. Marsh, C.A.9 \(Idaho\) 1971, 451 F.2d 219](#). [Criminal Law](#) 780(1)



Instruction regarding requirement of knowledge was sufficient in prosecution for sale of morphine not in pursuance of written order, and court was not required to refer to dilaudid tablets on theory that defendant thought all pills sold were dilaudid and did not know dilaudid was narcotic, in absence of specific request therefor or specific objection to omission of such instruction. [U. S. v. Goldman, C.A.1 \(Mass.\) 1971, 450 F.2d 873](#). [Criminal Law](#) 1038.2; [Criminal Law](#) 1038.3; [Controlled Substances](#) 98


Absence of conspiracy charge in indictment did not preclude instruction under evidence in prosecution for illegally transferring marijuana without order form on law of conspiracy. [U. S. v. Sannicandro, C.A.9 \(Cal.\) 1970, 434 F.2d 321](#). [Criminal Law](#) 814(1)


Impermissible convictions on charges of concealment of illegally imported marijuana and illegal sale of marijuana did not, in view of instructions by court as to elements necessary to convict on each count, taint conviction for illegal transfer of marijuana. [U. S. v. Sannicandro, C.A.9 \(Cal.\) 1970, 434 F.2d 321](#). [Criminal Law](#) 1177


Instruction that when defendant in heroin case takes stand, he is subject to all obligations of a witness and his testimony is to be treated like that of any other witness and jurors should remember his very grave interest in the case was not objectionable as implying that defendant would commit perjury nor as violating [§ 3481 of Title 18](#) providing that accused shall at his own request be a competent witness. [Taylor v. U. S., C.A.8 \(Mo.\) 1968, 390 F.2d 278](#), certiorari denied [89 S.Ct. 155, 393 U.S. 869, 21 L.Ed.2d 137](#). [Criminal Law](#) 786(3)


Where trial judge determined that there had been sufficient showing of conspiracy to admit narcotics bureau agent's testimony recounting statements made by seller of narcotics to agent out of defendant's presence, trial judge in instructing jury that it should only consider such testimony if it first found that prima facie case of conspiracy had been established in effect unnecessarily gave jury an opportunity to second-guess judge's decision, but error favored defendant and provided no basis for reversal of judgment of conviction. [U. S. v. Ragland, C.A.2 \(Conn.\) 1967, 375 F.2d 471](#), certiorari denied [88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987](#). [Criminal Law](#) 779; [Criminal Law](#) 1172.7


Jurors were properly instructed that if they believed government's evidence as to transfers of narcotics and found "this" beyond reasonable doubt jurors would find that the essential requirements of unlawfully transferring narcotics not in pursuance of written order and on proper form had been established. [U. S. v. Hooks, C.A.3 \(Pa.\) 1966, 359 F.2d 584, Controlled Substances](#) 98; [Internal Revenue](#) 5317


Act of trial court in reading to jury complete text of former § 4742 of Title 26 [now covered by this section] which related to prohibited transfers of marijuana and which included an enumerated list of exceptions thereto, none of which defendant, charged with illegal transfer of marijuana, claimed were applicable, followed by instruction that burden to prove he was within an enumerated exception was on defendant was not plain error where instruction contained no misstatement of law though perhaps it was unnecessary to read the section in its entirety. [West v. U. S., C.A.8 \(Neb.\) 1966, 359 F.2d 50, certiorari denied 87 S.Ct. 131, 385 U.S. 867, 17 L.Ed.2d 94, Criminal Law](#) 808.5



Instructions requested by defendant, whose defense was entrapment, that under circumstances of case the government was required to prove beyond a reasonable doubt that the defendant was engaged in an established pattern of continuing criminal conduct consisting of the transfer of marijuana were properly refused. [Waker v. U. S., C.A.1 \(Mass.\) 1965, 352 F.2d 623, Criminal Law](#) 772(6)


Defendant in prosecution for illegal transfer of marijuana was not entitled to instruction on offense of unlawful acquisition or possession of marijuana, since issue of legality of his acquisition was irrelevant to offense charged. [Waker v. U. S., C.A.1 \(Mass.\) 1965, 344 F.2d 795, Criminal Law](#) 795(2.70)

