TITLE 18—CRIMES AND CRIMINAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 645, § 1, 62 Stat. 683

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AMENDMENTS

1970—Pub. L. 91–452, title II, § 201(b), Oct. 15, 1970, 84 Stat. 928, added Part V.

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61i	T. 5 § 118j (See Rev. T. 5 Table)
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61*l*	T. 5 § 118k (See Rev. T. 5 Table)
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61r	T. 5 § 118n (See Rev. T. 5 Table)
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116	1362
117	2074
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130	1017
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207	202
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212	602, 603, 606, 607
213	T. 5 § 118*o* (See Rev. T. 5 Table)
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233	1506
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236	505
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240	210
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246	752, 1071

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336	1302
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338	1341
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419a(b)	10
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425	1585
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467	662, 3435
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484	2193
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486	2195
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489	1659
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505	1081
506	1082
507	1083
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519–521	Rep.
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532–535	Rep.
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543	3567
544	3563
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548	1151, 1153, 3242
549	1151, 1153
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551	3
552	1660
553	3236
554	Rep. See Cr. Proc. R. 6(f).
554a	Rep. See Cr. Proc. R. 6.
555	Rep. See Cr. Proc. R. 7(a).
556	Rep. See Cr. Proc. R. 6(d), 52(a).
556a	3288, 3289
556b	Rep.
557	Rep. See Cr. Proc. R. 8, 13, 14.
558	Rep. See Cr. Proc. R. 7.
559	Rep. See Cr. Proc. R. 7.
560	Rep. See Cr. Proc. R. 7.
561	Rep. See Cr. Proc. R. 12(b)(5).
562	3432
562a	Rep. See Cr. Proc. R. 10.
563	3005
564	Rep. See Cr. Proc. R. 11, 12(b)(3).
565	Rep. See Cr. Proc. R. 31(c).
566	Rep. See Cr. Proc. R. 31(a), (b).
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586	T. 26 [I.R.C. 1939] § 3748(b) (See T. 26 [I.R.C. 1986] § 6531)
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595	Rep. See Cr. Proc. R. 4, 5.
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604	3049
605	3012
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713	4163, 4165
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715	Rep.
716	4203, 4204
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719	4207
720	Rep.
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746	4281
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817–819, 831–840	Rep.
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929	Rep.

POSITIVE LAW; CITATION

Section 1 of act June 25, 1948, ch. 645, 62 Stat. 683, provided in part that: ''Title 18 of the United States Code, entitled 'Crimes and Criminal Procedure', is hereby revised, codified and enacted into positive law, and may be cited as 'Title 18, U.S.C., §—.' ''

LEGISLATIVE CONSTRUCTION

Section 19 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that: ''No inference of a legislative construction is to be drawn by reason of the chapter in Title 18, Crimes and Criminal Procedure, as set out in section 1 of this Act, in which any particular section is placed, nor by reason of the catchlines used in such title.''

SEPARABILITY

Section 18 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that: ''If any part of Title 18, Crimes and Criminal Procedure, as set out in section 1 of this Act, shall be held invalid the remainder shall not be affected thereby.''

EFFECTIVE DATE

Section 20 of act June 25, 1948, ch. 645, 62 Stat. 862, provided that the revision of this title shall be effective Sept. 1, 1948.

EXISTING RIGHTS OR LIABILITIES

Section 21 of act June 25, 1948, ch. 645, 62 Stat. 862, provided in part that any right or liabilities now existing under repealed sections or parts thereof shall not be affected by the repeal.

REPEALED, TRANSFERRED, AND OMITTED SECTIONS

All former sections of Title 18 were repealed, transferred to other titles, or omitted by said act June 25, 1948, except for sections 595, 644, 726–1, 726a, 729, 730, and 732 which were repealed by act June 25, 1948, ch. 646, 62 Stat. 687, the act revising and codifying Title 28, Judiciary and Judicial Procedure, into positive law.

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[1] So in original. First word only of item should be capitalized.

[2] Chapter heading amended by Pub. L. 86–710 without corresponding amendment of part analysis.

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AMENDMENTS

2006—Pub. L. 109–248, title I, §141(a)(2), July 27, 2006, 120 Stat. 602, added item for chapter 109B.

Pub. L. 109–177, title I, §121(g)(4)(B), Mar. 9, 2006, 120 Stat. 224, which directed amendment of table of chapters at the beginning of part I of this title by striking item relating to ''section 114'' and inserting new item 114, was executed by adding item for chapter 114 and striking item for former chapter 114 ''Trafficking in Contraband Cigarettes'', to reflect the probable intent of Congress.

Pub. L. 109–177, title I, §110(b)(2), title III, §306(b), Mar. 9, 2006, 120 Stat. 208, 239, substituted ''Railroad carriers and mass transportation systems on land, on water, or through the air'' for ''Railroads'' in item for chapter 97 and added item for chapter 111A.

2004—Pub. L. 108–495, §2(b), Dec. 23, 2004, 118 Stat. 4000, added item for chapter 88.

Pub. L. 108–212, §2(b), Apr. 1, 2004, 118 Stat. 569, added item for chapter 90A.

2003—Pub. L. 108–193, §5(c)(2), Dec. 19, 2003, 117 Stat. 2880, substituted ''Peonage, slavery, and trafficking in persons'' for ''Peonage and slavery'' in item for chapter 77.

Pub. L. 108–105, §3(b), Nov. 5, 2003, 117 Stat. 1208, added item for chapter 74.

2002—Pub. L. 107–273, div. B, title IV, §4002(c)(1), (e)(5), Nov. 2, 2002, 116 Stat. 1808, 1810, substituted ''2721'' for ''2271'' in item for chapter 123 and repealed amendment by Pub. L. 104–294, §601(j)(2)(A). See 1996 Amendment note below.

[3] Editorially supplied. Chapter 119 added by Pub. L. 90–351 without corresponding amendment of part analysis.

1998—Pub. L. 105–277, div. I, title II, §201(b)(2), Oct. 21, 1998, 112 Stat. 2681–871, added item for chapter 11B.

1996—Pub. L. 104–294, title I, §101(b), title VI, §§601(j)(2)(B), 605(c), (p)(3), Oct. 11, 1996, 110 Stat. 3491, 3501, 3509, 3510, substituted ''1461'' for ''1460'' in item for chapter 71, added item for chapter 90, and substituted ''2340'' for ''2340.'' in item for chapter 113C and ''2441'' for ''2401'' in item for chapter 118.

Pub. L. 104–201, div. A, title X, §1069(b)(4), Sept. 23, 1996, 110 Stat. 2656, inserted ''and stalking'' after ''violence'' in item for chapter 110A.

Pub. L. 104–192, §2(b), Aug. 21, 1996, 110 Stat. 2104, added item for chapter 118.

Pub. L. 104–132, title III, §303(c)(2), Apr. 24, 1996, 110 Stat. 1253, redesignated item 113B, relating to torture, as 113C. Pub. L. 104–294, title VI, §601(j)(2)(A), Oct. 11, 1996, 110 Stat. 3501, which amended analysis identically, was repealed by Pub. L. 107–273, div. B., title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

1994—Pub. L. 103–322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title by striking ''kidnaping'' each place it appears and inserting ''kidnapping'', was executed by substituting ''Kidnapping'' for ''Kidnaping'' in item for chapter 55, to reflect the probable intent of Congress.

Pub. L. 103–322, title IV, §40221(b), title XII, §120003(b)(2), title XV, §150001(b), title XXV, §250002(b)(1), title XXX, §300002(b), title XXXIII, §§330002(g), 330011(c)(2), 330021(1), Sept. 13, 1994, 108 Stat. 1931, 2022, 2035, 2085, 2102, 2140, 2144, 2150, substituted ''weapons'' for ''Weapons'' in item for chapter 10, ''kidnapping'' for ''kidnaping'' in item for chapter 18, ''470'' for ''471'' in item for chapter 25, added item for chapter 26, substituted ''700'' for ''701'' in item for chapter 33, ''kidnapping'' for ''kidnaping'' in item for chapter 84, added items for chapters 110A and 113A and redesignated item for former chapter 113A as 113B, and added item for chapter 123.

Pub. L. 103–236, title V, §506(b), Apr. 30, 1994, 108 Stat. 464, added item for chapter 113B, Torture.

1992—Pub. L. 102–572, title X, §1003(b), Oct. 29, 1992, 106 Stat. 4524, made amendment identical to Pub. L. 101–519 in item for chapter 113A. See 1990 Amendment note below.

Pub. L. 102–521, §2(b), Oct. 25, 1992, 106 Stat. 3403, added item for chapter 11A.

1990—Pub. L. 101–647, title II, §226(g)(3), Nov. 29, 1990, 104 Stat. 4808, inserted ''and other abuse'' after ''exploitation'' in item for chapter 110.

Pub. L. 101–519, §132(c), Nov. 5, 1990, 104 Stat. 2252, substituted ''Terrorism'' for ''Extraterritorial jurisdiction over terrorist acts abroad against United States nationals'' in item for chapter 113A.

Pub. L. 101–298, §3(c), May 22, 1990, 104 Stat. 203, added item for chapter 10.

1988—Pub. L. 100–690, title VII, §7063, Nov. 18, 1988, 102 Stat. 4404, substituted ''Bribery, graft, and conflicts of interest'' for ''Bribery and graft'' in item for chapter 11, substituted ''carrier operation under the influence of alcohol or drugs....341'' for ''Carrier Operation Under the Influence of Alcohol or Drugs'' in item for chapter 17A, substituted ''abuse'' for ''Abuse'', in item for chapter 109A, struck out final period and inserted ''....2331'' in item for chapter 113A, and substituted ''wire and electronic communications and transactional records access'' for ''Wire and Electronic Communications and Transactional Records Access'' in item for chapter 121.

Pub. L. 100–606, §2(b), Nov. 4, 1988, 102 Stat. 3047, added item for chapter 50A.

1986—Pub. L. 99–646, §87(c)(7), Nov. 10, 1986, 100 Stat. 3623, and Pub. L. 99–654, §3(a)(7), Nov. 14, 1986, 100 Stat. 3663, amended analysis identically, striking out item for chapter 99 ''Rape'' and adding item for chapter 109A.

Pub. L. 99–628, §5(a)(2), Nov. 7, 1986, 100 Stat. 3511, substituted ''Transportation for illegal sexual activity and related crimes'' for ''White slave traffic'' as item for chapter 117.

Pub. L. 99–570, title I, §§1366(b), 1971(b), Oct. 27, 1986, 100 Stat. 3207–39, 3207–59, added items for chapters 17A and 46.

Pub. L. 99–508, title I, §101(c)(3), title II, §201(b), Oct. 21, 1986, 100 Stat. 1851, 1868, inserted ''and electronic communications'' in item for chapter 119 and added item for chapter 121.

Pub. L. 99–399, title XII, §1202(b), Aug. 27, 1986, 100 Stat. 897, added item for chapter 113A.

1982—Pub. L. 97–285, §§2(d), 4(d), Oct. 6, 1982, 96 Stat. 1219, 1220, substituted ''Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault'' for ''Congressional assassination, kidnaping, and assault'' as item for chapter 18, and inserted ''and Presidential staff'' after ''Presidential'' in item for chapter 84.

1978—Pub. L. 95–575, §2, Nov. 2, 1978, 92 Stat. 2465, added item for chapter 114.

Pub. L. 95–225, §2(b), Feb. 6, 1978, 92 Stat. 8, added item for chapter 110.

1971—Pub. L. 91–644, title IV, §17, Jan. 2, 1971, 84 Stat. 1891, added item for chapter 18.

1970—Pub. L. 91–513, title III, §1101(b)(1)(B), Oct. 27, 1970, 84 Stat. 1292, struck out item for chapter 68 ''Narcotics''.

Pub. L. 91–452, title IX, §901(b), title XI, §1102(b), Oct. 15, 1970, 84 Stat. 947, 959, added items for chapters 40 and 96.

1968—Pub. L. 90–351, title IV, §905, June 19, 1968, 82 Stat. 234, added item for chapter 44.

Pub. L. 90–321, title II, §202(b), May 29, 1968, 82 Stat. 162, added item for chapter 42.

Pub. L. 90–284, title I, §104(b), title X, §1002(b), Apr. 11, 1968, 82 Stat. 77, 92, added items for chapters 12 and 102.

1965—Pub. L. 89–141, §3, Aug. 28, 1965, 79 Stat. 581, added item for chapter 84.

1956—Act Aug. 1, 1956, ch. 825, §2(a), 70 Stat. 798, substituted ''Animals, Birds, Fish, and Plants'' for ''Animals, Birds, and Fish'' in item for chapter 3.

Act July 18, 1956, ch. 629, §202, 70 Stat. 575, added item for chapter 68.

Act July 14, 1956, ch. 595, §2, 70 Stat. 540, added item for chapter 2.

1949—Act May 24, 1949, ch. 139, §1, 63 Stat. 89, struck out ''constituting crimes'' in item for chapter 21, and added item for chapter 50.

CHAPTER 1—GENERAL PROVISIONS

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Senate Revision Amendment

In the analysis of sections under this chapter heading, a new item, ''14. Applicability to Canal Zone.'', was inserted by Senate amendment, to follow underneath item 13, inasmuch as a new section 14, with such a catchline, was inserted, by Senate amendment, in this chapter. See Senate Report No. 1620, amendments Nos. 1 and 3, 80th Cong.

Amendments

2006—Pub. L. 109–177, title III, §302(d), Mar. 9, 2006, 120 Stat. 233, added item 26.

2003—Pub. L. 108–21, title VI, §601(b), Apr. 30, 2003, 117 Stat. 687, added item 25.

2002—Pub. L. 107–273, div. B, title IV, §4004(a), Nov. 2, 2002, 116 Stat. 1812, struck out item 14 ''Applicability to Canal Zone; definition''.

1996—Pub. L. 104–191, title II, §241(b), Aug. 21, 1996, 110 Stat. 2016, which directed the amendment of the table of sections at the beginning of chapter 2 of this title by inserting item 24, was executed by inserting item 24 in the table of sections at the beginning of this chapter, to reflect the probable intent of Congress.

1994—Pub. L. 103–332, title XXXII, §§320910(b), 320914(b), Sept. 13, 1994, 108 Stat. 2127, 2128, added items 21 and 23.

1990—Pub. L. 101–647, title XXXV, §3504, Nov. 29, 1990, 104 Stat. 4921, substituted ''defense'' for ''Defense'' in item 17.

1989—Pub. L. 101–73, title IX, §962(e)(3), Aug. 9, 1989, 103 Stat. 504, added item 20.

1987—Pub. L. 100–185, §4(b), Dec. 11, 1987, 101 Stat. 1279, added item 19.

1986—Pub. L. 99–646, §§34(b), 38(b), Nov. 10, 1986, 100 Stat. 3599, renumbered item 20 as 17 and added item 18.

1984—Pub. L. 98–473, title II, §§218(b), 402(b), 1001(b), Oct. 12, 1984, 98 Stat. 2027, 2057, 2136, substituted ''Repealed'' for ''Offenses classified'' in item 1 and added items 16 and 20.

1970—Pub. L. 91–375, §6(j)(1), Aug. 12, 1970, 84 Stat. 777, inserted ''United States'' before ''Postal Service'' in item 12.

1962—Pub. L. 87–845, §3(b), Oct. 18, 1962, 76A Stat. 698, inserted ''; definition'' in item 14.

