

INCREASED PENALTIES FOR NARCOTIC AND MARIHUANA LAW VIOLATIONS

OCTOBER 19 (legislative day, OCTOBER 1), 1951.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 3490]

The Committee on Finance, to whom was referred the bill (H. R. 3490) to amend the penalty provisions applicable to persons convicted of violating certain narcotic laws, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act the House report is accepted as follows:

A. PURPOSE OF THE BILL

The purpose of the bill is to make more stringent and more uniform the penalties which would be imposed upon persons violating the Federal narcotic and marihuana laws. Enactment of more severe sentences would enable narcotic violators, who are frequently addicts themselves, to be subjected to a longer period of treatment and observation, and would at the same time have the important effect of removing from active participation in the drug traffic those offenders who may not be susceptible to corrective treatment.

B. SUMMARY OF THE BILL

The Narcotic Drugs Import and Export Act now provides criminal penalties for anyone who fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or who receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale, of any such narcotic drug after being imported or brought in. Other criminal penalties are provided for violations of the internal revenue laws relating to the taxes upon opium and coca leaves and marihuana and the occupational taxes upon distributors of narcotics and marihuana.

The bill would amend the Narcotic Drugs Import and Export Act and the internal-revenue laws relating to narcotics and marihuana in order to provide greater uniformity of penalties for serious violations of those laws. The bill would fix maximum fines of \$2,000 for all such offenses and minimum and maximum prison terms of from 2 to 5 years for the first offense, 5 to 10 years for the second offense, and 10 to 20 years for third and subsequent offenses. It would

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preclude suspension of sentence or probation on a second and subsequent conviction; would use section 2557 (b) (1) of the Internal Revenue Code to provide the same penalties for both narcotic and marihuana violations of the internal-revenue laws now found in section 2596 of the code; would for the first time provide the increased penalties for second and subsequent convictions of marihuana law violators and would broaden the scope of what would constitute a prior conviction to include convictions for any prior violations of 21 United States Code 174 and those prior violations subject to the penalties provided in section 2557 (b) (1) of the Internal Revenue Code and its antecedents, and section 2596 of such code. A conspiracy to commit violations of the above laws would be considered a specific offense.

By the amendment of section 2557 (b) (1), Internal Revenue Code, the possible penalties for the several offenses coming within its scope would become uniform. However, the specific penalties otherwise provided by law, including those provided in subsections (b) (2), (b) (3), and (b) (4) of section 2557, Internal Revenue Code, would remain unchanged.

C. INCREASE IN DRUG ADDICTION

During the fiscal year 1950, the Bureau of Narcotics arrested 6,163 persons for violations of the various narcotic laws. This represented nearly a 24-percent increase over the 4,980 arrests in 1949, a 77-percent increase over the 3,472 arrests in 1943, an 83 percent increase over the 3,367 arrests in 1947, and more than a 100-percent increase over the 2,944 arrests in 1946. From these statistics there can be no question but that there is an increase in drug addiction.

According to the annual report of the Bureau of Narcotics of the Treasury Department for the calendar year ended December 31, 1950, Italy is now the major source of supply of heroin smuggled into the United States. The other principal sources of supply are Turkey, Iran, Syria, India, Mexico, China, and Hong Kong. Efforts are in progress through direct negotiations with these countries and through the United Nations Economic and Social Council to obtain agreement to limit the production of narcotics to the world's medical and scientific needs. It is estimated that from 75 to 90 percent of the illegitimate narcotics enter this country through the port of New York, although substantial quantities also come in through the port of New Orleans and elsewhere. The usual mode of entry is asserted to be seamen who have made contact with a source of supply in a foreign country. The appreciation in value between the cost of the narcotics in the foreign country and the initial price obtained in the illegitimate traffic in this country may be as great as tenfold. The difficulty in blocking this source of supply is readily apparent since the packages of narcotics are concealable on the person of seamen and the numbers of seamen are such that it is impossible for the Bureau of Narcotics and the Bureau of Customs to do more than make spot checks of personnel as they leave their ship.

The ultimate cost of an average daily supply of heroin may range from \$8 to \$15 a day, and the gross volume of business from the illegitimate narcotics traffic, assuming 60,000 addicts in the country, as estimated by the Bureau of Narcotics, and an average cost of \$10 a day for a supply would approximate \$220 million a year.