Trial court under facts of prosecution for sale of narcotics was not required to instruct jury regarding difference between dealing with a purchaser as a seller and acting for purchaser as a procuring agent. [Dunbar v. U. S., C.A.9 \(Or.\) 1965, 342 F.2d 979, Controlled Substances](#) 98

When warranted by evidence, purchasing agent instruction is required when requested on charge of selling narcotics. [Lewis v. U. S., C.A.D.C.1964, 337 F.2d 541, 119 U.S.App.D.C. 145, certiorari denied 85 S.Ct. 1542, 381 U.S. 920, 14 L.Ed.2d 440, Controlled Substances](#) 98

If evidence of procuring is present, procuring agent instruction is required in prosecution on indictment charging offenses of selling and purchasing illicit narcotics. [Lewis v. U. S., C.A.D.C.1964, 337 F.2d 541, 119 U.S.App.D.C. 145, certiorari denied 85 S.Ct. 1542, 381 U.S. 920, 14 L.Ed.2d 440, Controlled Substances](#) 98

In prosecution for illegal sale of narcotics where government offered evidence that defendant was asked by a plain-clothes policeman to purchase narcotics for him and that he gave defendant money and that she went to a certain house where a seller of drugs was said to live and that she later handed officer a packet containing drugs, failure to instruct as to the elements necessary to establish a sale by defendant was reversible error. [Kelley v. U. S., C.A.D.C.1960, 275 F.2d 10, 107 U.S.App.D.C. 122, Controlled Substances](#) 98; [Criminal Law](#) 1173.2(2)

In prosecution for illegal possession and transportation of narcotics, instruction that failure to produce upon reasonable notice and demand order form required by law showing payment of special transfer tax was presumptive evidence of guilt, was proper, even though accused was in jail and unwarned. [Miller v. U.S., C.A.5 \(Tex.\) 1959, 273 F.2d 279, certiorari denied 80 S.Ct. 756, 362 U.S. 928, 4 L.Ed.2d 747, Internal Revenue](#) 5317

In prosecution under indictment charging defendant and codefendant with transferring of marijuana to an agent not pursuant to a written order form, on theory that defendant was an aider and abettor and hence liable as principal, had

defendant's counsel objected to conversations between agent and codefendant, none of which was in defendant's presence, court would have been required to instruct jury that they were admissible only against codefendant and not against defendant, and the defendant was entitled to have jury instructed that such testimony should not be considered as evidence against him. [Glenn v. U. S., C.A.6 \(Tenn.\) 1959, 271 F.2d 880. Criminal Law ↪673\(4\)](#)

39. Verdict

If, in prosecution on two-count indictment, charging defendant with transferring cocaine without obtaining from the transferee an order form sheet for that purpose, as required by former § 4705 of Title 26 [now covered by this section], the evidence as to defendant's participation in first transaction had been clear and convincing, and yet short of proof beyond a reasonable doubt, then the duty of the jury would have been to acquit. [U. S. v. Randall, C.A.9 \(Cal.\) 1974, 491 F.2d 1317. Criminal Law ↪419\(1.5\); Criminal Law ↪561\(2\)](#)

Where defendant was charged with violation of former § 4705 of Title 26 [now covered by this section] requiring that selling, bartering, exchanging, or giving away of narcotic drugs be pursuant to written order on official form, and transactions charged in counts one and two occurred week prior to transaction charged in count three, fact that defense to all counts was entrapment and that defendant was convicted of count three but that jury was unable to agree as to counts one and two did not render verdict inconsistent. [U. S. v. Watson, C.A.9 \(Cal.\) 1970, 421 F.2d 1357. Criminal Law ↪878\(4\)](#)

Defendant's acquittal on counts charging sale of narcotics without a written order did not amount to an acquittal on counts charging concealment and sale of heroin, regardless of whether a single course of conduct was involved in each offense, since counts under which defendant was convicted did not require proof of a sale without a written order and, thus, were separable and distinct from counts which were dismissed. [Perez v. U. S., C.A.9 \(Cal.\) 1970, 421 F.2d 462. Double Jeopardy ↪146](#)