1958—Pub. L. 85–921, §4, Sept. 2, 1958, 72 Stat. 1771, added item 15.

Commission on the Advancement of Federal Law Enforcement

Pub. L. 104–132, title VIII, §806, Apr. 24, 1996, 110 Stat. 1305, established Commission on the Advancement of Federal Law Enforcement, directed Commission to review and recommend action to Congress on Federal law enforcement priorities for 21st century, including Federal law enforcement capability to investigate and deter adequately threat of terrorism facing United States, standards and procedures, degree of coordination with international, State, and local law enforcement agencies, and other matters, provided for membership and administration of Commission, staffing and support functions, and powers to hold hearings and obtain official data for purposes of carrying out its duties, required report to Congress and public of findings, conclusions, and recommendations not later than 2 years after quorum of Commission had been appointed, and provided for termination of Commission 30 days after submitting report.

National Commission on Reform of Federal Criminal Laws

Pub. L. 89–801, Nov. 8, 1966, 80 Stat. 1516, as amended by Pub. L. 91–39, July 8, 1969, 83 Stat. 44, provided for the establishment of the National Commission on Reform of Federal Criminal Laws, its membership, duties, compensation of the members, the Director, and the staff of the Commission, established the Advisory Committee on Reform of Federal Criminal Laws, required the Commission to submit interim reports to the President and the Congress and to submit a final report within four years from Nov. 8, 1966, and further provided that the Commission shall cease to exist sixty days after the submission of the final report.

EX. ORD. NO. 11396. COORDINATION BY ATTORNEY GENERAL OF FEDERAL LAW ENFORCEMENT AND CRIME PREVENTION PROGRAMS

Ex. Ord. No. 11396, Feb. 7, 1968, 33 F.R. 2689, provided:

WHEREAS the problem of crime in America today presents the Nation with a major challenge calling for maximum law enforcement efforts at every level of Government;

WHEREAS coordination of all Federal Criminal law enforcement activities and crime prevention programs is desirable in order to achieve more effective results;

WHEREAS the Federal Government has acknowledged the need to provide assistance to State and local law enforcement agencies in the development and administration of programs directed to the prevention and control of crime:

WHEREAS to provide such assistance the Congress has authorized various departments and agencies of the Federal Government to develop programs which may benefit State and local efforts directed at the prevention and control of crime, and the coordination of such programs is desirable to develop and administer them most effectively; and

WHEREAS the Attorney General, as the chief law officer of the Federal Government, is charged with the responsibility for all prosecutions for violations of the Federal criminal statutes and is authorized under the Law Enforcement Assistance Act of 1965 (79 Stat. 828) [formerly set out as a note preceding section 3001 of this title] to cooperate with and assist State, local, or other public or private agencies in matters relating to law enforcement organization, techniques and practices, and the prevention and control of crime.

NOW, THEREFORE, by virtue of the authority vested in the President by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. The Attorney General is hereby designated to facilitate and coordinate (1) the criminal law enforcement activities and crime prevention programs of all Federal departments and agencies, and (2) the activities of such departments, and agencies relating to the development and implementation of Federal programs which are designed, in whole or in substantial part, to assist State and local law enforcement agencies and crime prevention activities. The Attorney General may promulgate such rules and regulations and take such actions as he shall deem necessary or appropriate to carry out his functions under this Order.

SEC. 2. Each Federal department and agency is directed to cooperate with the Attorney General in the performance of his functions under this Order and shall, to the extent permitted by law and within the limits of available funds, furnish him such reports, information, and assistance as he may request.

LYNDON B. JOHNSON.

EXECUTIVE ORDER NO. 11534

Ex. Ord. No. 11534, June 4, 1970, 35 F.R. 8865, which related to the National Council on Organized Crime, was revoked by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

[§ 1. Repealed. Pub. L. 98–473, title II, § 218(a)(1), Oct. 12, 1984, 98 Stat. 2027]

Section, acts June 25, 1948, ch. 645, 62 Stat. 684; Oct. 30, 1984, Pub. L. 98–596, § 8, 98 Stat. 3138, classified offenses as a felony, misdemeanor, or petty offense.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–481, § 1, Jan. 12, 2007, 120 Stat. 3673, provided that: ''This Act [enacting section 706a of this title] may be cited as the 'Geneva Distinctive Emblems Protection Act of 2006'.''

Pub. L. 109–476, § 1, Jan. 12, 2007, 120 Stat. 3568, provided that: ''This Act [enacting section 1039 of this title and provisions set out as a note under section 1039 of this title and amending provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Telephone Records and Privacy Protection Act of 2006'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–437, § 1, Dec. 20, 2006, 120 Stat. 3266, provided that: ''This Act [amending section 704 of this title and enacting provisions set out as a note under section 704 of this title] may be cited as the 'Stolen Valor Act of 2005'.''

Pub. L. 109–374, § 1, Nov. 27, 2006, 120 Stat. 2652, provided that: ''This Act [amending section 43 of this title] may be cited as the 'Animal Enterprise Terrorism Act'.''

Pub. L. 109–181, § 1(a)(1), Mar. 16, 2006, 120 Stat. 285, provided that: ''This section [amending section 2320 of this title, enacting provisions set out as a note under section 2320 of this title, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Stop Counterfeiting in Manufactured Goods Act'.''

Pub. L. 109–181, § 2(a), Mar. 16, 2006, 120 Stat. 288, provided that: ''This section [amending sections 2318, 2319A, and 2320 of this title and section 1101 of Title 17, Copyrights] may be cited as the 'Protecting American Goods and Services Act of 2005'.''

Pub. L. 109–178, § 1, Mar. 9, 2006, 120 Stat. 278, provided that: ''This Act [amending section 2709 of this title, section 3414 of Title 12, Banks and Banking, sections 1681u and 1681v of Title 15, Commerce and Trade, and sections 436 and 1861 of Title 50, War and National Defense, and enacting provisions set out as a note under section 3414 of Title 12] may be cited as the 'USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006'.''

Pub. L. 109–177, § 1(a), Mar. 9, 2006, 120 Stat. 192, provided that: ''This Act [see Tables for classification] may be cited as the 'USA PATRIOT Improvement and Reauthorization Act of 2005'.''

Pub. L. 109–177, title II, § 201, Mar. 9, 2006, 120 Stat. 230, provided that: ''This title [enacting section 3599 of this title, amending section 3583 of this title and section 848 of Title 21, Food and Drugs, and enacting provisions set out as notes under section 46502 of Title 49, Transportation] may be cited as the 'Terrorist Death Penalty Enhancement Act of 2005'.''

Pub. L. 109–177, title III, § 301, Mar. 9, 2006, 120 Stat. 233, provided that: ''This title [see Tables for classification] may be cited as the 'Reducing Crime and Terrorism at America's Seaports Act of 2005'.''

Pub. L. 109–177, title IV, § 401, Mar. 9, 2006, 120 Stat. 243, provided that: ''This title [see Tables for classification] may be cited as the 'Combating Terrorism Financing Act of 2005'.''

Pub. L. 109–177, title VI, § 601, Mar. 9, 2006, 120 Stat. 251, provided that: ''This title [see Tables for classification] may be cited as the 'Secret Service Authorization and Technical Modification Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6701, Dec. 17, 2004, 118 Stat. 3764, provided that: ''This subtitle [subtitle H (§§ 6701–6704) of title VI of Pub. L. 108–458, enacting section 1038 of this title, amending sections 1001, 1505, and 1958 of this title, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Stop Terrorist and Military Hoaxes Act of 2004'.''

Pub. L. 108–458, title VI, § 6801, Dec. 17, 2004, 118 Stat. 3766, provided that: ''This subtitle [subtitle I

(§§ 6801–6803) of title VI of Pub. L. 108–458, enacting section 832 of this title, amending sections 175b, 1961, 2332a, and 2332b of this title and sections 2077 and 2122 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 175b of this title] may be cited as the 'Weapons of Mass Destruction Prohibition Improvement Act of 2004'.''

Pub. L. 108–458, title VI, § 6901, Dec. 17, 2004, 118 Stat. 3769, provided that: ''This subtitle [subtitle J (§§ 6901–6911) of title VI of Pub. L. 108–458, enacting sections 175c, 2332g, and 2332h of this title, amending sections 1956, 2332b, and 2516 of this title, section 2778 of Title 22, Foreign Relations and Intercourse, and sections 2122 and 2272 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 175c of this title] may be cited as the 'Prevention of Terrorist Access to Destructive Weapons Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–21, § 1(a), Apr. 30, 2003, 117 Stat. 650, provided that: ''This Act [see Tables for classification] may be cited as the 'Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003' or 'PROTECT Act'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4001, Nov. 2, 2002, 116 Stat. 1806, provided that: ''This title [see Tables for classification] may be cited as the 'Criminal Law Technical Amendments Act of 2002'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–56, § 1(a), Oct. 26, 2001, 115 Stat. 272, as amended by Pub. L. 109–177, title I, § 101(b), Mar. 9, 2006, 120 Stat. 194, provided that: ''This Act [see Tables for classification] may be cited as the 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001' or the 'USA PATRIOT Act'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–314, § 1(a), Oct. 30, 1998, 112 Stat. 2974, provided that: ''This Act [see Tables for classification] may be cited as the 'Protection of Children From Sexual Predators Act of 1998'.''

Pub. L. 105–184, § 1, June 23, 1998, 112 Stat. 520, provided that: ''This Act [amending sections 709, 982, 2326, 2327, and 2703 of this title and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Telemarketing Fraud Prevention Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–294, § 1, Oct. 11, 1996, 110 Stat. 3488, provided that: ''This Act [see Tables for classification] may be cited as the 'Economic Espionage Act of 1996'.''

Pub. L. 104–132, § 1, Apr. 24, 1996, 110 Stat. 1214, provided that: ''This Act [see Tables for classification] may be cited as the 'Antiterrorism and Effective Death Penalty Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–322, title X, § 100001, Sept. 13, 1994, 108 Stat. 1996, provided that: ''This title [amending section 13 of this title and section 3751 of Title 42, The Public Health and Welfare] may be cited as the 'Drunk Driving Child Protection Act of 1994'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–647, § 1, Nov. 29, 1990, 104 Stat. 4789, provided that: ''This Act [see Tables for classification] may be cited as the 'Crime Control Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, § 7011, Nov. 18, 1988, 102 Stat. 4395, provided that: ''This subtitle [subtitle B (§§ 7011–7096) of title VII of Pub. L. 100–690, see Tables for classification] may be cited as the 'Minor and Technical Criminal Law Amendments Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–185, § 1, Dec. 11, 1987, 101 Stat. 1279, provided that: ''This Act [enacting section 19 of this title, amending sections 18, 3013, 3559, 3571, 3572, 3573, 3611, 3612, and 3663 of this title and section 604 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under section 3611 of this title] may be cited as the 'Criminal Fine Improvements Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–646, § 1, Nov. 10, 1986, 100 Stat. 3592, provided that: ''This Act [see Tables for classification] may be cited as the 'Criminal Law and Procedure Technical Amendments Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 200 of title II (§§ 200–2304) of Pub. L. 98–473 provided that: ''This title [see Tables for classification] may be cited as the 'Comprehensive Crime Control Act of 1984'.''

SEVERABILITY

Pub. L. 108–21, § 2, Apr. 30, 2003, 117 Stat. 651, provided that: ''If any provision of this Act [see Tables for classification], or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.''

Pub. L. 107–56, § 2, Oct. 26, 2001, 115 Stat. 275, provided that: ''Any provision of this Act [see Short Title of 2001 Amendment note above] held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.''

Pub. L. 104–132, title IX, § 904, Apr. 24, 1996, 110 Stat. 1319, provided that: ''If any provision of this Act [see Short Title of 1996 Amendments note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(June 25, 1948, ch. 645, 62 Stat. 684; Oct. 31, 1951, ch. 655, § 17b, 65 Stat. 717.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 550 (Mar. 4, 1909, ch. 321, § 332, 35 Stat. 1152).

Section 2(a) comprises section 550 of title 18, U.S.C., 1940 ed., without change except in minor matters of phraseology.

Section 2(b) is added to permit the deletion from many sections throughout the revision of such phrases as ''causes or procures''.

The section as revised makes clear the legislative intent to punish as a principal not only one who directly commits an offense and one who ''aids, abets, counsels, commands, induces or procures'' another to commit an offense, but also anyone who causes the doing of an act which if done by him directly would render him guilty of an offense against the United States.

It removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.

This accords with the following decisions: *Rothenburg v. United States*, 1918, 38 S. Ct. 18, 245 U.S. 480, 62 L. Ed. 414, and *United States v. Hodorowicz*, C. C. A. Ill. 1939, 105 F. 2d 218, certiorari denied, 60 S. Ct. 108, 308 U.S. 584, 84 L. Ed. 489. *United States v. Giles*, 1937, 57 S. Ct. 340, 300 U.S. 41, 81 L. Ed. 493, rehearing denied, 57 S. Ct. 505, 300 U.S. 687, 81 L. Ed. 888.

AMENDMENTS

1951—Subsec. (a). Act Oct. 31, 1951, inserted ''punishable as''.

Subsec. (b). Act Oct. 31, 1951, inserted ''willfully'' before ''causes'', and ''or another'' after ''him'', and substituted ''is punishable as a principal'' for ''is also a principal and punishable as such''.

§ 3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

(June 25, 1948, ch. 645, 62 Stat. 684; Pub. L. 99–646, § 43, Nov. 10, 1986, 100 Stat. 3601; Pub. L. 101–647, title XXXV, § 3502, Nov. 29, 1990, 104 Stat. 4921; Pub. L. 103–322, title XXXIII, §§ 330011(h), 330016(2)(A), Sept. 13, 1994, 108 Stat. 2145, 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 551 (Mar. 4, 1909, ch. 321, § 333, 35 Stat. 1152).

The first paragraph is new. It is based upon authority of *Skelly v. United States* (C. C. A. Okl. 1935, 76 F. 2d 483, certiorari denied, 1935, 55 S. Ct. 914, 295 U.S. 757, 79 L. Ed. 1699), where the court defined an accessory after the fact as—

one who knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon in order to hinder the felon's apprehension, trial, or punishment—

and cited Jones' Blackstone, books 3 and 4, page 2204; *U.S. v. Hartwell* (Fed. Cas. No. 15,318); *Albritton v. State* (32 Fla. 358, 13 So. 955); *State v. Davis* (14 R. I. 281); *Schleeter v. Commonwealth* (218 Ky. 72, 290 S. W. 1075). (See also *State v. Potter*, 1942, 221 N. C. 153, 19 S. E. 2d 257; *Hunter v. State*, 1935, 128 Tex. Cr. R. 191, 79 S. W. 2d 855; *State v. Wells*, 1940, 195 La. 754, 197 So. 419.)

The second paragraph is from section 551 of title 18, U.S.C., 1940 ed. Here only slight changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(2)(A), inserted ''(notwithstanding section 3571)'' before ''fined not more than one-half'' in second par.

Pub. L. 103–322, § 330011(h), amended directory language of Pub. L. 101–647, § 3502. See 1990 Amendment note below.

1990—Pub. L. 101–647, as amended by Pub. L. 103–322, § 330011(h), substituted ''15 years'' for ''ten years'' in second par.

1986—Pub. L. 99–646 inserted ''life imprisonment or'' in second par.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(h) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

§ 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 684; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C. 1940 ed., § 251 (Mar. 4, 1909, ch. 321, § 146, 35 Stat. 1114).