The significance of these statistics is not measured alone in the horrible toll of human misery of the persons addicted, nor to the contribution which the illegal drug traffic affords to organized crime, as has been developed recently by the Senate Special Committee To Investigate Organized Crime in Interstate Commerce (see S. Rept. 307, 82d Cong., 1st sess., pp. 164-169). Many of the addicts obviously do not earn sufficient to maintain themselves with the necessities of life and at the same time provide a surplus for their supply of narcotics. This necessitates individual careers in crime sufficient to yield the necessary money to maintain the drug habit.

There has been an alarming increase in drug addiction among younger people. In the first 6 months of 1946, the average age of persons committed to the United States Public Health Service hospital at Lexington, Ky., was 37½ years. During the same 6 months' period of 1950, only 4 years later, the average age dropped to 26.7 years. In 1946 the hospital had during the year only 3 patients under 21; in 1950 it had 766 such patients throughout the year.

The drug traffic has also become a problem among personnel at our military establishments over the past several months. Dope peddlers have been arrested in and about several military camps and addiction has been detected among the personnel of the armed services.

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D. INADEQUACY OF PENALTIES UNDER EXISTING LAW

An analysis of the adequacy of penalties under existing law should take into account the extent to which repetition in violations of the narcotics and marihuana laws occurs and a comparison of the severity of sentences for narcotics violations with crimes of equal social significance.

The average sentence of persons convicted of violation of the Federal narcotics and marihuana laws (exclusive of those placed on probation) in the year ended June 30, 1951, was 23.1 months which is slightly less than the average sentence disclosed in a survey made 15 years ago. During this 15-year period the number of persons convicted of narcotic violations each year has fluctuated, but during the past 4 years there has been a steady increase in convictions although there has been a decrease in the number of persons convicted and sentenced for violation of all other crimes.

The percentage of persons receiving sentences of 5 years or more for violation of the narcotics law is less than the percentage of persons receiving similar sentences for violation of the counterfeiting and white-slave-traffic laws.

According to the Bureau of Narcotics, recidivism (repeated offenses) among narcotic violators has increased greatly during the past 15 years. In 1935, the study of narcotics convictions disclosed that 40 percent of the persons convicted had been previously convicted of violating the narcotic laws. Figures compiled by the Bureau of Prisons for the fiscal year ended June 30, 1950, show that of 1,481 narcotic violators committed to Federal institutions with a sentence of more than 1 year, 63.6 percent were recidivists. Approximately 30 percent had three or more prior commitments. It would appear, therefore, that the punishment which has been afforded narcotic law violators has not been an effective deterrent.

Of the 1,598 convictions of narcotics violations in the fiscal year 1949, 25 percent of the persons convicted were granted probation; in the fiscal year 1950, 471 persons out of a total of 2,136 convicted were granted probation. The statistics show, also, that of the nearly 400 convicted in 1949 and placed on probation, 15 percent had prior convictions for violation of the narcotic laws. Half of those having prior convictions had two or more. One had as many as nine prior convictions.

It appears urgent, therefore, that steps be taken to increase penalties even to the extent of removing some discretion from the Federal judiciary in order to cope effectually with the expanding illegal traffic in narcotics. On this point, the recommendation of the Senate Special Committee To Investigate Organized Crime in Interstate Commerce is quoted in support:

"We have seen that there has been a serious increase in the narcotics traffic, particularly among teen-agers. One of the ways to curb that traffic is through the imposition of severe penalties. Mr. Harry Anslinger, Commissioner of Narcotics, testified before this committee that—

"The average prison sentence meted out in the Federal courts is 18 months. Short sentences do not deter. In districts where we get good sentences the traffic does not flourish. * * * Both the League of Nations and the United Nations have recommended more severe sentences as one of the best methods to suppress the traffic.

"In many countries that has been very effective. * * *

"There should be a minimum sentence for the second offense. The commercialized transaction, the peddler, the smuggler, those who traffic in narcotics, on the second offense if there were a minimum sentence of 5 years without probation or parole, I think it would just about dry up the traffic."

"In the light of this testimony, Congress should pass legislation to provide for increased penalties for drug peddlers and others engaged in the commercialized aspects of the drug traffic. Mandatory penalties of imprisonment of at least 5 years should be provided for second offenders. Such legislation is now pending in the House of Representatives where it is receiving the careful consideration of the Committee on Ways and Means."