40. Sentence and punishment--Generally

Where defendant was convicted on a six count indictment charging violations of former § 4705 of Title 26 [now covered by this section], penalizing the unlawful sale or exchange of narcotic drugs except in pursuance of a designated writing, and former § 174 of this title penalizing the fraudulent importation of narcotic drugs, defendant was properly sentenced to imprisonment for a term of one to five years on each count, the sentences on the first three counts to run consecutively, and the sentences on remaining three counts to run concurrently with those on the first three counts, since defendant under former § 4705 had committed three distinct offenses notwithstanding fact that violations were compendiously committed in single transactions of vending. [Gore v. U. S., U.S. Dist. Col. 1958, 78 S.Ct. 1280, 357 U.S. 386, 2 L.Ed.2d 1405, rehearing denied 79 S.Ct. 13, 358 U.S. 858, 3 L.Ed.2d 92. Sentencing And Punishment ↪606](#)

Where defendant was in custody on burglary and other state charges unrelated to federal charges prior to his sentencing on federal narcotics charges, defendant was not entitled to credit for time spent in custody prior to sentencing. [U.S. v. Bueno, C.A.5 \(Tex.\) 1972, 470 F.2d 154, certiorari denied 93 S.Ct. 1931, 411 U.S. 949, 36 L.Ed.2d 411. Sentencing And Punishment ↪1175](#)

That defendant's conviction of concealing marihuana with knowledge that it was illegally imported was invalid did not invalidate defendant's conviction of sale of cocaine not pursuant to written order on theory that invalid conviction had spilled over to affect proof or sentence on cocaine counts where proof of cocaine sales was independent of small quantity of marihuana that had been found and concurrent sentences imposed on cocaine offenses were only

for one year over minimum sentence. [U. S. v. Beverhoudt, C.A.2 \(N.Y.\) 1971, 438 F.2d 930. Controlled Substances ↪100\(1\)](#)

Imposition of sentence of ten years for sale of narcotics and concurrent sentences of five years for conspiracy and one year for sale of drugs was not an abuse of discretion, on theory that defendant had received disparate sentence to that of codefendants and two others in nonrelated cases because he had stood trial rather than pleading guilty, where total sentence was within permissible statutory limits and defendant had prior criminal record. [Peterson v. U. S., C.A.8 \(Mo.\) 1970, 432 F.2d 545. Controlled Substances ↪100\(2\); Sentencing And Punishment ↪56](#)

Imposition of two consecutive ten-year sentences for unlawfully transferring marijuana without required written order form and imposition of other sentences ranging from one to ten years to be served concurrently with the two ten-year sentences were not excessive and did not amount to cruel and unusual punishment, where they were within range prescribed by former §§ 4742 and 4744 of Title 26 and § 331 of this title. [U. S. v. Kellerman, C.A.10 \(Okla.\) 1970, 432 F.2d 371. Sentencing And Punishment ↪1508; Controlled Substances ↪100\(2\); Sentencing And Punishment ↪645](#)

Sentences aggregating 25 years of imprisonment and \$8,000 in fines for unlawful purchase and sale of heroin without required order form were not so excessive as to constitute cruel and unusual punishment. [McWilliams v. U. S., C.A.8 \(Mo.\) 1968, 394 F.2d 41, certiorari denied 89 S.Ct. 643, 393 U.S. 1044, 21 L.Ed.2d 593. Sentencing And Punishment ↪1490; Sentencing And Punishment ↪1560](#)

Sentencing under former § 4705 of Title 26 [now covered by this section] making it unlawful to transfer narcotic drugs except in pursuance of written order and former § 174 of this title which prohibited the fraudulent or knowing importation of narcotic drugs was mandatory, and [§ 4208 of Title 18](#) allowing sentencing court to fix prisoner's eligibility for parole at time of sentencing did not apply to offenses under those narcotics laws. [Vaughn v. U. S., C.A.7 \(Ill.\) 1966, 359 F.2d 809. Controlled Substances ↪100\(2\)](#)