Changes in phraseology only.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 5. United States defined

The term ''United States'', as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 39, 133, 346, 381, 502, and 632, and section 40 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231).

Section consolidates the first sentence of section 39, all of sections 133, 346, and 632, and the second sentences, respectively, of sections 381 and 502, all of title 18, U.S.C., 1940 ed., and section 40 of title 50, U.S.C., 1940 ed., War and National Defense, with minor changes in phraseology.

All of these sections and parts of sections were derived from section 1 of title XIII of said act of June 15, 1917. Said section 40 of title 50, U.S.C., War and National Defense, has also been retained in that title, as it still relates to some sections therein which were not transferred to this title.

The remainder of said section 39 of title 18, U.S.C., 1940 ed., which was derived from sections 2, 3, and 4 of title XIII of the act of June 15, 1917, relating to jurisdiction and other matters, is almost entirely obsolete. The provisions still in force are incorporated in section 3241 of this title.

The remaining provisions of said sections 381 and 502 of title 18, U.S.C., 1940 ed., which were derived from sources other than said section 1 of title XIII of the act

of June 15, 1917, are incorporated in sections 1364 and 2275 of this title.

SENATE REVISION AMENDMENT

Words ", except the Canal Zone." were substituted for the period in this section by Senate amendment. See Senate Report No. 1620, amendment No. 2, 80th Cong.

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

§ 6. Department and agency defined

As used in this title:

The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

This section defines the terms "department" and "agency" of the United States. The word "department" appears 57 times in title 18, U.S.C., 1940 ed., and the word "agency" 14 times. It was considered necessary to define clearly these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See *United States v. Germaine*, 1878, 99 U.S. 508, 25 L. Ed. 482, for definition of words "department" or "head of department.")

The phrase "corporation in which the United States has a proprietary interest" is intended to include those governmental corporations in which stock is not actually issued, as well as those in which stock is owned by the United States. It excludes those corporations in which the interest of the Government is custodial or incidental.

REFERENCES IN TEXT

Section 1 of Title 5, referred to in text, was repealed by Pub. L. 89–554, § 8, Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 101 of Title 5, Government Organization and Employees.

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act—

(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agree-

ment with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.

(June 25, 1948, ch. 645, 62 Stat. 685; July 12, 1952, ch. 695, 66 Stat. 589; Pub. L. 97–96, § 6, Dec. 21, 1981, 95 Stat. 1210; Pub. L. 98–473, title II, § 1210, Oct. 12, 1984, 98 Stat. 2164; Pub. L. 103–322, title XII, § 120002, Sept. 13, 1994, 108 Stat. 2021; Pub. L. 107–56, title VIII, § 804, Oct. 26, 2001, 115 Stat. 377.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 451 (Mar. 4, 1909, ch. 321, § 272, 35 Stat. 1142; June 11, 1940, ch. 323, 54 Stat. 304).

The words ''The term 'special maritime and territorial jurisdiction of the United States' as used in this title includes:'' were substituted for the words ''The crimes and offenses defined in sections 451–468 of this title shall be punished as herein prescribed.''

This section first appeared in the 1909 Criminal Code. It made it possible to combine in one chapter all the penal provisions covering acts within the admiralty and maritime jurisdiction without the necessity of repeating in each section the places covered.

The present section has made possible the allocation of the diverse provisions of chapter 11 of Title 18, U.S.C., 1940 ed., to particular chapters restricted to particular offenses, as contemplated by the alphabetical chapter arrangement.

In several revised sections of said chapter 11 the words ''within the special maritime and territorial jurisdiction of the United States'' have been added. Thus the jurisdictional limitation will be preserved in all sections of said chapter 11 describing an offense.

Enumeration of names of Great Lakes was omitted as unnecessary.

Other minor changes were necessary now that the section defines a term rather than the place of commission of crime or offense; however, the extent of the special jurisdiction as originally enacted has been carefully followed.

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in par. (9), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2001—Par. (9). Pub. L. 107–56 added par. (9).
1994—Par. (8). Pub. L. 103–322 added par. (8).
1984—Par. (7). Pub. L. 98–473 added par. (7).
1981—Par. (6). Pub. L. 97–96 added par. (6).
1952—Par. (5). Act July 12, 1952, added par. (5).

TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION

Pub. L. 104–132, title IX, § 901(a), Apr. 24, 1996, 110 Stat. 1317, provided that: ''The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988 [set out as a note under section 1331 of Title 43, Public Lands], for purposes of Federal criminal jurisdiction is part of the United States, subject to its sovereignty, and is within the special maritime and territorial jurisdiction of the United States for the purposes of title 18, United States Code.''

§ 8. Obligation or other security of the United States defined

The term ''obligation or other security of the United States'' includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and canceled United States stamps.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 261 (Mar. 4, 1909, ch. 321, § 147, 35 Stat. 1115; Jan. 27, 1938, ch. 10, § 3, 52 Stat. 7).

The terms of this section were general enough to justify its inclusion in this chapter rather than retaining it in the chapter on ''Counterfeiting'' where the terms which it specifically defines are set out in sections 471–476, 478, 481, 483, 492, and 504 of this title.

Words ''Federal Reserve notes, Federal Reserve bank notes'' were inserted before ''coupons'' because such notes have almost supplanted national bank currency.

Minor changes were made in phraseology.

§ 9. Vessel of the United States defined

The term ''vessel of the United States'', as used in this title, means a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof.

(June 25, 1948, ch. 645, 62 Stat. 685.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 501 (Mar. 4, 1909, ch. 321, § 310, 35 Stat. 1148).

Section is made applicable to the entire title rather than to sections 481 et seq. of title 18, U.S.C., 1940 ed.

Minor changes in phraseology were made.

§ 10. Interstate commerce and foreign commerce defined

The term ''interstate commerce'', as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

The term ''foreign commerce'', as used in this title, includes commerce with a foreign country.

(June 25, 1948, ch. 645, 62 Stat. 686.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 408, 408b, 414(a), and 419a(b) (Oct. 29, 1919, ch. 89, § 2(b), 41 Stat. 325; June 22, 1932, ch. 271, § 2, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 782; May 22, 1934, ch. 333, § 2(a), 48 Stat. 794; Aug. 18, 1941, ch. 366, § 2(b), 55 Stat. 631).

This section consolidates into one section identical definitions contained in sections 408, 408b, 414(a), and 419a(b) of title 18, U.S.C., 1940 ed.

In addition to slight improvements in style, the word ''commerce'' was substituted for ''transportation'' in order to avoid the narrower connotation of the word ''transportation'' since ''commerce'' obviously includes more than ''transportation.'' The word ''Possession'' was inserted in two places to make the definition more accurate and comprehensive since the places included in the word ''Possession'' would normally be within the term defined and a narrower construction should be handled by express statutory exclusion in those crimes which Congress intends to restrict to commerce within the continental United States.

§ 11. Foreign government defined

The term ''foreign government'', as used in this title except in sections 112, 878, 970, 1116,

and 1201, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

(June 25, 1948, ch. 645, 62 Stat. 686; Pub. L. 94–467, § 11, Oct. 8, 1976, 90 Stat. 2001.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 98, 288, 349; section 235 of title 22 U.S.C., 1940 ed., Foreign Relations and Intercourse; section 41 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title VIII, § 4, 40 Stat. 226).

The definition of ''foreign government'' contained in this section, with minor changes in phraseology, is from section 4 of title VIII of act June 15, 1917 (Ch. 30, 40 Stat. 217, 226), known as the Espionage Act of 1917. This definition was incorporated in sections 98, 288, and 349 of title 18 and in section 235 of title 22, Foreign Relations and Intercourse, and in section 41 of Title 50, War and National Defense, U.S.C., all in 1940 ed., since the definition was specifically enacted with reference to said sections and others not material here.

The remaining provisions of said sections 98 and 349 of title 18, U.S.C., 1940 ed., which were derived from sources other than said section 4 of title VIII of the act of June 15, 1917, are incorporated in sections 502 and 957 of this title.

AMENDMENTS

1976—Pub. L. 94–467 inserted ''except in sections 112, 878, 970, 1116, and 1201'' after ''title''.

§ 12. United States Postal Service defined

As used in this title, the term ''Postal Service'' means the United States Postal Service established under title 39, and every officer and employee of that Service, whether or not such officer or employee has taken the oath of office.

(June 25, 1948, ch. 645, 62 Stat. 686; Pub. L. 91–375, § 6(j)(2), Aug. 12, 1970, 84 Stat. 777; Pub. L. 101–647, title XXXV, § 3505, Nov. 29, 1990, 104 Stat. 4921.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 301, 360 (Mar. 4, 1909, ch. 321, §§ 230, 231, 35 Stat. 1134).

This section consolidates sections 301 and 360 of title 18, U.S.C., 1940 ed., with necessary changes in phraseology.

AMENDMENTS

1990—Pub. L. 101–647 substituted ''whether or not such officer or employee has taken the oath of office'' for ''whether he has taken the oath of office''.

1970—Pub. L. 91–375 inserted ''United States'' before ''Postal Service'' in section catchline and substituted in text as definition of ''Postal Service'' the United States Postal Service established under title 39, and every officer and employee of that Service, whether he has taken the oath of office, for prior definition which included the Post Office Department and every employee, thereof, whether or not he has taken the oath of office.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 13. Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b)(1) Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.

(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional fine under this title, or both, if—

(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

(B) For the purposes of subparagraph (A), the term ''minor'' means a person less than 18 years of age.

(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.

(June 25, 1948, ch. 645, 62 Stat. 686; Pub. L. 100–690, title VI, § 6477(a), Nov. 18, 1988, 102 Stat. 4381; Pub. L. 103–322, title X, § 100002, Sept. 13, 1994, 108 Stat. 1996; Pub. L. 104–132, title IX, § 901(b), Apr. 24, 1996, 110 Stat. 1317; Pub. L. 104–294, title VI, § 604(b)(32), Oct. 11, 1996, 110 Stat. 3508.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 468 (Mar. 4, 1909, ch. 321, § 289, 35 Stat. 1145; June 15, 1933, ch. 85, 48 Stat.

152; June 20, 1935, ch. 284, 49 Stat. 394; June 6, 1940, ch. 241, 54 Stat. 234).

Act March 4, 1909, § 289 used the words ''now in force'' when referring to the laws of any State, organized Territory or district, to be considered in force.

As amended on June 15, 1933, the words ''by the laws thereof in force on June 1, 1933, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal,'' were used.

The amendment of June 20, 1935, extended the date to ''April 1, 1935,'' and the amendment of June 6, 1940, extended the date to ''February 1, 1940''.

The revised section omits the specification of any date as unnecessary in a revision, which speaks from the date of its enactment. Such omission will not only make effective within Federal reservations, the local State laws in force on the date of the enactment of the revision, but will authorize the Federal courts to apply the same measuring stick to such offenses as is applied in the adjoining State under future changes of the State law and will make unnecessary periodic pro forma amendments of this section to keep abreast of changes of local laws. In other words, the revised section makes applicable to offenses committed on such reservations, the law of the place that would govern if the reservation had not been ceded to the United States.

The word ''Possession'' was inserted to clarify scope of section.

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 901(b)(1), inserted ''or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district'' after ''section 7 of this title,''.

Subsec. (b)(2)(A). Pub. L. 104–294 substituted ''under this title'' for ''of not more than $1,000''.

Subsec. (c). Pub. L. 104–132, § 901(b)(2), added subsec. (c).

1994—Subsec. (b). Pub. L. 103–322 designated existing provisions as par. (1), substituted ''Subject to paragraph (2) and for purposes'' for ''For purposes'', and added par. (2).

1988—Pub. L. 100–690 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 604(d) of Pub. L. 104–294 provided that: ''The amendments made by this section [amending this section, sections 36, 112, 113, 241, 242, 245, 351, 511, 542, 544, 545, 668, 704, 709, 794, 1014, 1030, 1112, 1169, 1512, 1515, 1516, 1751, 1956, 1961, 2114, 2311, 2339A, 2423, 2511, 2512, 2721, 3059A, 3561, 3582, 3592, and 5037 of this title, section 802 of Title 21, Food and Drugs, sections 540A and 991 of Title 28, Judiciary and Judicial Procedure, and sections 3631, 5633, 10604, and 14011 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 1001, 1169, and 2325 of this title and section 994 of Title 28] shall take effect on the date of enactment of Public Law 103–322 [Sept. 13, 1994].''

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

[§ 14. Repealed. Pub. L. 107–273, div. B, title IV, § 4004(a), Nov. 2, 2002, 116 Stat. 1812]

Section, act June 25, 1948, ch. 645, 62 Stat. 686; Aug. 5, 1953, ch. 325, 67 Stat. 366; Pub. L. 87–845, § 3(a), Oct. 18, 1962, 76A Stat. 698; Pub. L. 90–357, § 59, June 22, 1968, 82 Stat. 248; Pub. L. 101–647, title XXXV, § 3519(c), Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103–322, title XXXIII, § 330010(9), Sept. 13, 1994, 108 Stat. 2143, listed Title 18 sections applicable to and within Canal Zone.

§ 15. Obligation or other security of foreign government defined

The term ''obligation or other security of any foreign government'' includes, but is not limited to, uncanceled stamps, whether or not demonetized.

(Added Pub. L. 85–921, § 3, Sept. 2, 1958, 72 Stat. 1771.)

§ 16. Crime of violence defined

The term ''crime of violence'' means—

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(Added Pub. L. 98–473, title II, § 1001(a), Oct. 12, 1984, 98 Stat. 2136.)

§ 17. Insanity defense

(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) BURDEN OF PROOF.—The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

(Added Pub. L. 98–473, title II, § 402(a), Oct. 12, 1984, 98 Stat. 2057, § 20; renumbered § 17, Pub. L. 99–646, § 34(a), Nov. 10, 1986, 100 Stat. 3599.)

§ 18. Organization defined

As used in this title, the term ''organization'' means a person other than an individual.

(Added Pub. L. 99–646, § 38(a), Nov. 10, 1986, 100 Stat. 3599; amended Pub. L. 100–185, § 4(c), Dec. 11, 1987, 101 Stat. 1279; Pub. L. 100–690, title VII, § 7012, Nov. 18, 1988, 102 Stat. 4395.)

AMENDMENTS

1988—Pub. L. 100–690 made technical correction of directory language of Pub. L. 99–646, § 38(a), similar to that made by Pub. L. 100–185.

1987—Pub. L. 100–185 made technical correction in directory language of Pub. L. 99–646, § 38(a).

§ 19. Petty offense defined

As used in this title, the term ''petty offense'' means a Class B misdemeanor, a Class C misdemeanor, or an infraction, for which the maximum fine is no greater than the amount set forth for such an offense in section 3571(b)(6) or (7) in the case of an individual or section 3571(c)(6) or (7) in the case of an organization.

(Added Pub. L. 100–185, § 4(a), Dec. 11, 1987, 101 Stat. 1279; amended Pub. L. 100–690, title VII, § 7089(a), Nov. 18, 1988, 102 Stat. 4409.)

AMENDMENTS

1988—Pub. L. 100–690 inserted '', for which the maximum fine is no greater than the amount set forth for

such an offense in section 3571(b)(6) or (7) in the case of an individual or section 3571(c)(6) or (7) in the case of an organization'' after ''infraction''.

