Public Law 99-651
99th Congress

An Act

Nov. 14, 1986
[H.R. 3004]

To amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes.

Courts, U.S.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—CRIMINAL JUSTICE ACT REVISION

Criminal Justice Act Revision of 1986.
18 USC 3006A note.

SEC. 101. SHORT TITLE.

This title may be referred to as the "Criminal Justice Act Revision of 1986".

SEC. 102. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) IN GENERAL.—Section 3006A of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking out "(1) who is" and all that follows through "subsection (h)." and inserting in lieu thereof the following: "in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:

"(1) Representation shall be provided for any financially eligible person who—

"(A) is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title);

"(B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;

18 USC 5031.

"(C) is charged with a violation of probation;

"(D) is under arrest, when such representation is required by law;

"(E) is entitled to appointment of counsel in parole proceedings under chapter 311 of this title;

18 USC 4201 *et seq.*

"(F) is subject to a mental condition hearing under chapter 313 of this title;

18 USC 4241 *et seq.*

"(G) is in custody as a material witness;

"(H) is entitled to appointment of counsel under the sixth amendment to the Constitution; or

"(I) faces loss of liberty in a case, and Federal law requires the appointment of counsel.

"(2) Whenever the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—

"(A) is charged with a petty offense for which a sentence to confinement is authorized; or

"(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

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"(3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:

"(A) Attorneys furnished by a bar association or a legal aid agency.

"(B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).".

(2) Subsection (b) is amended—

(A) in the second sentence—

(i) by striking out "In every criminal case" and all that follows through "violation of probation and" and inserting in lieu thereof "In every case in which a person entitled to representation under a plan approved under subsection (a)"; and

(ii) by striking out "defendant" and inserting in lieu thereof "person";

(B) in the third sentence by striking out "defendant" each place it appears and inserting in lieu thereof "person"; and

(C) in the fifth sentence by striking out "defendants" and inserting in lieu thereof "persons".

(3)(A) Subsection (d)(1) is amended by striking out "court. Such attorney" and inserting in lieu thereof "court, unless the Judicial Conference determines that a higher rate of not in excess of $75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate and for time expended out of court. The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5 on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. Attorneys". Regulations.

(B) Subsection (d)(2) is amended—

(i) in the first sentence—

(I) by striking out "$2,000" and inserting in lieu thereof "$3,500"; and

(II) by striking out "$800" and inserting in lieu thereof "$1,000";

(ii) in the second sentence by striking out "$2,000" and inserting in lieu thereof "$2,500"; and

(iii) by striking out the third sentence and inserting in lieu thereof the following: "For any other representation required or authorized by this section, the compensation

shall not exceed $750 for each attorney in each proceeding.".

(C) Subsection (d)(3) is amended by adding at the end thereof the following: "The chief judge of the circuit may delegate such approval authority to an active circuit judge.".

(D) Subsection (d)(4) is amended in the first sentence by striking out "represented the defendant" and inserting in lieu thereof "provided representation to the person involved".

(4)(A) Subsection (e)(1) is amended in the first sentence by striking out "an adequate defense" and inserting in lieu thereof "adequate representation".

(B) Subsection (e)(2) is amended to read as follows:

"(2) WITHOUT PRIOR REQUEST.—(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed $300 and expenses reasonably incurred.

"(B) The court, or the United States magistrate (if the services were rendered in a case disposed of entirely before the United States magistrate), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds $300.".

(C)(i) Subsection (e)(3) is amended by striking out "$300" and inserting in lieu thereof "$1,000".

(ii) Subsection (e)(3) is amended by adding at the end thereof the following: "The chief judge of the circuit may delegate such approval authority to an active circuit judge.".

(5)(A)(i) Subsection (h)(2)(A) is amended by striking out "similarly as under title 28, United States Code, section 605, and subject to the conditions of that section" and inserting in lieu thereof "in accordance with section 605 of title 28".

(ii) Subsection (h)(2)(A) is amended by inserting after the fourth sentence the following: "Upon the expiration of his term, a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of his office until his successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier.".

(B) Subsection (h)(2)(B) is amended in the third sentence by striking out "coming" and inserting in lieu thereof "next fiscal".

(C) Subsection (h) is further amended by adding at the end thereof the following:

Insurance.