Imposition of consecutive sentences under different statutes for same narcotic transaction was not improper. [Williams v. U. S., C.A.D.C.1964, 332 F.2d 308, 118 U.S.App.D.C. 108, certiorari denied 85 S.Ct. 724, 379 U.S. 1003, 13 L.Ed.2d 704. See, also, Henley v. U.S., C.A.Fla.1970, 433 F.2d 960; Clay v. U.S., C.A.Okla.1962, 303 F.2d 301, certiorari denied 83 S.Ct. 1095, 372 U.S. 970, 10 L.Ed.2d 132; Worthem v. U.S., C.A.Mo.1962, 298 F.2d 814, certiorari denied 82 S.Ct. 1165, 369 U.S. 891, 8 L.Ed.2d 291; McMurray v. U.S., C.A.Okla.1961, 298 F.2d 619, certiorari denied 82 S.Ct. 950, 369 U.S. 860, 8 L.Ed.2d 18. Sentencing And Punishment ↪606](#)

Congress by making it unlawful for any person to sell narcotic drugs except in pursuance of a written order and penalizing sale of narcotic drugs except in the original stamped package and penalizing the fraudulent importation of narcotic drugs into the United States, intended that a person against whom any one of the defined phases of the drug selling transaction was proved, should be punished but did not manifest the congressional intent, by providing for a five year sentence for a violation of any of the statutes, that one who performed the entire transaction, receive accumulative sentence of fifteen years. [Gore v. U.S., C.A.D.C.1957, 244 F.2d 763, 100 U.S.App.D.C. 315, certiorari granted 78 S.Ct. 335, 355 U.S. 903, 2 L.Ed.2d 259, affirmed 78 S.Ct. 1280, 357 U.S. 386, 2 L.Ed.2d 1405, rehearing denied 79 S.Ct. 13, 358 U.S. 858, 3 L.Ed.2d 92. Sentencing And Punishment ↪524](#)

Where defendant was convicted on a six count indictment charging violations of former § 4705 of Title 26 [now covered by this section] penalizing the unlawful sale or exchange of narcotic drugs except in pursuance of a designated writing, and former § 174 of this title penalizing the fraudulent importation of narcotic drugs and defendant was a first offender and was sentenced from three to fifteen years, sentence was not invalid on the ground that the maximum sentence for a first offense under former § 7237 of Title 26 was two to five years, since defendant was

convicted for three offenses, and his sentences did not exceed the maximum for first offenders on each count. [Gore v. U.S., C.A.D.C.1957, 244 F.2d 763, 100 U.S.App.D.C. 315](#), certiorari granted [78 S.Ct. 335, 355 U.S. 903, 2 L.Ed.2d 259](#), affirmed [78 S.Ct. 1280, 357 U.S. 386, 2 L.Ed.2d 1405](#), rehearing denied [79 S.Ct. 13, 358 U.S. 858, 3 L.Ed.2d 92](#). [Sentencing And Punishment](#) ↪524

One who was convicted under former § 4705 of Title 26 [now covered by this section] as second narcotics offender, of narcotic drug sale not made in pursuance of written order of person to whom drug was sold on form issued in blank for that purpose by Secretary of Treasury could be sentenced for term of 30 years. [Hughes v. U. S., E.D.Mo.1968, 280 F.Supp. 95](#). [Sentencing And Punishment](#) ↪1408

41. ---- Vacating or setting aside, sentence and punishment

There was neither perjury, nor such a substantial discrepancy in testimony in prosecution for selling cocaine as would entitle petitioner to vacation of sentence. [Rodriguez v. U. S., C.A.5 \(Fla.\) 1973, 473 F.2d 1042](#). [Criminal Law](#) ↪1537

Where, beyond bare conclusory allegations, petitioner alleged no facts to establish truth of claims that United States Attorney knowingly used perjured testimony, suppressed evidence, or made false statements in prosecution for selling cocaine, no hearing was required as to such claims on motion to vacate sentence. [Rodriguez v. U. S., C.A.5 \(Fla.\) 1973, 473 F.2d 1042](#). [Criminal Law](#) ↪1655(1)

Where conviction, on plea of guilty to violation of former § 4744 of Title 26 requiring payment of tax upon acquisition of marihuana resulted from agreement to dismiss the more serious controlled substances violations and defendant had served the relatively small part of the sentence which was vacated because of retroactive application of United States Supreme Court decision, defendant by moving to vacate sentence tacitly repudiated former bargain plea, and if government had substantial evidence that he had committed more serious offense he could be tried for it. [Harrington v. U. S., C.A.5 \(Fla.\) 1971, 444 F.2d 1190](#). [Criminal Law](#) ↪273.2(2)