§ 20. Financial institution defined

As used in this title, the term ''financial institution'' means—

(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

(2) a credit union with accounts insured by the National Credit Union Share Insurance Fund;

(3) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system;

(4) a System institution of the Farm Credit System, as defined in section 5.35(3) of the Farm Credit Act of 1971;

(5) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662);

(6) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act;

(7) a Federal Reserve bank or a member bank of the Federal Reserve System;

(8) an organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act; or

(9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978).

(Added Pub. L. 98–473, title II, § 1107(a), Oct. 12, 1984, 98 Stat. 2145, § 215(b); amended Pub. L. 99–370, § 2, Aug. 4, 1986, 100 Stat. 779; renumbered § 20 and amended Pub. L. 101–73, title IX, § 962(e)(1), (2), Aug. 9, 1989, 103 Stat. 503; Pub. L. 101–647, title XXV, § 2597(a), Nov. 29, 1990, 104 Stat. 4908.)

REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in pars. (1) and (6), is classified to section 1813 of Title 12, Banks and Banking.

Section 5.35(3) of the Farm Credit Act of 1971, referred to in par. (4), is classified to section 2271(3) of Title 12.

Section 25 of the Federal Reserve Act, referred to in par. (8), is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 1(b) of the International Banking Act of 1978, referred to in par. (9), is classified to section 3101 of Title 12.

PRIOR PROVISIONS

A prior section 20 was renumbered section 17 of this title.

AMENDMENTS

1990—Pars. (7) to (9). Pub. L. 101–647 added pars. (7) to (9).

1989—Pub. L. 101–73, § 962(e)(1), (2)(A)–(C), redesignated subsec. (b) of section 215 of this title as this section, inserted section catchline, struck out subsec. (b) designation before ''As used'', and substituted ''used in this title'' for ''used in this section''.

Par. (1). Pub. L. 101–73, § 962(e)(2)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''a bank with deposits insured by the Federal Deposit Insurance Corporation;''.

Par. (2). Pub. L. 101–73, § 962(e)(2)(E), (H), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;''.

Par. (3). Pub. L. 101–73, § 962(e)(2)(H), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Par. (4). Pub. L. 101–73, § 962(e)(2)(F), (H), redesignated par. (5) as (4) and amended it generally. Prior to amendment, par. (4) read as follows: ''a Federal land bank, Federal intermediate credit bank, bank for cooperatives, production credit association, and Federal land bank association;''. Former par. (4) redesignated (3).

Par. (5). Pub. L. 101–73, § 962(e)(2)(H), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pars. (6), (7). Pub. L. 101–73, § 962(e)(2)(G), (H), redesignated par. (7) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: ''a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or''. Former par. (6) redesignated (5).

Par. (8). Pub. L. 101–73, § 962(e)(2)(E), struck out par. (8) which read as follows: ''a savings and loan holding company as defined in section 408 of the National Housing Act (12 U.S.C. 1730a).''

1986—Pub. L. 99–370 amended subsec. (b) [formerly § 215(b)] generally expanding provisions formerly contained in subsec. (c) [former § 215(c)] defining ''financial institution''.

§ 21. Stolen or counterfeit nature of property for certain crimes defined

(a) Wherever in this title it is an element of an offense that—

(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

(b) For purposes of this section, the term ''official representation'' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.

(Added Pub. L. 103–322, title XXXII, § 320910(a), Sept. 13, 1994, 108 Stat. 2127.)

§ 23.[1] Court of the United States defined

As used in this title, except where otherwise expressly provided[2] the term ''court of the United States'' includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands.

(Added Pub. L. 103–322, title XXXII, § 320914(a), Sept. 13, 1994, 108 Stat. 2128.)

[1] See References in Text note below.

[1] So in original. No section 22 has been enacted.

[2] So in original. Probably should be followed by a comma.

§ 24. Definitions relating to Federal health care offense

(a) As used in this title, the term ''Federal health care offense'' means a violation of, or a criminal conspiracy to violate—

(1) section 669, 1035, 1347, or 1518 of this title;

(2) section 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title, if the violation or conspiracy relates to a health care benefit program.

(b) As used in this title, the term ''health care benefit program'' means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

(Added Pub. L. 104–191, title II, § 241(a), Aug. 21, 1996, 110 Stat. 2016.)

§ 25. Use of minors in crimes of violence

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) CRIME OF VIOLENCE.—The term ''crime of violence'' has the meaning set forth in section 16.

(2) MINOR.—The term ''minor'' means a person who has not reached 18 years of age.

(3) USES.—The term ''uses'' means employs, hires, persuades, induces, entices, or coerces.

(b) PENALTIES.—Any person who is 18 years of age or older, who intentionally uses a minor to commit a crime of violence for which such person may be prosecuted in a court of the United States, or to assist in avoiding detection or apprehension for such an offense, shall—

(1) for the first conviction, be subject to twice the maximum term of imprisonment and twice the maximum fine that would otherwise be authorized for the offense; and

(2) for each subsequent conviction, be subject to 3 times the maximum term of imprisonment and 3 times the maximum fine that would otherwise be authorized for the offense.

(Added Pub. L. 108–21, title VI, § 601[(a)], Apr. 30, 2003, 117 Stat. 686.)

§ 26. Definition of seaport

As used in this title, the term ''seaport'' means all piers, wharves, docks, and similar structures, adjacent to any waters subject to the jurisdiction of the United States, to which a vessel may be secured, including areas of land, water, or land and water under and in immediate proximity to such structures, buildings on or contiguous to such structures, and the equipment and materials on such structures or in such buildings.

(Added Pub. L. 109–177, title III, § 302(c), Mar. 9, 2006, 120 Stat. 233.)

CHAPTER 2—AIRCRAFT AND MOTOR VEHICLES

Sec.
31. Definitions.
32. Destruction of aircraft or aircraft facilities.
33. Destruction of motor vehicles or motor vehicle facilities.
34. Penalty when death results.
35. Imparting or conveying false information.
36. Drive-by shooting.
37. Violence at international airports.
38. Fraud involving aircraft or space vehicle parts in interstate or foreign commerce.
39.[1] Commercial motor vehicles required to stop for inspections.
39.[1] Traffic signal preemption transmitters.

AMENDMENTS

2005—Pub. L. 109–59, title II, § 2018(b), title IV, § 4143(c)(1), Aug. 10, 2005, 119 Stat. 1543, 1748, added item 39 ''Commercial motor vehicles required to stop for inspections'' and item 39 ''Traffic signal preemption transmitters''.

2000—Pub. L. 106–181, title V, § 506(c)(2)(A), Apr. 5, 2000, 114 Stat. 139, added item 38.

1994—Pub. L. 103–322, title VI, §§ 60008(c), 60021(b), Sept. 13, 1994, 108 Stat. 1972, 1980, added items 36 and 37.

§ 31. Definitions

(a) DEFINITIONS.—In this chapter, the following definitions apply:

(1) AIRCRAFT.—The term ''aircraft'' means a civil, military, or public contrivance invented, used, or designed to navigate, fly, or travel in the air.

(2) AVIATION QUALITY.—The term ''aviation quality'', with respect to a part of an aircraft or space vehicle, means the quality of having been manufactured, constructed, produced, maintained, repaired, overhauled, rebuilt, reconditioned, or restored in conformity with applicable standards specified by law (including applicable regulations).

(3) DESTRUCTIVE SUBSTANCE.—The term ''destructive substance'' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature.

(4) IN FLIGHT.—The term ''in flight'' means—

(A) any time from the moment at which all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation; and

(B) in the case of a forced landing, until competent authorities take over the responsibility for the aircraft and the persons and property on board.

(5) IN SERVICE.—The term ''in service'' means—

(A) any time from the beginning of preflight preparation of an aircraft by ground personnel or by the crew for a specific flight until 24 hours after any landing; and

(B) in any event includes the entire period during which the aircraft is in flight.

(6) MOTOR VEHICLE.—The term ''motor vehicle'' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

[1] So in original. Two sections 39 have been enacted and the order of the two items 39 does not correspond to the order of the sections in text.

(7) PART.—The term ''part'' means a frame, assembly, component, appliance, engine, propeller, material, part, spare part, piece, section, or related integral or auxiliary equipment.

(8) SPACE VEHICLE.—The term ''space vehicle'' means a man-made device, either manned or unmanned, designed for operation beyond the Earth's atmosphere.

(9) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(10) USED FOR COMMERCIAL PURPOSES.—The term ''used for commercial purposes'' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

(b) TERMS DEFINED IN OTHER LAW.—In this chapter, the terms ''aircraft engine'', ''air navigation facility'', ''appliance'', ''civil aircraft'', ''foreign air commerce'', ''interstate air commerce'', ''landing area'', ''overseas air commerce'', ''propeller'', ''spare part'', and ''special aircraft jurisdiction of the United States'' have the meanings given those terms in sections 40102(a) and 46501 of title 49.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 538; amended Pub. L. 98–473, title II, §§ 1010, 2013(a), Oct. 12, 1984, 98 Stat. 2141, 2187; Pub. L. 100–690, title VII, § 7015, Nov. 18, 1988, 102 Stat. 4395; Pub. L. 103–272, § 5(e)(1), July 5, 1994, 108 Stat. 1373; Pub. L. 106–181, title V, § 506(b), Apr. 5, 2000, 114 Stat. 136.)

AMENDMENTS

2000—Pub. L. 106–181 added subsecs. (a) and (b) and struck out former text which read as follows: ''When used in this chapter the term—

''''Aircraft engine', 'air navigation facility', 'appliance', 'civil aircraft', 'foreign air commerce', 'interstate air commerce', 'landing area', 'overseas air commerce', 'propeller', 'spare part' and 'special aircraft jurisdiction of the United States' shall have the meaning ascribed to those terms in sections 40102(a) and 46501 of title 49.

''''Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo;

''''Destructive substance' means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature;

''''Used for commercial purposes' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit;

''''In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

''''In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight.''

1994—Pub. L. 103–272 substituted ''sections 40102(a) and 46501 of title 49'' for ''the Federal Aviation Act of 1958, as amended'' in par. beginning with definition of ''Aircraft engine''.

1988—Pub. L. 100–690 substituted ''door is opened'' for ''door in opened'' in definition of ''in flight''.

1984—Pub. L. 98–473, § 2013(a)(1), in first par. struck out ''and'' before ''spare part'', inserted ''and 'special aircraft jurisdiction of the United States' '', and substituted ''Federal Aviation Act of 1958'' for ''Civil Aeronautics Act of 1938''.

Pub. L. 98–473, § 1010, substituted ''passengers and property, or property or cargo'' for ''or passengers and property'' in definition of motor vehicle.

Pub. L. 98–473, § 2013(a)(2)–(4), inserted definitions of ''in flight'' and ''in service''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2015 of part B (§§ 2011–2015) of chapter XX of title II of Pub. L. 98–473 provided that: ''This part [see Short Title of 1984 Amendment note below] shall become effective on the date of the enactment of this joint resolution [Oct. 12, 1984].''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–181, title V, § 506(a), Apr. 5, 2000, 114 Stat. 136, provided that: ''This section [enacting section 38 of this title and amending this section and section 2516 of this title] may be cited as the 'Aircraft Safety Act of 2000'.''

SHORT TITLE OF 1984 AMENDMENT

Section 2011 of part B (§§ 2011–2015) of chapter XX of title II of Pub. L. 98–473 provided that: ''This part [amending this section, section 32 of this title, and sections 1301, 1471, and 1472 of former Title 49, Transportation, and enacting provisions set out as notes under this section] may be cited as the 'Aircraft Sabotage Act'.''

STATEMENT OF FINDINGS AND PURPOSE FOR 1984 AMENDMENT

Section 2012 of part B (§§ 2011–2015) of chapter XX of title II of Pub. L. 98–473 provided that: ''The Congress hereby finds that—

''(1) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified by the United States on November 1, 1972) requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of civil aviation;

''(2) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations; and

''(3) the purpose of this subtitle [part, see Short Title of 1984 Amendment note above] is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities.''

§ 32. Destruction of aircraft or aircraft facilities

(a) Whoever willfully—

(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed or such making or causing to be made is likely to endanger the safety of any such aircraft;

(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

(5) interferes with or disables, with intent to endanger the safety of any person or with a reckless disregard for the safety of human life, anyone engaged in the authorized operation of such aircraft or any air navigation facility aiding in the navigation of any such aircraft;

(6) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

(7) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight; or

(8) attempts or conspires to do anything prohibited under paragraphs (1) through (7) of this subsection;

shall be fined under this title or imprisoned not more than twenty years or both.

(b) Whoever willfully—

(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

(4) attempts or conspires to commit an offense described in paragraphs (1) through (3) of this subsection;

shall be fined under this title or imprisoned not more than twenty years, or both. There is jurisdiction over an offense under this subsection if a national of the United States was on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term ''national of the United States'' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.

(c) Whoever willfully imparts or conveys any threat to do an act which would violate any of paragraphs (1) through (6) of subsection (a) or any of paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution shall be fined under this title or imprisoned not more than five years, or both.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 539; amended Pub. L. 98–473, title II, § 2013(b), Oct. 12, 1984, 98 Stat. 2187; Pub. L. 100–690, title VII, § 7016, Nov. 18, 1988, 102 Stat. 4395; Pub. L. 103–322, title XXXIII, § 330016(1)(O), (S), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–132, title VII, §§ 721(b), 723(a)(1), Apr. 24, 1996, 110 Stat. 1298, 1300; Pub. L. 109–177, title I, § 123, Mar. 9, 2006, 120 Stat. 226.)

REFERENCES IN TEXT

Section 101(a)(22) of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101(a)(22) of Title 8, Aliens and Nationality.

AMENDMENTS

2006—Subsec. (a)(5) to (7). Pub. L. 109–177, § 123(1), (2), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 109–177, § 123(1), (3), redesignated par. (7) as (8) and substituted ''paragraphs (1) through (7)'' for ''paragraphs (1) through (6)''.

Subsec. (c). Pub. L. 109–177, § 123(4), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (5)''.

1996—Subsec. (a)(7). Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts''.

Subsec. (b). Pub. L. 104–132, § 721(b), in closing provisions, struck out '', if the offender is later found in the United States,'' before ''be fined under this title'' and inserted at end ''There is jurisdiction over an offense under this subsection if a national of the United States was on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.''

Subsec. (b)(4). Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts''.

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(S), substituted ''fined under this title'' for ''fined not more than $100,000'' in concluding provisions.

Subsec. (c). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000''.

1988—Subsec. (a)(3). Pub. L. 100–690 substituted ''interfering'' for ''intefering''.

1984—Pub. L. 98–473 amended section generally. Prior to amendment section read as follows:

''Whoever willfully sets fire to, damages, destroys, disables, or wrecks any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce; or

''Whoever willfully sets fire to, damages, destroys, disables, or wrecks any aircraft engine, propeller, appliance, or spare part with intent to damage, destroy, disable, or wreck any such aircraft; or

''Whoever, with like intent, willfully places or causes to be placed any destructive substance in, upon, or in proximity to any such aircraft, or any aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material used or intended to be used in connection with the operation of any such aircraft, or any cargo carried or intended to be carried on any such aircraft, or otherwise makes or causes to be made any such aircraft, aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material unworkable or unusable or hazardous to work or use; or

''Whoever, with like intent, willfully sets fire to, damages, destroys, disables, or wrecks, or places or causes to be placed any destructive substance in, upon, or in proximity to any shop, supply, structure, station, depot, terminal, hangar, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus used or intended to be used in connection with the operation, loading, or unloading of any such aircraft or making any such aircraft ready for flight, or otherwise makes or causes to be made any such shop, supply, structure, station, depot, terminal, hangar, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus unworkable or unusable or hazardous to work or use; or

''Whoever, with like intent, willfully incapacitates any member of the crew of any such aircraft; or

''Whoever willfully attempts to do any of the aforesaid acts or things—

''shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 2015 of Pub. L. 98–473, set out as a note under section 31 of this title.