"(3) MALPRACTICE AND NEGLIGENCE SUITS.—The Director of the Administrative Office of the United States Courts shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for, any person who is an officer or employee of a Federal Public Defender Organization established under this subsection, or a Community Defender Organization established under this subsection which is receiving periodic sustaining grants, for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence of any such officer or employee in furnishing representational services under this section while acting within the scope of that person's office or employment.".

(6) Subsection (j) is amended by inserting immediately before the period at the end of the first sentence the following: ", including funds for the continuing education and training of persons providing representational services under this section".

(7) Subsection (l) is amended—

(A) by striking out ", other than subsection (h) of section 1,"; and

(B) by striking out "Act" each place it appears and inserting in lieu thereof "section".

(b) ADDITIONAL AMENDMENTS.—(1) Section 3006A of title 18, United States Code, is further amended by striking out subsection (g) and redesignating subsections (h) through (l) as subsections (g) through (k), respectively.

(2) Subsection (j), as redesignated by paragraph (1), is amended to read as follows:

"(j) DISTRICTS INCLUDED.—As used in this section, the term 'district court' means each district court of the United States created by chapter 5 of title 28, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, and the District Court of Guam.".

Virgin Islands. Northern Mariana Islands. Guam. 28 USC 81 *et seq.*

18 USC 3006A.

SEC. 103. TECHNICAL AMENDMENTS.

Section 223(e) of the Comprehensive Crime Control Act of 1984 (Public Law 98-473; 98 Stat. 2028) is amended to read as follows:

"(e) Section 3006A(a) is amended—

"(1) in paragraph (1)(A) by striking out 'misdemeanor (other than a petty offense as defined in section 1 of this title)' and inserting in lieu thereof 'Class A misdemeanor';

"(2) in paragraph (1) by striking out subparagraph (E) and redesignating subparagraphs (F) through (I) as subparagraphs (E) through (H), respectively; and

"(3) in paragraph (2)(A) by striking out 'petty offense' and inserting in lieu thereof 'Class B or C misdemeanor, or an infraction'.".

SEC. 104. WITNESS FEES.

Section 1825 of title 28, United States Code, is amended to read as follows:

"§ 1825. Payment of fees

"(a) In any case in which the United States or an officer or agency of the United States is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, and in the proceedings before a United States magistrate, on the certificate of such magistrate, except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

"(1) on the certificate of a Federal public defender or assistant Federal public defender, in a criminal case in which the defendant is represented by such Federal public defender or assistant Federal public defender, and

"(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such other counsel.

28 USC 2255.

"(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

"(1) on the certificate of a Federal public defender or assistant Federal public defender, in any such proceedings in which a party is represented by such Federal public defender or assistant Federal public defender, and

"(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in any such proceedings in which a party is represented by such other counsel.

"(c) Fees and mileage need not be tendered to a witness upon service of a subpoena issued on behalf of the United States or an officer or agency of the United States, upon service of a subpoena issued on behalf of a defendant represented by a Federal public defender, assistant Federal public defender, or other attorney appointed pursuant to section 3006A of title 18, or upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis, if the payment of such fees and mileage is to be made by the United States marshal under this section.".

18 USC 3006A note.

SEC. 105. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect one hundred and twenty days after the date of enactment of this Act. The maximum hourly rates provided in section 3006A(d)(1) of title 18, United States Code, as amended by section 102(a)(3)(A) of this Act, shall apply only to services performed on or after the effective date of this title. The maximum allowed for compensation for a case, as provided in section 3006A(d)(2) of title 18, United States Code, as amended by section 102(a)(3)(B) of this Act, shall apply only to compensation claims in which some portion of the claim is for services performed on or after the effective date of this title. The maximum compensation allowed pursuant to section 3006A(e) of title 18, United States Code, as amended by subparagraphs (B) and (C) of section 102(a)(4) of this Act, shall apply only to services obtained on or after the effective date of this title.

Claims.

TITLE II—RECALL OF CERTAIN JUDICIAL OFFICERS

SEC. 201. RECALL OF CERTAIN RETIRED JUDICIAL OFFICERS.

(a) MAGISTRATES.—(1) Section 631(d) of title 28, United States Code, is amended—

(A) by striking out "No" and inserting in lieu thereof "Except as otherwise provided in sections 375 and 636(h) of this title, no";

(B) by striking out "the unanimous" and inserting in lieu thereof "a majority"; and

(C) by inserting after "courts," the following: "which is taken upon the magistrate's attaining age seventy and upon each subsequent anniversary thereof,".