On motion by defendant to have sentence for unlawful sale of narcotics set aside and vacated, defendant was required to allege facts sufficient to inform the government as to what he relied on to establish fraud against him. [Taylor v. U. S., C.A.8 \(Mo.\) 1956, 229 F.2d 826](#), certiorari denied [76 S.Ct. 1055, 351 U.S. 986, 100 L.Ed. 1500](#). [Criminal Law](#) ↪1580(1)

On motion to set aside and vacate sentence for unlawful sale of narcotics, allegations that records of Narcotic Bureau showed the arrest for possession of narcotics of witness, who testified that he was not a user of narcotics, did not show that prosecuting attorney and United States agents of the Narcotic Bureau had actual knowledge of the alleged perjured testimony of witness. [Taylor v. U. S., C.A.8 \(Mo.\) 1956, 229 F.2d 826](#), certiorari denied [76 S.Ct. 1055, 351 U.S. 986, 100 L.Ed. 1500](#). [Criminal Law](#) ↪1580(1)

Proof on motion to vacate sentence failed to demonstrate inconsistency in area of informer's testimony concerning informer's use of drugs. [McFadden v. U. S., E.D.Mo.1970, 317 F.Supp. 926](#), appeal dismissed [436 F.2d 1384](#). [Criminal Law](#) ↪1618(8)

Where issue of credibility of informer's testimony had been raised on appeal wherein defendant's conviction was affirmed, such issue would not be discussed further on motion to vacate sentence. [McFadden v. U. S., E.D.Mo.1970, 317 F.Supp. 926](#), appeal dismissed [436 F.2d 1384](#). [Criminal Law](#) ↪1433(2)

That narcotics agent was dismissed from service and indicted for bribery of government employees was insufficient to show, on motion to vacate sentence for illegal purchase and sale of narcotics, a lack of truthfulness in such agent's testimony some four years earlier. [McFadden v. U. S., E.D.Mo.1970, 317 F.Supp. 926](#), appeal dismissed [436 F.2d 1384](#). [Criminal Law](#) ↪ [1618\(12\)](#)

[42. New trial](#)

Person, who was convicted of unlawful transfer of marijuana, transporting and concealing marijuana without paying tax, of unlawful sale of heroin not from original stamped package and of unlawful sale of heroin without prescribed order form, was not entitled, on theory that judgments of conviction of transporting and concealing marijuana without paying tax were void because former §§ 4741 and 4744 of this title in which they were based had been declared unconstitutional and thus that remaining counts were inseparable and were tainted by such illegal convictions, to new trial as to remaining counts. [Hooks v. U. S., C.A.3 \(Pa.\) 1971, 450 F.2d 405](#). [Criminal Law](#) ↪ [1189](#)

Where conviction for violating former § 4742 of Title 26 [now covered by this section] was reversed because no transcript was available, and defendant had already completely served sentence imposed as result of conviction, re-trial would be pointless and order expunging record of conviction would be entered. [U. S. v. Atilus, C.A.5 \(Fla.\) 1970, 425 F.2d 816](#). [Criminal Law](#) ↪ [1186.7](#)

Newly discovered evidence consisting of knowledge that agents that had testified as to narcotics transaction with defendant had testified previously at another trial that they were pursuing an investigation in the Bronx at a certain time close to time sale was allegedly made to defendant was not a sufficient basis upon which to grant a new trial in view of fact discrepancy as to time, although it had some bearing on credibility of the agents, did not affect the case's central issue which was the nature of the transaction which concededly involved payment of money and delivery of something in a brown paper bag. [U. S. v. Faustin, C.A.2 \(N.Y.\) 1967, 371 F.2d 820](#), certiorari denied [87 S.Ct. 2062, 387 U.S. 935, 18 L.Ed.2d 998](#). [Criminal Law](#) ↪ [945\(1\)](#)

Where evidence of defendant's guilty knowledge of sale of marijuana by another in defendant's automobile was weak, in view of peculiar circumstances, district court erred in refusing to grant a new trial for newly discovered evidence. [Newsom v. U. S., C.A.5 \(Tex.\) 1962, 311 F.2d 74](#). [Criminal Law](#) ↪ [938\(1\)](#)

[43. Harmless or prejudicial error](#)