§ 33. Destruction of motor vehicles or motor vehicle facilities

(a) Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or

Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such; or

Whoever willfully attempts or conspires to do any of the aforesaid acts—

shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever is convicted of a violation of subsection (a) involving a motor vehicle that, at the time the violation occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12))) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under this title and imprisoned for any term of years not less than 30, or for life.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–88, title IV, § 402(a), Dec. 29, 1995, 109 Stat. 955; Pub. L. 109–177, title IV, § 406(c)(1), Mar. 9, 2006, 120 Stat. 245.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 inserted ''or conspires'' before ''to do any of the aforesaid acts'' in fourth par.

1995—Pub. L. 104–88 designated existing provisions as subsec. (a) and added subsec. (b).

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 34. Penalty when death results

Whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540; amended Pub. L. 103–322, title VI, § 60003(a)(1), Sept. 13, 1994, 108 Stat. 1968.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''imprisonment for life.'' for ''imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order.''

§ 35. Imparting or conveying false information

(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States.

(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title—shall be fined under this title, or imprisoned not more than five years, or both.

(Added July 14, 1956, ch. 595, § 1, 70 Stat. 540; amended Pub. L. 87–338, Oct. 3, 1961, 75 Stat. 751; Pub. L. 89–64, July 7, 1965, 79 Stat. 210; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1965—Subsec. (a). Pub. L. 89–64 substituted ''subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States'' for ''fined not more than $1,000, or imprisoned not more than one year, or both''.

1961—Pub. L. 87–338 designated existing provisions as subsec. (a), struck out ''willfully'' before ''imparts or conveys'', and added subsec. (b).

§ 36. Drive-by shooting

(a) DEFINITION.—In this section, ''major drug offense'' means—

(1) a continuing criminal enterprise punishable under section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c));

(2) a conspiracy to distribute controlled substances punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846) section[1] 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963); or

(3) an offense involving major quantities of drugs and punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) or section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)).

(b) OFFENSE AND PENALTIES.—(1) A person who, in furtherance or to escape detection of a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of two or more persons and who, in the course of such conduct, causes grave risk to any human life shall be punished by a term of no more than 25 years, by fine under this title, or both.

(2) A person who, in furtherance or to escape detection of a major drug offense and with the intent to intimidate, harass, injure, or maim, fires a weapon into a group of 2 or more persons and who, in the course of such conduct, kills any person shall, if the killing—

(A) is a first degree murder (as defined in section 1111(a)), be punished by death or imprisonment for any term of years or for life, fined under this title, or both; or

(B) is a murder other than a first degree murder (as defined in section 1111(a)), be fined under this title, imprisoned for any term of years or for life, or both.

(Added Pub. L. 103–322, title VI, § 60008(b), Sept. 13, 1994, 108 Stat. 1971; amended Pub. L. 104–294, title VI, § 604(b)(30), Oct. 11, 1996, 110 Stat. 3508.)

AMENDMENTS

1996—Subsec. (a)(1), (2). Pub. L. 104–294 substituted ''408(c)'' for ''403(c)'' in par. (1) and ''Export'' for ''Export Control'' in par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

SHORT TITLE

Section 60008(a) of Pub. L. 103–322 provided that: ''This section [enacting this section] may be cited as the 'Drive-By Shooting Prevention Act of 1994'.''

§ 37. Violence at international airports

(a) OFFENSE.—A person who unlawfully and intentionally, using any device, substance, or weapon—

(1) performs an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious bodily injury (as defined in section 1365 of this title) or death; or

(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the prohibited activity in subsection (a) if—

(1) the prohibited activity takes place in the United States; or

(2) the prohibited activity takes place outside the United States and (A) the offender is later found in the United States; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))).

(c) BAR TO PROSECUTION.—It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term ''labor dispute'' has the meaning set forth in section 2(c)[1] of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)), and the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 103–322, title VI, § 60021(a), Sept. 13, 1994, 108 Stat. 1979; amended Pub. L. 104–132, title VII, §§ 721(g), 723(a)(1), Apr. 24, 1996, 110 Stat. 1299, 1300; Pub. L. 104–294, title VI, §§ 601(q), 607(*o*), Oct. 11, 1996, 110 Stat. 3502, 3512.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts'' in concluding provisions.

Subsec. (b)(2). Pub. L. 104–132, § 721(g), inserted subpar. (A) designation and added subpar. (B).

Subsec. (c). Pub. L. 104–294 inserted heading and inserted '', and the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States'' before period at end.

[1] So in original. Probably should be preceded by ''or''.

[1] So in original. Probably should be section ''13(c)''.

EFFECTIVE DATE

Section 60021(c) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the later of—

''(1) the date of enactment of this Act [Sept. 13, 1994]; or

''(2) the date on which the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.'' [Protocol came into force and United States became a party to the Protocol Nov. 18, 1994, Treaty Doc. 100–19.]

§ 38. Fraud involving aircraft or space vehicle parts in interstate or foreign commerce

(a) OFFENSES.—Whoever, in or affecting interstate or foreign commerce, knowingly and with the intent to defraud—

(1)(A) falsifies or conceals a material fact concerning any aircraft or space vehicle part;

(B) makes any materially fraudulent representation concerning any aircraft or space vehicle part; or

(C) makes or uses any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part;

(2) exports from or imports or introduces into the United States, sells, trades, installs on or in any aircraft or space vehicle any aircraft or space vehicle part using or by means of a fraudulent representation, document, record, certification, depiction, data plate, label, or electronic communication; or

(3) attempts or conspires to commit an offense described in paragraph (1) or (2),

shall be punished as provided in subsection (b).

(b) PENALTIES.—The punishment for an offense under subsection (a) is as follows:

(1) AVIATION QUALITY.—If the offense relates to the aviation quality of a part and the part is installed in an aircraft or space vehicle, a fine of not more than $500,000, imprisonment for not more than 15 years, or both.

(2) FAILURE TO OPERATE AS REPRESENTED.—If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in serious bodily injury (as defined in section 1365), a fine of not more than $1,000,000, imprisonment for not more than 20 years, or both.

(3) FAILURE RESULTING IN DEATH.—If, by reason of the failure of the part to operate as represented, the part to which the offense is related is the proximate cause of a malfunction or failure that results in the death of any person, a fine of not more than $1,000,000, imprisonment for any term of years or life, or both.

(4) OTHER CIRCUMSTANCES.—In the case of an offense under subsection (a) not described in paragraph (1), (2), or (3) of this subsection, a fine under this title, imprisonment for not more than 10 years, or both.

(5) ORGANIZATIONS.—If the offense is committed by an organization, a fine of not more than—

(A) $10,000,000 in the case of an offense described in paragraph (1) or (4); and

(B) $20,000,000 in the case of an offense described in paragraph (2) or (3).

(c) CIVIL REMEDIES.—

(1) IN GENERAL.—The district courts of the United States shall have jurisdiction to prevent and restrain violations of this section by issuing appropriate orders, including—

(A) ordering a person (convicted of an offense under this section) to divest any interest, direct or indirect, in any enterprise used to commit or facilitate the commission of the offense, or to destroy, or to mutilate and sell as scrap, aircraft material or part inventories or stocks;

(B) imposing reasonable restrictions on the future activities or investments of any such person, including prohibiting engagement in the same type of endeavor as used to commit the offense; and

(C) ordering the dissolution or reorganization of any enterprise knowingly used to commit or facilitate the commission of an offense under this section making due provisions for the rights and interests of innocent persons.

(2) RESTRAINING ORDERS AND PROHIBITION.—Pending final determination of a proceeding brought under this section, the court may enter such restraining orders or prohibitions, or take such other actions (including the acceptance of satisfactory performance bonds) as the court deems proper.

(3) ESTOPPEL.—A final judgment rendered in favor of the United States in any criminal proceeding brought under this section shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(d) CRIMINAL FORFEITURE.—

(1) IN GENERAL.—The court, in imposing sentence on any person convicted of an offense under this section, shall order, in addition to any other sentence and irrespective of any provision of State law, that the person forfeit to the United States—

(A) any property constituting, or derived from, any proceeds that the person obtained, directly or indirectly, as a result of the offense; and

(B) any property used, or intended to be used in any manner, to commit or facilitate the commission of the offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property on the offense.

(2) APPLICATION OF OTHER LAW.—The forfeiture of property under this section, including any seizure and disposition of the property, and any proceedings relating to the property, shall be governed by section 413 of the Comprehensive Drug Abuse and Prevention Act of 1970 (21 U.S.C. 853) (not including subsection (d) of that section).

(e) CONSTRUCTION WITH OTHER LAW.—This section does not preempt or displace any other remedy, civil or criminal, provided by Federal or State law for the fraudulent importation, sale,

trade, installation, or introduction into commerce of an aircraft or space vehicle part.

(f) TERRITORIAL SCOPE.—This section also applies to conduct occurring outside the United States if—

(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or political subdivision thereof;

(2) the aircraft or spacecraft part as to which the violation relates was installed in an aircraft or space vehicle owned or operated at the time of the offense by a citizen or permanent resident alien of the United States, or by an organization thereof; or

(3) an act in furtherance of the offense was committed in the United States.

(Added Pub. L. 106–181, title V, § 506(c)(1), Apr. 5, 2000, 114 Stat. 137.)

EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of Title 49, Transportation.

§ 39.[1] Traffic signal preemption transmitters

(a) OFFENSES.—

(1) SALE.—Whoever, in or affecting interstate or foreign commerce, knowingly sells a traffic signal preemption transmitter to a nonqualifying user shall be fined under this title, or imprisoned not more than 1 year, or both.

(2) USE.—Whoever, in or affecting interstate or foreign commerce, being a nonqualifying user makes unauthorized use of a traffic signal preemption transmitter shall be fined under this title, or imprisoned not more than 6 months, or both.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) TRAFFIC SIGNAL PREEMPTION TRANSMITTER.—The term ''traffic signal preemption transmitter'' means any mechanism that can change or alter a traffic signal's phase time or sequence.

(2) NONQUALIFYING USER.—The term ''nonqualifying user'' means a person who uses a traffic signal preemption transmitter and is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity, but does not include a person using a traffic signal preemption transmitter for classroom or instructional purposes.

(Added Pub. L. 109–59, title II, § 2018(a), Aug. 10, 2005, 119 Stat. 1542.)

§ 39.[1] Commercial motor vehicles required to stop for inspections

(a) A driver of a commercial motor vehicle (as defined in section 31132 of title 49) shall stop and submit to inspection of the vehicle, driver, cargo, and required records when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration of the Department of Transportation, at or in the vicinity of an inspection site. The driver shall not leave the inspection site until authorized to do so by an authorized employee.

(b) A driver of a commercial motor vehicle, as defined in subsection (a), who knowingly fails to stop for inspection when directed to do so by an authorized employee of the Administration at or in the vicinity of an inspection site, or leaves the inspection site without authorization, shall be fined under this title or imprisoned not more than 1 year, or both.

(Added Pub. L. 109–59, title IV, § 4143(a), Aug. 10, 2005, 119 Stat. 1747.)

[1] Another section 39 is set out after this section.

[1] Another section 39 is set out preceding this section.

CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

Sec.
41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges.
42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations.
43. Force, violence, and threats involving animal enterprises.
[44, 45. Repealed.]
46. Transportation of water hyacinths.
47. Use of aircraft or motor vehicles to hunt certain wild horses or burros; pollution of watering holes.
48. Depiction of animal cruelty.

HISTORICAL AND REVISION NOTES

The criminal provisions of the Migratory Bird Treaty Act, sections 703–711 of title 16, U.S.C., 1940 ed., Conservation, and the Migratory Bird Conservation Act, sections 715–715r of title 16, U.S.C., 1940 ed., Conservation, were considered for inclusion in this chapter. Since these provisions, except parts of sections 704–707 of said title 16, are so inextricably interwoven with the Migratory Bird Acts, it was found advisable to exclude them.

AMENDMENTS

2006—Pub. L. 109–374, § 2(b), Nov. 27, 2006, 120 Stat. 2655, substituted ''Force, violence, and threats involving animal enterprises'' for ''Animal enterprise terrorism'' in item 43.

1999—Pub. L. 106–152, § 1(b), Dec. 9, 1999, 113 Stat. 1732, added item 48.

1992—Pub. L. 102–346, § 2(b), Aug. 26, 1992, 106 Stat. 929, which directed the general amendment of item 43, was executed by adding item 43 to reflect the probable intent of Congress, because item 43 had been previously struck out by Pub. L. 101–647. See 1990 Amendment note below.

1990—Pub. L. 101–647, title XII, § 1206(b), title XXXV, § 3506, Nov. 29, 1990, 104 Stat. 4832, 4922, substituted ''Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations'' for ''Importation of injurious animals and birds; permits; specimens for museums'' in item 42, struck out item 43 ''Transportation or importation in violation of state, national, or foreign laws'', item 44 ''Marking packages or containers'', and item 45 ''Capturing or killing carrier pigeons'', and inserted ''; pollution of watering holes'' after ''burros'' in item 47.

1959—Pub. L. 86–234, § 1(b), Sept. 8, 1959, 73 Stat. 470, added item 47.

1956—Act Aug. 1, 1956, ch. 825, § 2(b), 70 Stat. 798, amended chapter heading to include reference to ''Plants'' and added item 46.

§ 41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges

Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, willfully disturbs or kills any bird, fish, or wild animal of any kind whatever, or takes or destroys the eggs or nest of any such bird or fish, on any lands or waters which are set apart or reserved as sanctuaries, refuges or breeding grounds for such birds, fish, or animals under any law of the United States or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 686; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 145 and §§ 676, 682, 683, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., Conservation (Jan. 24, 1905, ch. 137, § 2, 33 Stat. 614; June 29, 1906, ch. 3593, § 2, 34 Stat. 607; Mar. 4, 1909, ch. 321, § 84, 35 Stat. 1104; Aug. 11, 1916, ch. 313, 39 Stat. 476; June 5, 1920, ch. 247, § 2, 41 Stat. 986; Apr. 15, 1924, ch. 108, 43 Stat. 98; Feb. 28, 1925, ch. 376, 43 Stat. 1091; July 3, 1926, ch. 744, § 6, 44 Stat. 821; July 3, 1926, ch. 776, § 3, 44 Stat. 889; June 28, 1930, ch. 709, § 2, 46 Stat. 828; Mar. 10, 1934, ch. 54, § 2, 48 Stat. 400; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This revised section condenses, consolidates, and simplifies similar provisions of sections 676, 682, 683, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., with section 145 of title 18, U.S.C., 1940 ed., with such changes of phraseology as make clear the intent of Congress to protect all wildlife within Federal sanctuaries, refuges, fish hatcheries, and breeding grounds. Irrelevant provisions of such sections in title 16 are to be retained in that title.