E. ANTICIPATED EFFECT OF INCREASING MAXIMUM PENALTIES AND IMPOSING MINIMUM PENALTIES FOR NARCOTICS VIOLATIONS

According to the testimony before a subcommittee of the Committee on Ways and Means, Federal judges in a few areas in the country have a reputation for imposing severe sentences for narcotics violations. In Memphis, Tenn., Louisville, Ky., and Minneapolis, Minn., the drug traffic is today practically nonexis-

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tent, largely because of this factor. The Deputy Commissioner of Narcotics of the Treasury Department testified from his personal experience in 1928, 1929, and 1930 when he had charge of the New York district for the Bureau of Narcotics:

"There were dope peddlers in Brooklyn, which is the eastern judicial district, but uniformly those dope peddlers would not deal in Brooklyn. They would come over to Manhattan. The judges at that time in Brooklyn, * * * meted out strong, long sentences. Ten years was common. In Manhattan it was consistent with what it is at this time. And that condition maintains in New York at this time. They do not do business in Brooklyn. They may live in Brooklyn, but the deals are made in Manhattan where prosecution would lie in the event they were caught."

The following brief memorandum prepared by the Bureau of Narcotics, regarding the importance of mandatory sentences for narcotic law offenses, is quoted in full:

"What I am saying may be common knowledge, but for the record it might be well to touch briefly on the nature of this commerce in illicit narcotics. The opiates and cocaine are poisons which slowly destroy the physical being. Most people reserve a particular horror and antipathy for the poisoner. There is no reason why the narcotic peddler should be excluded from this feeling. While the narcotic poison slowly destroys the victim's physique, it may rapidly destroy his dignity, his respect, his moral values. A useful citizen may soon become a parasitic criminal. If one already has criminal tendencies, he is confirmed in them. In a few months a wholesome woman may be transferred into the lowest harlot that walks the streets.

"Narcotic commerce is no crime of accident or impulse or occasion. It is a carefully studied way of life. It depends on deliberate and calculated scheming and diligently developed sources of supply, on carefully cultivated outlets and customers. This is a degraded business where the attendant human misery is completely discounted for the profit consideration. That profit is alluring. A \$1,000 investment may be doubled merely by crossing a street between a wholesaler and a waiting customer with a few ounces of heroin. Obviously the criminal will assume some risks in such an attractive business.

"He calculates these risks exactly. His is such an easily hidden business that he knows that it might take officers of the law months to catch him at the exact moment when competent evidence is available against him. He knows the quality and amount of the narcotic-law enforcement in the community; he knows whether narcotic cases move promptly on the criminal calendar or are stagnated for months; he knows the quality of prosecution; above all, he knows what is the likely payoff in the way of a sentence. These professionals do not just reckon sentences in the gross amount of time imposed. They can almost instantly figure the amount of good time and industrial good time which might be forthcoming on any kind of a sentence. They know under just what circumstances probation or parole is likely to be granted. Fear is the only consideration which will deter most of these people. We would like to see the risks enhanced in this dirty business.

"One more thought. Assume that we have only a certain number of people with the criminal know-how to carry on the narcotic traffic. And it does require know-how. Then it is an elemental police matter that long sentences will permit the fewest to escape justice. With one contingent captured and out of the way for a long time, the police can concentrate on the remainder. The enforcement machine can run smoothly on new grist without being clogged by repeaters who, if given early release, will simply be fed back into the machine to overload it (hearings before the Subcommittee on Narcotics, April 7, 1951)."

Both the Department of Justice and the Treasury Department have reported favorably on the bill. The report of the Department of Justice on legislation identical in purpose states, in part, "The bill on the whole would seem to be helpful in dealing with the grave law-enforcement problems arising from the nefarious traffic in narcotic drugs."

F. CONCLUSION

The violation of laws relating to the importation, taxation, and use of narcotics and marihuana constitutes a problem of the greatest urgency. The increased and more uniform penalties provided under this bill should be enacted at the earliest practicable date.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

NARCOTIC DRUGS IMPORT AND EXPORT ACT, AS AMENDED (PUBLIC, No. 227
67TH CONG.)