Where defendant admitted possessing packages and only issue was whether defendant had knowledge that packages contained marijuana, giving of erroneous instructions that possession would be presumptive evidence of guilt and that jury could draw certain inferences concerning order forms from finding of possession did not constitute "plain error" that would justify reviewing court reviewing the errors despite lack of objections. [Daniels v. U. S., C.A.9 \(Cal.\) 1968, 402 F.2d 30](#). [Criminal Law](#) ↪ [1038.1\(5\)](#)

Admission of testimony of former narcotics agent who stated he had arrested defendant 8 years before commission of acts charged in indictment for violation of former § 4705 of Title 26 [now covered by this section] and former § 174 of this title was prejudicial error, since the fact of arrest was probative of nothing except defendant's apprehension, and in addition the event about which the witness testified was too remote. [U.S. v. White, C.A.6 \(Mich.\) 1968, 390 F.2d 405](#). [Criminal Law](#) ↪ [384](#); [Criminal Law](#) ↪ [1169.1\(7\)](#)

Failure to give purchasing agent instruction constituted prejudicial error as to "sale" offenses relating to narcotics law violation but not as to counts not charging facilitation of a sale. [Lewis v. U. S., C.A.D.C.1964, 337 F.2d 541](#).

[119 U.S.App.D.C. 145](#), certiorari denied [85 S.Ct. 1542](#), [381 U.S. 920](#), [14 L.Ed.2d 440](#). [Criminal Law](#) ↪
[1173.2\(1\)](#); [Controlled Substances](#) ↪98

In prosecution against husband and wife and their daughter for feloniously transferring marijuana without a written order and for acquiring marijuana without paying the required tax, admitting incriminating statement or action by one or more of the defendants out of the presence of the other was not reversible error in view of action taken by the trial judge. [Wiley v. U.S., C.A.4 \(N.C.\) 1960, 277 F.2d 820](#), certiorari denied [81 S.Ct. 47](#), [364 U.S. 817](#), [5 L.Ed.2d 47](#). [Criminal Law](#) ↪ [1169.5\(2\)](#)

In prosecution under indictment charging defendant and codefendant with transferring marijuana to agent not pursuant to a written order form, on theory that defendant was an aider and abettor and hence liable as principal, where the evidence would have been insufficient to sustain defendant's conviction had the improper testimony regarding conversations between agent and codefendant in defendant's absence been excluded, court of appeals would be remiss in its duty to see that fundamental justice is done if it failed to note plain error inherent in the proceedings below. [Glenn v. U. S., C.A.6 \(Tenn.\) 1959, 271 F.2d 880](#). [Criminal Law](#) ↪ [1036.5](#)

In prosecution for making illegal transfers of marijuana, district court's comments, which pertained to defendant's basic defense of entrapment, and which had effect of vitiating defendant's requested instruction which was given, constituted prejudicial error. [Shurman v. U. S., C.A.5 \(Tex.\) 1956, 233 F.2d 272](#). [Criminal Law](#) ↪ [655\(2\)](#); [Criminal Law](#) ↪ [1166.22\(1\)](#)

In prosecution for the illegal transfer of and transportation of marijuana, admission of demand of Treasury agent for written order forms furnished by Secretary of Treasury for transfer of marijuana was not error under circumstances. [Yogt v. U. S., C.C.A.5 \(Tex.\) 1946, 156 F.2d 308](#). [Controlled Substances](#) ↪ [69](#)



[44](#). Questions reviewable


Inasmuch as defendant convicted of unlawful concealment and sale of imported heroin and unlawful sale of heroin without obtaining written order form was given concurrent sentence on all counts, reviewing court did not have to consider constitutionality of provisions requiring written order form. [U. S. v. Asteguieta-Luna, C.A.9 \(Cal.\) 1971, 449 F.2d 149](#). [Criminal Law](#) ↪ [1177.3\(1\)](#)

Where defendant was sentenced to concurrent five years' imprisonment on conviction of selling narcotics without complying with written order form and of possessing cocaine which had been illegally imported and the conviction for sale without complying with written order form requirement was supported by overwhelming weight of evidence, reviewing court would not reach contentions that evidence was insufficient to prove his knowledge that the cocaine he was charged with possessing had been illegally imported or that prejudicial testimony of narcotics agent was admitted concerning knowledge of illegal importation of other narcotics not involved in indictment. [U. S. v. Re-vuelta, C.A.9 \(Nev.\) 1971, 437 F.2d 50](#). [Criminal Law](#) ↪ [1177.3\(1\)](#)