Because of the general nature of this consolidated section, no specific reference is made to rules and regulations issued by the Secretary of the Interior or any other personage, but only to rules and regulations "promulgated by authority of law".

The punishment provided by the sections consolidated varied from a fine not exceeding $100 or imprisonment not exceeding 6 months, or both, in section 694a of title 16, U.S.C., 1940 ed., to a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both, in sections 676, 685, and 688 of such title 16. The revised section adopts the punishment provisions of the other five sections.

The references to "misdemeanor" in sections 676, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., were omitted as unnecessary in view of definition of "misdemeanor" in section 1 of this title, and also to conform with policy followed by codifiers of the 1909 Criminal Code, as stated in Senate Report 10, part 1, pages 12, 13, 14, Sixtieth Congress, first session, to accompany S. 2982.

Words "upon conviction", contained in sections 676, 685, 688, 689b, 692a, and 694a of title 16, U.S.C., 1940 ed., were omitted as surplusage, because punishment can be imposed only after conviction.

Words "in any United States court of competent jurisdiction", in sections 676, 685, and 688 of title 16, U.S.C., 1940 ed., words "in any United States court", in sections 689b, 692a, and 694a of such title 16, and words "in the discretion of the court", in said sections 676, 685, 688, and 689b, were likewise omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $500".

§ 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

(a)(1) The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called "flying foxes" or fruit bats of the genus Pteropus; of the zebra mussel of the species Dreissena polymorpha; and such other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish (including mollusks and crustacea), amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act,[1] insofar as such importation is subject to regulation under that Act.

(2) As used in this subsection, the term "wild" relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms "wildlife" and "wildlife resources" include those resources that comprise wild mammals, wild birds, fish (including mollusks and crustacea), and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent.

(3) Notwithstanding the foregoing, the Secretary of the Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest and health, shall permit the importation for zoological, educational, medical, and scientific purposes of any mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles, or the offspring or eggs thereof, where such importation would be prohibited otherwise by or pursuant to this Act, and this Act shall not restrict importations by Federal agencies for their own use.

(4) Nothing in this subsection shall restrict the importation of dead natural-history specimens for museums or for scientific collections, or the importation of domesticated canaries, parrots (including all other species of psittacine birds), or such other cage birds as the Secretary of the Interior may designate.

(5) The Secretary of the Treasury and the Secretary of the Interior shall enforce the provi-

[1] See References in Text note below.

sions of this subsection, including any regulations issued hereunder, and, if requested by the Secretary of the Interior, the Secretary of the Treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions.

(b) Whoever violates this section, or any regulation issued pursuant thereto, shall be fined under this title or imprisoned not more than six months, or both.

(c) The Secretary of the Interior within one hundred and eighty days of the enactment of the Lacey Act Amendments of 1981 shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits—

(1) the condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

(2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

(June 25, 1948, ch. 645, 62 Stat. 687; May 24, 1949, ch. 139, § 2, 63 Stat. 89; Pub. L. 86–702, § 1, Sept. 2, 1960, 74 Stat. 753; Pub. L. 97–79, § 9(d), Nov. 16, 1981, 95 Stat. 1079; Pub. L. 101–646, title I, § 1208, Nov. 29, 1990, 104 Stat. 4772; Pub. L. 102–237, title X, § 1013(e), Dec. 13, 1991, 105 Stat. 1901; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–332, § 2(h)(1), Oct. 26, 1996, 110 Stat. 4091.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., §§ 391, 394 (Mar. 4, 1909, ch. 321, §§ 241, 244, 35 Stat. 1137, 1138; June 15, 1935, ch. 261, title II, § 201, 49 Stat. 381; Reorg. Plan No. II, § 4(f), 4 F.R. 2731, 53 Stat. 1433).

This section consolidates the provisions of sections 391 and 394 of title 18, U.S.C., 1940 ed., as subsections (a) and (b), respectively.

In subsection (a) the words ''Territory or District thereof'' were omitted as unnecessary in view of the definition of the United States in section 5 of this title.

In subsection (b) the words ''upon conviction thereof'', were omitted as surplusage because punishment can only be imposed after conviction.

The amount of the fine was reduced from $1,000 to $500, thus making the violation a petty offense as defined in section 1 of this title. (See also section 41 of this title which provides a similar punishment.)

Minor verbal changes were also made.

1949 Act

This section [section 2] incorporates in section 42 of title 18, U.S.C., with slight changes in phraseology, the provisions of act of June 29, 1948 (ch. 716, 62 Stat. 1096), which became law subsequent to the enactment of the revision of title 18.

References in Text

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Foods and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Plant Pest Act, referred to in subsec. (a)(1), is Pub. L. 85–36, title I, May 23, 1957, 71 Stat. 31, as amended, which was classified generally to chapter 7B (§ 150aa et seq.) of Title 7, Agriculture, prior to repeal by Pub. L. 106–224, title IV, § 438(a)(2), June 20, 2000, 114 Stat. 454. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsec. (a)(3), probably refers to Pub. L. 86–702, which amended this section and section 43 of this title.

The enactment of the Lacey Act Amendments of 1981, referred to in subsec. (c), means the date of enactment of Pub. L. 97–79, which was approved Nov. 16, 1981.

Amendments

1996—Subsec. (a)(1). Pub. L. 104–332 made technical amendment to Pub. L. 101–646, § 1208. See 1990 Amendment note below.

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1991—Subsec. (a)(1). Pub. L. 102–237 inserted ''brown tree snakes,'' after ''reptiles,'' in first sentence.

1990—Subsec. (a)(1). Pub. L. 101–646, as amended by Pub. L. 104–332, inserted ''of the zebra mussel of the species Dreissena polymorpha;'' after ''Pteropus;''.

1981—Subsec. (c). Pub. L. 97–79 substituted ''Secretary of the Interior within one hundred and eighty days of the enactment of the Lacey Act Amendments of 1981'' for ''Secretary of the Treasury''.

1960—Pub. L. 86–702 substituted ''Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia and reptiles; permits; specimens for museums; regulations'' for ''Importation of injurious animals and birds; permits; specimens for museums'' in section catchline.

Subsec. (a)(1). Pub. L. 86–702 designated first sentence of subsec. (a) as par. (1), prohibited importation into the Commonwealth of Puerto Rico or any possession of the United States and shipments between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, described the mongoose and flying foxes by their scientific names, extended the provisions prohibiting importation or shipment to include wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or their eggs or offspring, empowered the Secretary to prohibit importation or shipment if injurious to human beings, forestry, or to wildlife or wildlife resources, required prompt exportation or destruction at the expense of the importer or consignee, provided that this section shall not be construed to repeal or modify any provision of the Public Health Service Act or Federal Food, Drug, and Cosmetic Act and that it shall not authorize any action with respect to the importation of plant pests, and deleted provisions which required destruction of prohibited birds and animals or their return at the expense of the owner, and which prohibited the importation of the English sparrow and the starling.

Subsec. (a)(2), (3). Pub. L. 86–702 added pars. (2) and (3).

Subsec. (a)(4). Pub. L. 86–702 designated second sentence of subsec. (a) as par. (4), limited importation of natural-history specimens to dead ones, and included all species of psittacine birds.

Subsec. (a)(5). Pub. L. 86–702 designated third sentence of subsec. (a) as par. (5), authorized enforcement by the Secretary of the Interior, and permitted the Secretary of the Treasury, if requested by the Secretary of the Interior, to require the furnishing of a bond.

Subsec. (b). Pub. L. 86–702 included violations of regulations.

1949—Subsec. (a). Act May 24, 1949, made section applicable to any Territory or district thereof as well as to the United States, and changed phraseology.

Subsec. (b). Act May 24, 1949, reenacted subsec. (b) without change.

Subsec. (c). Act May 24, 1949, added subsec. (c).

INVASIVE SPECIES

For provisions relating to restrictions on the introduction of invasive species into natural ecosystems of the United States, see Ex. Ord. No. 13112, Feb. 3, 1999, 64 F.R. 6183, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

§ 43. Force, violence, and threats involving animal enterprises

(a) OFFENSE.—Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—

(1) for the purpose of damaging or interfering with the operations of an animal enterprise; and

(2) in connection with such purpose—

(A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

(B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

(C) conspires or attempts to do so;

shall be punished as provided for in subsection (b).

(b) PENALTIES.—The punishment for a violation of section[1] (a) or an attempt or conspiracy to violate subsection (a) shall be—

(1) a fine under this title or imprisonment not[2] more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and—

(A) the offense results in no economic damage or bodily injury; or

(B) the offense results in economic damage that does not exceed $10,000;

(2) a fine under this title or imprisonment for not more than 5 years, or both, if no bodily injury occurs and—

(A) the offense results in economic damage exceeding $10,000 but not exceeding $100,000; or

(B) the offense instills in another the reasonable fear of serious bodily injury or death;

(3) a fine under this title or imprisonment for not more than 10 years, or both, if—

(A) the offense results in economic damage exceeding $100,000; or

(B) the offense results in substantial bodily injury to another individual;

(4) a fine under this title or imprisonment for not more than 20 years, or both, if—

(A) the offense results in serious bodily injury to another individual; or

(B) the offense results in economic damage exceeding $1,000,000; and

(5) imprisonment for life or for any terms of years, a fine under this title, or both, if the offense results in death of another individual.

(c) RESTITUTION.—An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution—

(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;

(2) for the loss of food production or farm income reasonably attributable to the offense; and

(3) for any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.

(d) DEFINITIONS.—As used in this section—

(1) the term ''animal enterprise'' means—

(A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;

(B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or

(C) any fair or similar event intended to advance agricultural arts and sciences;

(2) the term ''course of conduct'' means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose;

(3) the term ''economic damage''—

(A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, the loss of profits, or increased costs, including losses and increased costs resulting from threats, acts or vandalism, property damage, trespass, harassment, or intimidation taken against a person or entity on account of that person's or entity's connection to, relationship with, or transactions with the animal enterprise; but

(B) does not include any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise;

(4) the term ''serious bodily injury'' means—

(A) injury posing a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

[1] So in original. Probably should be ''subsection''.

[2] So in original. Probably should be preceded by ''for''.

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(5) the term ''substantial bodily injury'' means—

(A) deep cuts and serious burns or abrasions;

(B) short-term or nonobvious disfigurement;

(C) fractured or dislocated bones, or torn members of the body;

(D) significant physical pain;

(E) illness;

(F) short-term loss or impairment of the function of a bodily member, organ, or mental faculty; or

(G) any other significant injury to the body.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed, or to limit any existing legal remedies for such interference; or

(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this action, or to preempt State or local laws that may provide such penalties or remedies.

(Added Pub. L. 102–346, § 2(a), Aug. 26, 1992, 106 Stat. 928; amended Pub. L. 104–294, title VI, § 601(r)(3), Oct. 11, 1996, 110 Stat. 3502; Pub. L. 107–188, title III, § 336, June 12, 2002, 116 Stat. 681; Pub. L. 109–374, § 2(a), Nov. 27, 2006, 120 Stat. 2652.)

PRIOR PROVISIONS

A prior section 43, acts June 25, 1948, ch. 645, 62 Stat. 687; Sept. 2, 1960, Pub. L. 86–702, § 2, 74 Stat. 754; Dec. 5, 1969, Pub. L. 91–135, § 7(a), 83 Stat. 279, related to transportation of wildlife taken in violation of State, national, or foreign law, the receipt of such wildlife, and the making of false records in relation thereto, prior to repeal by Pub. L. 97–79, § 9(b)(2), Nov. 16, 1981, 95 Stat. 1079. See section 3372(a) of Title 16, Conservation.

AMENDMENTS

2006—Pub. L. 109–374 amended section catchline and text generally, substituting provisions relating to force, violence, and threats involving animal enterprises for provisions relating to animal enterprise terrorism.

2002—Subsec. (a). Pub. L. 107–188, § 336(a), amended heading and text of subsec. (a) generally, deleting par. (2) reference to intentionally stealing and to requirement that economic damage exceed $10,000, and in concluding provisions substituting reference to punishment under subsec. (b) for reference to fine or imprisonment of not more than one year.

Subsec. (b). Pub. L. 107–188, § 336(b), amended subsec. (b) generally, substituting ''Penalties'' for ''Aggravated Offense'' in heading and list of penalties for property damage, personal injury and death for reference to serious bodily injury and death in text.

Subsec. (c)(3). Pub. L. 107–188, § 336(c), added par. (3).

1996—Subsec. (c). Pub. L. 104–294 inserted ''or 3663A'' after ''section 3663'' in introductory provisions.

SHORT TITLE

Section 1 of Pub. L. 102–346 provided that: ''This Act [enacting this section and provisions set out below] may be cited as the 'Animal Enterprise Protection Act of 1992'.''

STUDY OF EFFECT OF TERRORISM ON CERTAIN ANIMAL ENTERPRISES

Section 3 of Pub. L. 102–346 directed Attorney General and Secretary of Agriculture to jointly conduct a study on extent and effects of domestic and international terrorism on enterprises using animals for food or fiber production, agriculture, research, or testing, and, not later than 1 year after Aug. 26, 1992, submit a report that describes the results of the study together with any appropriate recommendations and legislation to Congress.

[§ 44. Repealed. Pub. L. 97–79, § 9(b)(2), Nov. 16, 1981, 95 Stat. 1079]

Section, acts June 25, 1948, ch. 645, 62 Stat. 687; Dec. 5, 1969, Pub. L. 91–135, § 8, 83 Stat. 281, related to marking of packages or containers used in the shipment of fish and wildlife. See section 3372(b) of Title 16, Conservation.

[§ 45. Repealed. Pub. L. 101–647, title XII, § 1206(a), Nov. 29, 1990, 104 Stat. 4832]

Section, act June 25, 1948, ch. 645, 62 Stat. 688, related to penalties for capturing or killing carrier pigeons.

§ 46. Transportation of water hyacinths

(a) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, alligator grass (alternanthera philoxeroides), or water chestnut plants (trapa natans) or water hyacinth plants (eichhornia crassipes) or the seeds of such grass or plants; or

(b) Whoever knowingly sells, purchases, barters, exchanges, gives, or receives any grass, plant, or seed which has been transported in violation of subsection (a); or

(c) Whoever knowingly delivers or receives for transportation, or transports, in interstate commerce, an advertisement, to sell, purchase, barter, exchange, give, or receive alligator grass or water chestnut plants or water hyacinth plants or the seeds of such grass or plants—

Shall be fined under this title, or imprisoned not more than six months, or both.

(Added Aug. 1, 1956, ch. 825, § 1, 70 Stat. 797; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 47. Use of aircraft or motor vehicles to hunt certain wild horses or burros; pollution of watering holes

(a) Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be fined under this title, or imprisoned not more than six months, or both.

(b) Whoever pollutes or causes the pollution of any watering hole on any of the public land or ranges for the purpose of trapping, killing, wounding, or maiming any of the animals re-

ferred to in subsection (a) of this section shall be fined under this title, or imprisoned not more than six months, or both.

(c) As used in subsection (a) of this section—

(1) The term ''aircraft'' means any contrivance used for flight in the air; and

(2) The term ''motor vehicle'' includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land.

(Added Pub. L. 86–234, § 1(a), Sept. 8, 1959, 73 Stat. 470; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 48. Depiction of animal cruelty

(a) CREATION, SALE, OR POSSESSION.—Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) EXCEPTION.—Subsection (a) does not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.