Sec. 2. (a) * * *

(c) **[That if any person]** *Whoever* fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, **[or assists in so doing,]** or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, **[such person shall upon conviction]** or conspires to commit any of such acts in violation of the laws of the United States, shall be fined not more than **[\$5,000]** \$2,000 and imprisoned **[for not more than ten years.]** *not less than two or more than five years.* For a second offense, the offender shall be fined not more than \$2,000 and imprisoned not less than five or more than ten years. For a third or subsequent offense, the offender shall be fined not more than \$2,000 and imprisoned not less than ten or more than twenty years. Upon conviction for a second or subsequent offense, the imposition or execution of sentence shall not be suspended and probation shall not be granted. For the purpose of this subdivision, an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of any offense the penalty for which is provided in this subdivision or in section 2557 (b) (1) of the Internal Revenue Code, or if he previously has been convicted of any offense the penalty for which was provided in section 9, chapter 1, of the Act of December 17, 1914 (38 Stat. 789), as amended; section 1, chapter 202 of the Act of May 26, 1922 (42 Stat. 596), as amended; section 12, chapter 553, of the Act of August 2, 1937 (50 Stat. 556), as amended; or sections 2557 (b) (1) or 2596 of the Internal Revenue Code enacted February 10, 1939 (ch. 2, 53 Stat. 274, 282), as amended. After conviction, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth the prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denied the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in this subdivision.

Whenever on trial for a violation of this subdivision the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

[(f) Whenever on trial for a violation of subdivision (c) the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains the possession to the satisfaction of the jury.]

INTERNAL REVENUE CODE

SEC. 2557. PENALTIES

(a) * * *

(b) Violations in General.—

[(1) Any person who violates or fails to comply with any of the requirements of this subchapter or part V of subchapter A of chapter 27, shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court.]

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(1) *Whoever commits an offense or conspires to commit an offense described in this subchapter, subchapter C of this chapter, or parts V or VI of subchapter A of chapter 27, for which no specific penalty is otherwise provided, shall be fined not more than \$2,000 and imprisoned not less than two or more than five years. For a second offense, the offender shall be fined not more than \$2,000 and imprisoned not less than five or more than ten years. For a third or subsequent offense, the offender shall be fined not more than \$2,000 and imprisoned not less than ten or more than twenty years. Upon conviction for a second or subsequent offense, the imposition or execution of sentence shall not be suspended and probation shall not be granted. For the purpose of this paragraph, an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of any offense the penalty for which is provided in this paragraph or in section 2 (c) of the Narcotic Drugs Import and Export Act, as amended (U. S. C., title 21, sec. 174), or if he previously has been convicted of any offense the penalty for which was provided in section 9, chapter 1, of the Act of December 17, 1914 (38 Stat. 789), as amended; section 1, chapter 202, of the Act of May 26, 1922 (42 Stat. 596), as amended; section 12, chapter 553, of the Act of August 2, 1937 (50 Stat. 556), as amended; or sections 2557 (b) (1) or 2596 of the Internal Revenue Code enacted February 10, 1939 (ch. 2 53 Stat. 274, 282), as amended. After conviction, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense the United States attorney shall file an information setting forth the prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in this paragraph.*

[(5) A person who, after having been convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipeccaine, opiate, or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipeccaine, or opiate, again sells, imports, or exports, or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such second offense, be fined not more than \$5,000 or imprisoned in a Federal penitentiary for not more than ten years, or both, in the discretion of the court, whenever the fact of such previous conviction is established in the manner prescribed in paragraph 7 of this subsection.

[(6) A person who, after having been two times convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipeccaine, opiate, or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipeccaine, or opiate, again sells, imports, or exports or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such third offense, or any offense subsequent thereto, be fined not more than \$10,000 or imprisoned in a Federal penitentiary for not more than twenty years, or both, in the discretion of the court, whenever the fact of such previous convictions is established in the manner prescribed in paragraph 7 of this subsection.