(2) Section 636 of title 28, United States Code, is amended by adding at the end the following:

"(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in subchapter III of chapter 83, and chapter 84, of title 5. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 631.".

5 USC 8331; *ante*, p. 516.
Ante, p. 3646.

(b) ALTERNATIVE RECALL OF CERTAIN JUDGES AND MAGISTRATES.—(1) Chapter 17 of title 28, United States Code, is amended by inserting after section 374 the following new section:

"§ 375. Recall of certain judges and magistrates

"(a)(1) A bankruptcy judge, a judge of the Claims Court, or a United States magistrate appointed under chapter 43 of this title, who has retired under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge, judge of the Claims Court, or magistrate, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate during such 5-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successive 5-year periods.

28 USC 631 *et seq.*

"(2) For purposes of paragraph (1) of this subsection, a certification may be made—

"(A) in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located; and

"(B) in the case of a judge of the Claims Court, by the chief judge of the United States Claims Court.

"(3) For purposes of this section—

"(A) the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984; and

28 USC 151 *et seq.*

"(B) the term 'judge of the Claims Court' means a judge of the United States Claims Court who is appointed under chapter 7 of this title or who has served under section 167 of the Federal Courts Improvement Act of 1982.

28 USC 171 *et seq.*
28 USC 171 note.

"(b) A judge or magistrate recalled under this section may exercise all of the powers and duties of the office of judge or magistrate held at the time of retirement, including the ability to serve in any other judicial district to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or

28 USC 375.

employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

"(c) During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate is recalled.

Termination date.
28 USC 372.

"(d) A certification under subsection (a) may be terminated in accordance with section 372(c) of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate involved.

"(e) Except as provided in subsection (b), nothing in this section shall affect the right of judges or magistrates who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as reemployed annuitants in accordance with the provisions of title 5. A judge or magistrate to whom this section applies may be recalled under section 155, 636(h), or 797 of this title, as the case may be, other than during a 5-year period in which a certification under subsection (a) is in effect with respect to that judge or magistrate.

5 USC 8301 *et seq.; ante,* p. 516.

"(f) For purposes of determining the years of service requirements in order to be eligible for recall under this section, any service as a bankruptcy judge, a judge of the Claims Court, or a United States magistrate, and any prior service as a referee in bankruptcy, a commissioner of the Court of Claims, or a United States commissioner, may be credited.

"(g) Except as provided in subsection (c), a judge or magistrate recalled under this section shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

Regulations.

"(h) The Judicial Conference of the United States may promulgate regulations to implement this section.".

(2) The item relating to section 375 in the table of sections for chapter 17 of title 28, United States Code, is amended to read as follows:

"375. Recall of certain judges and magistrates.".

SEC. 202. TECHNICAL AMENDMENTS.

(a) RECALL OF BANKRUPTCY JUDGES.—Section 155(b) of title 28, United States Code, is amended by inserting ", and chapter 84," after "chapter 83".

(b) OFFICIAL DUTY STATION.—Section 374 of title 28, United States Code, is amended by adding at the end the following: "The place where a judge or magistrate recalled under section 155, 375, 636, or 797 of this title maintains the actual abode in which the judge or magistrate customarily lives shall be deemed to be the official station of such judge or magistrate for purposes of section 604(a)(7) of this title.".

(c) RECALL OF CLAIMS COURT JUDGES.—Section 797(a) of title 28, United States Code, is amended by inserting ", or chapter 84," after "chapter 83".

(d) CLERICAL AMENDMENT.—Section 633(b) of title 28, United States Code, is amended by striking out "643" and inserting in lieu thereof "634".

SEC. 203. EFFECTIVE DATE. 28 USC 155 note.

This title and the amendments made by this title take effect on January 1, 1987.

Approved November 14, 1986.

LEGISLATIVE HISTORY—H.R. 3004 (S. 1581):

HOUSE REPORTS: No. 99-417 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:
Vol. 131 (1985): Dec. 9, considered and passed House.
Vol. 132 (1986): Oct. 6, considered and passed Senate, amended, in lieu of S. 1581.
Oct. 14, 15, House concurred in Senate amendment with an amendment; vacated proceedings and again concurred in Senate amendment with an amendment.
Oct. 16, Senate concurred in House amendment.