(c) DEFINITIONS.—In this section—

(1) the term ''depiction of animal cruelty'' means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

(2) the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Added Pub. L. 106–152, § 1(a), Dec. 9, 1999, 113 Stat. 1732.)

CHAPTER 5—ARSON

Sec.
81. Arson within special maritime and territorial jurisdiction.

§ 81. Arson within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, or attempts or conspires to do such an act, shall be imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both.

If the building be a dwelling or if the life of any person be placed in jeopardy, he shall be fined under this title or imprisoned for any term of years or for life, or both.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 708(b), Apr. 24, 1996, 110 Stat. 1296; Pub. L. 107–56, title VIII, §§ 810(a), 811(a), Oct. 26, 2001, 115 Stat. 380, 381.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 464, 465 (Mar. 4, 1909, ch. 321, §§ 285, 286, 35 Stat. 1144).

Sections were consolidated and rewritten both as to form and substance and that part of each section relating to destruction of property by means other than burning constitutes section 1363 of this title.

The words ''within the maritime and territorial jurisdiction of the United States'' were added to preserve existing limitations of territorial applicability. (See section 7 of this title and note thereunder.)

The phrase ''any building, structure, or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping'' was substituted for ''any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house'', in section 464 of title 18, U.S.C., 1940 ed., and ''any arsenal, armory, magazine, rope walk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel, built, building, or undergoing repair, or any lighthouse, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval or victualing stores, arms, or other munitions of war'', in section 465 of title 18, U.S.C., 1940 ed. The substituted phrase is a concise and comprehensive description of the things enumerated in both sections.

The punishment provisions are new and are graduated with some regard to the gravity of the offense. It was felt that a possible punishment of 20 years for burning a wood pile or injuring or destroying an outbuilding was disproportionate and not in harmony with recent legislation.

AMENDMENTS

2001—Pub. L. 107–56, in first par., struck out '', or attempts to set fire to or burn'' after ''maliciously sets fire to or burns'' and inserted ''or attempts or conspires to do such an act,'' before ''shall be imprisoned'' and, in second par., substituted ''for any term of years or for life'' for ''not more than twenty years''.

1996—Pub. L. 104–132, in first par., substituted ''imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both'' for ''fined under this title or imprisoned not more than five years, or both''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par. and for ''fined not more than $5,000'' in second par.

CHAPTER 7—ASSAULT

Sec.
111. Assaulting, resisting, or impeding certain officers or employees.
112. Protection of foreign officials, official guests, and internationally protected persons.
113. Assaults within maritime and territorial jurisdiction.
114. Maiming within maritime and territorial jurisdiction.

Sec.
115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member.
116. Female genital mutilation.
117. Domestic assault by an habitual offender.[1]
118. Interference with certain protective functions.

AMENDMENTS

2007—Pub. L. 109–472, § 4(b), Jan. 11, 2007, 120 Stat. 3555, added item 118.

1996—Pub. L. 104–208, div. C, title VI, § 645(b)(2), Sept. 30, 1996, 110 Stat. 3009–709, added item 116.

1984—Pub. L. 98–473, title II, § 1008(b), Oct. 12, 1984, 98 Stat. 2140, added item 115.

1976—Pub. L. 94–467, § 6, Oct. 8, 1976, 90 Stat. 2000, substituted ''official guests, and internationally protected persons'' for ''and official guests'' in item 112.

1972—Pub. L. 92–539, title III, § 302, Oct. 24, 1972, 86 Stat. 1073, substituted ''Protection of foreign officials and official guests'' for ''Assaulting certain foreign diplomatic and other official personnel'' in item 112.

1964—Pub. L. 88–493, § 2, Aug. 27, 1964, 78 Stat. 610, substituted ''certain foreign diplomatic and other official personnel'' for ''public minister'' in item 112.

§ 111. Assaulting, resisting, or impeding certain officers or employees

(a) IN GENERAL.—Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned not more than 8 years, or both.

(b) ENHANCED PENALTY.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 100–690, title VI, § 6487(a), Nov. 18, 1988, 102 Stat. 4386; Pub. L. 103–322, title XXXII, § 320101(a), Sept. 13, 1994, 108 Stat. 2108; Pub. L. 104–132, title VII, § 727(c), Apr. 24, 1996, 110 Stat. 1302; Pub. L. 107–273, div. C, title I, § 11008(b), Nov. 2, 2002, 116 Stat. 1818.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 118, 254 (Mar. 4, 1909, ch. 321, § 62, 35 Stat. 1100; May 18, 1934, ch. 299, § 2, 48 Stat. 781).

This section consolidates sections 118 and 254 with changes in phraseology and substance necessary to effect the consolidation.

Also the words ''Bureau of Animal Industry of the Department of Agriculture'' appearing in section 118 of title 18, U.S.C., 1940 ed., were inserted in enumeration of Federal officers and employees in section 1114 of this title.

The punishment provision of section 254 of title 18, U.S.C., 1940 ed., was adopted as the latest expression of Congressional intent. This consolidation eliminates a serious incongruity in punishment and application.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 11008(b)(1), substituted ''8'' for ''three'' in concluding provisions.

Subsec. (b). Pub. L. 107–273, § 11008(b)(2), substituted ''20'' for ''ten''.

1996—Subsec. (b). Pub. L. 104–132 inserted ''(including a weapon intended to cause death or danger but that fails to do so by reason of a defective component)'' after ''deadly or dangerous weapon''.

1994—Subsec. (a). Pub. L. 103–322, § 320101(a)(1), inserted '', where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases,'' after ''shall'' in concluding provisions.

Subsec. (b). Pub. L. 103–322, § 320101(a)(2), inserted ''or inflicts bodily injury'' after ''weapon''.

1988—Pub. L. 100–690 amended text generally. Prior to amendment, text read as follows:

''Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

''Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title I, § 11008(a), Nov. 2, 2002, 116 Stat. 1818, provided that: ''This section [amending this section, sections 115 and 876 of this title, and provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Federal Judiciary Protection Act of 2002'.''

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined under this title or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon, or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever willfully—

(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

(3) within the United States and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by—

[1] Editorially supplied. Section 117 added by Pub. L. 109–162 without corresponding amendment of chapter analysis.

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest;

congregates with two or more other persons with intent to violate any other provision of this section;

shall be fined under this title or imprisoned not more than six months, or both.

(c) For the purpose of this section ''foreign government'', ''foreign official'', ''internationally protected person'', ''international organization'', ''national of the United States'', and ''official guest'' shall have the same meanings as those provided in section 1116(b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 88–493, §1, Aug. 27, 1964, 78 Stat. 610; Pub. L. 92–539, title III, §301, Oct. 24, 1972, 86 Stat. 1072; Pub. L. 94–467, §5, Oct. 8, 1976, 90 Stat. 1999; Pub. L. 95–163, §17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, §2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 100–690, title VI, §6478, Nov. 18, 1988, 102 Stat. 4381; Pub. L. 103–272, §5(e)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title XXXII, §320101(b), title XXXIII, §330016(1)(G), (K), Sept. 13, 1994, 108 Stat. 2108, 2147; Pub. L. 104–132, title VII, §721(d), Apr. 24, 1996, 110 Stat. 1298; Pub. L. 104–294, title VI, §604(b)(12)(A), Oct. 11, 1996, 110 Stat. 3507.)

HISTORICAL AND REVISION NOTES

Based on section 255 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. §4062).

Punishment provision was rewritten to make it more definite by substituting a maximum of $5,000 in lieu of the words ''fined at the discretion of the court.'' As thus revised this provision conforms with the first punishment provision of section 111 of this title. So, also, the greater punishment provided by the second paragraph of section 111 was added to this section for offenses involving the use of dangerous weapons.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 repealed Pub. L. 103–322, §320101(b)(1). See 1994 Amendment note below.

Subsec. (c). Pub. L. 104–132, §721(d)(1), inserted ''''national of the United States','' before ''and 'official guest'''.

Subsec. (e). Pub. L. 104–132, §721(d)(2), inserted first sentence and struck out former first sentence which read as follows: ''If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.''

1994—Subsec. (a). Pub. L. 103–322, §330016(1)(K), substituted ''under this title'' for ''not more than $5,000'' before ''or imprisoned not more than three years''.

Pub. L. 103–322, §320101(b)(2), (3), inserted '', or inflicts bodily injury,'' after ''weapon'' and substituted ''under this title'' for ''not more than $10,000'' before ''or imprisoned not more than ten years''.

Pub. L. 103–322, §320101(b)(1), which provided for amendment identical to Pub. L. 103–322, §330016(1)(K), above, was repealed by Pub. L. 104–294, §604(b)(12)(A).

Subsec. (b). Pub. L. 103–322, §330016(1)(G), in concluding provisions, substituted ''under this title'' for ''not more than $500''.

Subsec. (e). Pub. L. 103–272 substituted ''section 46501(2) of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))''.

1988—Subsec. (b)(3). Pub. L. 100–690 struck out ''but outside the District of Columbia'' after ''United States''.

1978—Subsec. (e). Pub. L. 95–504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (e). Pub. L. 95–163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

1976—Pub. L. 94–467 substituted ''official guests, and internationally protected persons'' for ''and official guests'' in section catchline.

Subsec. (a). Pub. L. 94–467 substituted ''official guest, or internationally protected person'' for ''or official guest'' and inserted provision including any other violent attack on the person or the liberty of such official, guest, or protected person, his official premises, private accommodation, or means of transport, or any attempt thereof, as acts subject to fine or imprisonment.

Subsec. (b). Pub. L. 94–467 restructured subsec. (b) and added pars. (2) and (3).

Subsec. (c). Pub. L. 94–467 redesignated subsec. (d) as (c), inserted ''internationally protected persons'', and struck out reference to section 1116(c) of this title. Former subsec. (c), which related to punishment for intimidating or harassing demonstrations against foreign officials or any combination of two or more persons for such purposes, within one hundred feet of any buildings or premises owned by a foreign government located within the United States but outside the District of Columbia, was struck out.

Subsecs. (d) to (f). Pub. L. 94–467 added subsecs. (e) and (f) and redesignated former subsecs. (d) and (e) as (c) and (d), respectively.

1972—Subsec. (a). Pub. L. 92–539 substituted ''Protection of foreign officials and official guests'' for ''Assaulting certain foreign diplomatic and other official personnel'' in section catchline, designated existing provisions as subsec. (a), and substituted ''a foreign official or official guest'' for ''the person of a head of foreign state or foreign government, foreign minister, ambassador or other public minister'' and ''act'' for ''acts''.

Subsecs. (b) to (e). Pub. L. 92–539 added subsecs. (b) to (e).

1964—Pub. L. 88–493 included heads of foreign states or governments and foreign ministers.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–467 provided: ''That this Act [enacting section 878 of this title, amending this section and sections 11, 970, 1116, and 1201 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons'.''

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92–539 provided: ''That this Act [enacting sections 970, 1116, and 1117 of this title, amending this section and section 1201 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Act for the Protection of Foreign Officials and Official Guests of the United States'.''

STATE AND LOCAL LAWS NOT SUPERSEDED

Section 10 of Pub. L. 94–467 provided that: ''Nothing contained in this Act [see Short Title of 1976 Amendment note above] shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia, on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia, including the obligation of all persons having official law enforcement powers to take appropriate action, such as effecting arrests, for Federal as well as non-Federal violations.''

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Section 2 of Pub. L. 92–539 provided that:

''The Congress recognizes that from the beginning of our history as a nation, the police power to investigate, prosecute, and punish common crimes such as murder, kidnaping, and assault has resided in the several States, and that such power should remain with the States.

''The Congress finds, however, that harassment, intimidation, obstruction, coercion, and acts of violence committed against foreign officials or their family members in the United States or against official guests of the United States adversely affect the foreign relations of the United States.

''Accordingly, this legislation is intended to afford the United States jurisdiction concurrent with that of the several States to proceed against those who by such acts interfere with its conduct of foreign affairs.''

FEDERAL PREEMPTION

Section 3 of Pub. L. 92–539 provided that: ''Nothing contained in this Act [see Short Title of 1972 Amendment note above] shall be construed to indicate an intent on the part of Congress to occupy the field in which its provisions operate to the exclusion of the laws of any State, Commonwealth, territory, possession, or the District of Columbia on the same subject matter, nor to relieve any person of any obligation imposed by any law of any State, Commonwealth, territory, possession, or the District of Columbia.''

IMMUNITY FROM CRIMINAL PROSECUTION

Section 5 of Pub. L. 88–493 provided that: ''Nothing contained in this Act [amending this section and section 1114 of this title, and enacting section 170e–1 of former Title 5, Executive Departments and Government Officers and Employees] shall create immunity from criminal prosecution under any laws in any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.''

§ 113. Assaults within maritime and territorial jurisdiction

(a) Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(1) Assault with intent to commit murder, by imprisonment for not more than twenty years.

(2) Assault with intent to commit any felony, except murder or a felony under chapter 109A, by a fine under this title or imprisonment for not more than ten years, or both.

(3) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by a fine under this title or imprisonment for not more than ten years, or both.

(4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than six months, or both.

(5) Simple assault, by a fine under this title or imprisonment for not more than six months, or both, or if the victim of the assault is an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 1 year, or both.

(6) Assault resulting in serious bodily injury, by a fine under this title or imprisonment for not more than ten years, or both.

(7) Assault resulting in substantial bodily injury to an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 5 years, or both.

(b) As used in this subsection—

(1) the term ''substantial bodily injury'' means bodily injury which involves—

(A) a temporary but substantial disfigurement; or

(B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty; and

(2) the term ''serious bodily injury'' has the meaning given that term in section 1365 of this title.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 94–297, § 3, May 29, 1976, 90 Stat. 585; Pub. L. 99–646, § 87(c)(2), (3), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(a)(2), (3), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 103–322, title XVII, § 170201(a)–(d), title XXXII, § 320101(c), title XXXIII, § 330016(2)(B), Sept. 13, 1994, 108 Stat. 2042, 2043, 2108, 2148; Pub. L. 104–294, title VI, § 604(b)(7), (12)(B), Oct. 11, 1996, 110 Stat. 3507.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 455 (Mar. 4, 1909, ch. 321, § 276, 35 Stat. 1143).

Opening paragraph was added to preserve the jurisdictional limitation provided for by section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title. (See reviser's note thereunder.)

Phraseology was simplified.

AMENDMENTS

1996—Pub. L. 104–294, § 604(b)(12)(B), repealed Pub. L. 103–322, § 320101(c)(1)(A), (2)(A). See 1994 Amendment note below.

Pub. L. 104–294, § 604(b)(7), repealed Pub. L. 103–322, § 170201(c)(1)–(3). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(2)(B), substituted ''a fine under this title'' for ''fine of not more than'' through the immediately following dollar amount wherever appearing.

Pub. L. 103–322, § 320101(c), as amended by Pub. L. 104–294, § 604(b)(12)(B), which directed the amendment of subsec. (c) by substituting ''ten years'' for ''five years'' and the amendment of subsec. (e) by substituting ''six

months'' for ''three months'', were executed by making the substitutions in subsecs. (a)(3) and (a)(5), respectively, to reflect the probable intent of Congress and the redesignation of subsecs. (c) and (e) as subsecs. (a)(3) and (a)(5), respectively. See below.