[(7) Whenever it shall appear, after conviction and before or after sentence, that a person convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of the narcotic drugs enumerated in paragraph (5) has previously been convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of said narcotic drugs, in violation of the laws of the United States, it shall be the duty of the United States district attorney for the district in which such subsequent conviction was had to file an information alleging that the defendant has previously been so convicted, and further alleging the number of such previous convictions. The court in which the defendant was convicted shall cause the said defendant, whether confined in prison or otherwise, to appear before it and shall apprise him of the allegations of the information and of his right to a trial by jury as to the truth thereof. The court shall inquire of the defendant whether he is the person who has previously been convicted. If the defendant states he is not such person, or if he refuses to answer or remains silent, a plea of not guilty shall be entered by

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the court, and a jury shall be empaneled to determine whether the defendant is the person alleged in the information to have previously been convicted, and the number of such previous convictions. If after a trial on the sole issue of the truth of such allegations the jury determines that the defendant is in fact the person previously convicted as charged in the information, or if he acknowledges in open court, after being duly cautioned as to his rights, that he is such person, he shall be punished as prescribed in paragraphs 5 or 6 of this subsection, as the case may be, and the previous sentence of the court, if any, shall be vacated and there shall be deducted from the new sentence the amount of time actually served under the sentence so vacated.]

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SEC. 2596. PENALTIES.

[Any person who is convicted of a violation of any provision of this subchapter or part VI of subchapter A of chapter 27 shall be fined not more than \$2,000 or imprisoned not more than five years, or both, in the discretion of the court.]

For penalties for violating or failing to comply with any of the provisions of this subchapter, see section 2557 (b) (1).

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SEC. 3235. PENALTIES.

For penalties for violating or failing to comply with any of the provisions of this part, see section [2596] 2557 (b) (1).

* * * * *

ACT OF AUGUST 12, 1937, AS AMENDED

[AN ACT

[To increase the punishment of second, third, and subsequent offenders against the narcotic laws

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a person who, after having been convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipecaine, opiate, or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipecaine, or opiate, again sells, imports, or exports, or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such second offense, be fined not more than \$5,000 or imprisoned in a Federal penitentiary for not more than ten years, or both, in the discretion of the court, whenever the fact of such previous conviction is established in the manner prescribed in section 3 of this Act. The word "isonipecaine" as used in this section shall mean any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated. The word "opiate" as used in this section shall have the same meaning as defined in section 3228 (f) of the Internal Revenue Code.

[SEC. 2. A person who, after having been two times convicted of selling, importing, or exporting, or conspiring to sell, import, or export, opium, coca leaves, cocaine, isonipecaine, opiate or any salt, derivative, or preparation of opium, coca leaves, cocaine, isonipecaine, or opiate, again sells, imports, or exports or conspires to sell, import, or export, any of the said narcotic drugs, in violation of the laws of the United States, shall, upon conviction of such third offense, or any offense subsequent thereto, be fined not more than \$10,000 or imprisoned in a Federal penitentiary for not more than twenty years, or both, in the discretion of the court, whenever the fact of such previous convictions is established in the manner prescribed in section 3 of this Act. The word "isonipecaine" as used in this section shall mean any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated. The word "opiate" as used in this section shall have the same meaning as defined in section 3228 (f) of the Internal Revenue Code.

[SEC. 3. Whenever it shall appear, after conviction and before or after sentence, that a person convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of the narcotic drugs enumerated in this Act has previously been convicted of unlawfully selling, importing, or exporting, or conspiring unlawfully to sell, import, or export, any of said narcotic drugs, in violation of the laws of the United States, it shall be the duty of the United

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States district attorney for the district in which such subsequent conviction was had to file an information alleging that the defendant has previously been so convicted, and further alleging the number of such previous convictions. The court in which the defendant was convicted shall cause the said defendant, whether confined in prison or otherwise, to appear before it and shall apprise him of the allegations of the information and of his right to a trial by jury as to the truth thereof. The court shall inquire of the defendant whether he is the person who has previously been convicted. If the defendant states he is not such person, or if he refuses to answer or remains silent, a plea of not guilty shall be entered by the court, and a jury shall be empaneled to determine whether the defendant is the person alleged in the information to have previously been convicted, and the number of such previous convictions. If after a trial on the sole issue of the truth of such allegations the jury determines that the defendant is in fact the person previously convicted as charged in the information, or if he acknowledges in open court, after being duly cautioned as to his rights, that he is such person, he shall be punished as prescribed in sections 1 or 2 of this Act, as the case may be, and the previous sentence of the court, if any, shall be vacated and there shall be deducted from the new sentence the amount of time actually served under the sentence so vacated.]