Where defendant was convicted of three narcotics offenses and one tax offense involving narcotics and given concurrent sentences, claim that conviction with respect to the tax offense was invalid was not reached. [U. S. v. Brown, C.A.9 \(Cal.\) 1970, 421 F.2d 1283](#), certiorari denied [90 S.Ct. 1855](#), [398 U.S. 941](#), [26 L.Ed.2d 276](#), rehearing denied [91 S.Ct. 28](#), [400 U.S. 856](#), [27 L.Ed.2d 96](#). [Criminal Law](#) ↪ [1134.70](#)

Where prison sentences totaling 25 years and fines totaling \$8,000 were within statutory limits in prosecution for unlawful purchase and sale of heroin without required order form, the reviewing court did not intercede to review



their propriety. [McWilliams v. U. S., C.A.8 \(Mo.\) 1968, 394 F.2d 41](#), certiorari denied [89 S.Ct. 643, 393 U.S. 1044, 21 L.Ed.2d 593](#). [Criminal Law](#)  [1156.2](#); [Criminal Law](#)  [1156.10](#)


Where court of appeals sustained defendant's conviction for conspiracy to violate former § 4742 of Title 26 [now covered by this section] prohibiting transfer of marihuana not pursuant to written order form supplied by Secretary and defendant had been given equal and concurrent sentences for that conviction and conviction for concealing of marihuana, it was unnecessary for court of appeals to justify conviction on charge of concealing marihuana. [Brown v. U. S., C.A.9 \(Cal.\) 1966, 366 F.2d 420](#). [Criminal Law](#)  [1177.3\(1\)](#)


[45. Remand](#)

Where stipulation provided that it included all evidence in case and made no reference to entrapment and affidavit revealed that claimed evidence as to illegal entrapment was not newly discovered but was known to defendant at time he committed offense with which he was charged for having transferred marijuana to special agent without written order form and claim of entrapment was not available to defendant, defendant was not entitled to relief on claim of error in court's refusal to issue certificate requesting remand of case on ground of newly discovered evidence which assertedly was found by him after his appeal had been perfected and which indicated an illegal entrapment. [U. S. v. Romero, C.A.10 \(Okla.\) 1971, 441 F.2d 401](#). [Criminal Law](#)  [1181.5\(3.1\)](#)

[46. Reversal](#)

Defendant's conviction, in violation of former § 4742 of Title 26 [now covered by this section] of the transfer of marijuana without a written order on a form issued by the Secretary of the Treasury was violative of his privilege against self-incrimination under [U.S.C.A.Const. Amend. 5](#) accordingly, it was only "just under the circumstances" to reverse the conviction, although defendant did not assert his right against self-incrimination at trial. [Baker v. U. S., C.A.8 \(Mo.\) 1969, 412 F.2d 1010](#). [Criminal Law](#)  [393\(1\)](#); [Criminal Law](#)  [1030\(2\)](#)

That evidence supporting conviction of conspiracy was same evidence supporting substantive counts upon which jury could not agree on verdict of guilty did not entitle defendant to reversal of conspiracy conviction arising out of alleged sale of narcotics without required written order form. [Aggers v. U. S., C.A.8 \(Mo.\) 1966, 366 F.2d 744](#), certiorari denied [87 S.Ct. 719, 385 U.S. 1010, 17 L.Ed.2d 548](#). [Criminal Law](#)  [1175](#)

Records of prosecution for violation of former § 4705 of Title 26 [now covered by this section] and former § 174 of this title regulating the importation, purchase and sale of narcotic drugs conclusively showed that defendant was entitled to no relief on ground that government had knowingly used perjured testimony of witness. [Frye v. U. S., C.A.7 \(Ill.\) 1964, 337 F.2d 385](#), certiorari denied [85 S.Ct. 927, 380 U.S. 925, 13 L.Ed.2d 810](#). [Criminal Law](#)  [1618\(12\)](#)

21 U.S.C.A. § 828, 21 USCA § 828

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