Pub. L. 103–322, § 170201(a)–(d), as amended by Pub. L. 104–294, § 604(b)(7), designated existing provisions as subsec. (a), redesignated former subsecs. (a) to (f) as pars. (1) to (6), respectively of subsec. (a) and realigned margins, inserted before period at end of par. (5) '', or if the victim of the assault is an individual who has not attained the age of 16 years, by fine under this title or imprisonment for not more than 1 year, or both'', and added subsecs. (a)(7) and (b).

1986—Subsec. (a). Pub. L. 99–646, § 87(c)(2), and Pub. L. 99–654, § 3(a)(2), amended subsec. (a) identically, striking out ''or rape'' after ''murder''.

Subsec. (b). Pub. L. 99–646, § 87(c)(3), and Pub. L. 99–654, § 3(a)(3), amended subsec. (b) identically, substituting ''a felony under chapter 109A'' for ''rape''.

1976—Subsec. (f). Pub. L. 94–297 added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

§ 114. Maiming within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, and with intent to torture (as defined in section 2340), maim, or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance—

Shall be fined under this title or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; May 24, 1949, ch. 139, § 3, 63 Stat. 90; Pub. L. 98–473, title II, § 1009A, Oct. 12, 1984, 98 Stat. 2141; Pub. L. 101–647, title XXXV, § 3507, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 103–322, title XXXIII, § 330016(1)(O), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–132, title VII, § 705(a)(1), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 462 (Mar. 4, 1909, ch. 321, § 283, 35 Stat. 1144).

The words ''within the special maritime and territorial jurisdiction of the United States, and'' were added to preserve jurisdictional limitation provided for by section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title. (See reviser's note thereunder.)

Changes in phraseology were made.

1949 ACT

This section [section 3] corrects a typographical error in section 114 of title 18, U.S.C.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''torture (as defined in section 2340), maim, or disfigure'' for ''maim or disfigure''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $25,000''.

1990—Pub. L. 101–647 substituted ''or imprisoned'' for ''and imprisoned''.

1984—Pub. L. 98–473 substituted ''and imprisoned'' for ''or imprisoned'' and provisions raising maximum fine from $1,000 to $25,000 and raising maximum term of imprisonment from seven years to twenty years.

1949—Act May 24, 1949, corrected spelling of ''maim''.

§ 115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member

(a)(1) Whoever—

(A) assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

(2) Whoever assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to retaliate against such person on account of the performance of official duties during the term of service of such person, shall be punished as provided in subsection (b).

(b)(1) An assault in violation of this section shall be punished as provided in section 111 of this title.

(2) A kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section shall be punished as provided in section 1201 of this title for the kidnapping or attempted kidnapping of, or a conspiracy to kidnap, a person described in section 1201(a)(5) of this title.

(3) A murder, attempted murder, or conspiracy to murder in violation of this section shall be punished as provided in sections 1111, 1113, and 1117 of this title.

(4) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for a term of not more than 10 years, or both, except that imprisonment for a threatened assault shall not exceed 6 years.

(c) As used in this section, the term—

(1) ''Federal law enforcement officer'' means any officer, agent, or employee of the United States authorized by law or by a Government

agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

(2) ''immediate family member'' of an individual means—

(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

(B) any other person living in his household and related to him by blood or marriage;

(3) ''United States judge'' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge; and

(4) ''United States official'' means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch who is the head of a department listed in 5 U.S.C. 101, or the Director of the Central Intelligence Agency.

(d) This section shall not interfere with the investigative authority of the United States Secret Service, as provided under sections 3056, 871, and 879 of this title.

(Added Pub. L. 98–473, title II, § 1008(a), Oct. 12, 1984, 98 Stat. 2140; amended Pub. L. 99–646, §§ 37(a), 60, Nov. 10, 1986, 100 Stat. 3599, 3613; Pub. L. 100–690, title VI, § 6487(f)[b], Nov. 18, 1988, 102 Stat. 4386; Pub. L. 101–647, title XXXV, § 3508, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, §§ 330016(2)(C), 330021(1), Sept. 13, 1994, 108 Stat. 2148, 2150; Pub. L. 104–132, title VII, §§ 723(a), 727(b), Apr. 24, 1996, 110 Stat. 1300, 1302; Pub. L. 107–273, div. B, title IV, § 4002(b)(9), div. C, title I, § 11008(c), Nov. 2, 2002, 116 Stat. 1808, 1818.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–273, § 4002(b)(9), substituted ''or attempted kidnapping of, or a conspiracy to kidnap, a person'' for '', attempted kidnapping, or conspiracy to kidnap of a person''.

Subsec. (b)(4). Pub. L. 107–273, § 11008(c), substituted ''10'' for ''five'' and ''6'' for ''three''.

1996—Subsec. (a)(1)(A). Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts''.

Subsec. (a)(2). Pub. L. 104–132, § 727(b)(1), which directed insertion of '', or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or'' after ''assaults, kidnaps, or murders, or attempts to kidnap or murder'', was executed by making the substitution after ''assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder'' to reflect the probable intent of Congress and the amendment by Pub. L. 104–132, § 723(a)(1). See below.

Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts''.

Subsec. (b)(2). Pub. L. 104–132, § 723(a)(2), substituted '', attempted kidnapping, or conspiracy to kidnap'' for ''or attempted kidnapping'' in two places.

Subsec. (b)(3). Pub. L. 104–132, § 723(a)(3), substituted '', attempted murder, or conspiracy to murder'' and '', 1113, and 1117'' for ''or attempted murder'' and ''and 1113'', respectively.

Subsec. (d). Pub. L. 104–132, § 727(b)(2), added subsec. (d).

1994—Subsec. (b)(2). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping'' in two places.

Subsec. (b)(4). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $5,000''.

1990—Subsec. (c)(4). Pub. L. 101–647 substituted ''the Central'' for ''The Central''.

1988—Subsec. (a). Pub. L. 100–690 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whoever assaults, kidnaps, or murders, or attempts to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title, or threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section with intent to impede, intimidate, interfere with, or retaliate against such official, judge or law enforcement officer while engaged in or on account of the performance of official duties, shall be punished as provided in subsection (b).''

1986—Subsec. (a). Pub. L. 99–646, § 60, substituted ''section 1114 of this title, or threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section'' for ''18 U.S.C. 1114, as amended,'', ''while engaged'' for ''while he is engaged'', and ''official duties'' for ''his official duties''.

Subsec. (b)(2). Pub. L. 99–646, § 37(a), inserted ''for the kidnapping or attempted kidnapping of a person described in section 1201(a)(5) of this title''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (c)(3) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 116. Female genital mutilation

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

(b) A surgical operation is not a violation of this section if the operation is—

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by

a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

(Added Pub. L. 104–208, div. C, title VI, § 645(b)(1), Sept. 30, 1996, 110 Stat. 3009–709.)

EFFECTIVE DATE

Section 645(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (b) [enacting this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Sept. 30, 1996].''

CONGRESSIONAL FINDINGS

Section 645(a) of div. C of Pub. L. 104–208 provided that: ''The Congress finds that—

''(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;

''(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;

''(3) such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional;

''(4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control;

''(5) the practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the first amendment to the Constitution or under any other law; and

''(6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the fourteenth Amendment, as well as under the treaty clause, to the Constitution to enact such legislation.''

§ 117. Domestic assault by an habitual offender

(a) IN GENERAL.—Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction—

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or

(2) an offense under chapter 110A,

shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) DOMESTIC ASSAULT DEFINED.—In this section, the term ''domestic assault'' means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

(Added Pub. L. 109–162, title IX, § 909, Jan. 5, 2006, 119 Stat. 3084.)

§ 118. Interference with certain protective functions

Any person who knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged, within the United States or the special maritime territorial jurisdiction of the United States, in the performance of the protective functions authorized under section 37 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709) or section 103 of the Diplomatic Security Act (22 U.S.C. 4802) shall be fined under this title, imprisoned not more than 1 year, or both.

(Added Pub. L. 109–472, § 4(a), Jan. 11, 2007, 120 Stat. 3555.)

CHAPTER 9—BANKRUPTCY

Sec.
151. Definition.
152. Concealment of assets; false oaths and claims; bribery.
153. Embezzlement against estate.
154. Adverse interest and conduct of officers.
155. Fee agreements in cases under title 11 and receiverships.
156. Knowing disregard of bankruptcy law or rule.
157. Bankruptcy fraud.
158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.

AMENDMENTS

2005—Pub. L. 109–8, title II, § 203(b)(2), Apr. 20, 2005, 119 Stat. 49, added item 158.

1994—Pub. L. 103–394, title III, § 312(a)(2), Oct. 22, 1994, 108 Stat. 4140, substituted ''against estate'' for ''by trustee or officer'' in item 153 and added items 156 and 157.

1978—Pub. L. 95–598, title III, § 314(b)(2), (d)(3), (e)(3), (f)(3), Nov. 6, 1978, 92 Stat. 2677, substituted in item 151 ''Definition'' for ''Definitions''; struck from item 153 '', receiver'' after ''trustee'' and from item 154 ''referees and other'' before ''officers''; and substituted in item 155 ''cases under title 11 and receiverships'' for ''bankruptcy proceedings''.

§ 151. Definition

As used in this chapter, the term ''debtor'' means a debtor concerning whom a petition has been filed under title 11.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 95–598, title III, § 314(b)(1), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 103–322, title XXXIII, § 330008(5), Sept. 13, 1994, 108 Stat. 2143.)

HISTORICAL AND REVISION NOTES

Based on section 52(f) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29f as added June 22, 1938, ch. 575, § 1, 52 Stat. 857).

Definition of ''bankruptcy'' was added to avoid repetitious references to said title 11.

Minor changes in phraseology was made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''means'' for ''mean''.

1978—Pub. L. 95–598 substituted ''Definition'' for ''Definitions'' in section catchline, substituted definition of ''debtor'' as a debtor concerning whom a petition has been filed under title 11 for definition of ''bankrupt'' as a debtor by or against whom a petition has been filed under title 11, and struck out definition of ''bankruptcy'' as including any proceeding, arrangement, or plan pursuant to title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 152. Concealment of assets; false oaths and claims; bribery

A person who—

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 86–519, § 2, June 12, 1960, 74 Stat. 217; Pub. L. 86–701, Sept. 2, 1960, 74 Stat. 753; Pub. L. 94–550, § 4, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 95–598, title III, § 314(a), (c), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 100–690, title VII, § 7017, Nov. 18, 1988, 102 Stat. 4395; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4138; Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

HISTORICAL AND REVISION NOTES

Based on section 52(b) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29b, 30 Stat. 554; May 27, 1926, ch. 406, § 11 (part), 44 Stat. 665; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 855).

Section was broadened to apply to one who gives or offers a bribe.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $5,000'' in closing provisions.

1994—Pub. L. 103–394 amended section generally, designating undesignated pars. as opening provisions, pars. (1) to (9), and closing provisions, and in pars. (1) and (9) inserting reference to United States Trustee.

Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

1988—Pub. L. 100–690 substituted ''penalty of perjury'' for ''penalty or perjury'' in third par.

1978—Pub. L. 95–598 substituted, wherever appearing, ''debtor'' for ''bankrupt'', ''case under title 11'' for ''bankruptcy proceeding'', and ''provisions of title 11'' for ''bankruptcy law''; and substituted ''a custodian'' for ''the receiver, custodian'', wherever appearing, and ''recorded information, including books, documents, records, and papers, relating to the property or financial affairs'' for ''document affecting or relating to the property or affairs'', in two places.

1976—Pub. L. 94–550 inserted paragraph covering the knowing and fraudulent making of a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28 or in relation to any bankruptcy proceeding.

1960—Pub. L. 86–701 included fraudulent transfers and concealment of property by persons in their individual capacity in sixth par.

Pub. L. 86–519 struck out ''under oath'' after ''knowingly and fraudulently presents'' in third par.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 153. Embezzlement against estate

(a) OFFENSE.—A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) PERSON TO WHOM SECTION APPLIES.—A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

(June 25, 1948, ch. 645, 62 Stat. 690; Pub. L. 95–598, title III, § 314(a)(1), (d)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

HISTORICAL AND REVISION NOTES

Based on section 52(a) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29a, 30 Stat. 554; May 27, 1926, ch. 406, § 11 (part), 44 Stat. 665; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 855).

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $5,000''.

1994—Pub. L. 103–394 amended section generally. Prior to amendment, section read as follows: ''Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his charge as trustee, custodian, marshal, or other officer of the court, shall be fined under this title or imprisoned not more than five years, or both.''

Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1978—Pub. L. 95–598 struck out '', receiver'' after ''trustee'' in section catchline and in text struck out ''receiver,'' before ''custodian'' and substituted ''debtor'' for ''bankrupt''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 154. Adverse interest and conduct of officers

A person who, being a custodian, trustee, marshal, or other officer of the court—

(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

(June 25, 1948, ch. 645, 62 Stat. 690; Pub. L. 95–598, title III, § 314(a)(2), (e)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

HISTORICAL AND REVISION NOTES

Based on section 52(c) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29c, 30 Stat. 554; June 22, 1938, ch. 575, § 1 (part), 52 Stat. 856).

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $5,000'' in closing provisions.

1994—Pub. L. 103–394 amended section generally. Prior to amendment, section read as follows:

''Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a case under title 11; or

''Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so—

''Shall be fined under this title, and shall forfeit his office, which shall thereupon become vacant.''

Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in third par.

1978—Pub. L. 95–598 struck out ''referees and other'' before ''officers'' in section catchline, and in text struck out ''Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or'' before ''Whoever, being a'' and ''referee, receiver,'' before ''custodian'' and substituted ''case under title 11'' for ''bankruptcy proceeding''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 155. Fee agreements in cases under title 11 and receiverships

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 690; May 24, 1949, ch. 139, § 4, 63 Stat. 90; Pub. L. 95–598, title III, § 314(f)(1), (2), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 572a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Aug. 25, 1937, ch. 777, 50 Stat. 810.)

Words ''upon conviction'' were deleted as surplusage since punishment can be imposed only after a conviction.

A fine of ''$5,000'' was substituted for ''$10,000'' and ''one year'' for ''five years'', to reduce the offense to the grade of a misdemeanor and the punishment to an amount and term proportionate to the gravity of the offense.

Minor changes were made in phraseology.

1949 ACT

This amendment [see section 4] clarifies section 155 of title 18, U.S.C., by restating the first paragraph thereof in closer conformity with the original law, as it existed at the time of the enactment of the revision of title 18.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1978—Pub. L. 95–598 substituted ''cases under title 11 and receiverships'' for ''bankruptcy proceedings'' in section catchline and in text ''or case under title 11'' for '', bankruptcy or reorganization proceeding'', inserted ''knowingly and fraudulently'' after ''supervision,'', and struck out penalty provision for a judge of a United States court to knowingly approve the payment of any fees or compensation that were fixed.

1949—Act May 24, 1949, inserted references to attorneys for any party in interest in three places, and substituted ''in any United States court or under its supervision'' for ''in or under the supervision of any court of the United States''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 156. Knowing disregard of bankruptcy law or rule

(a) DEFINITIONS.—In this section—

(1) the term ''bankruptcy petition preparer'' means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing; and

(2) the term ''document for filing'' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.

(b) OFFENSE.—If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

(Added Pub. L. 103–394, title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub. L. 109–8, title XII, § 1220, Apr. 20, 2005, 119 Stat. 195.)

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b), are set out in the Appendix to Title 11, Bankruptcy.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–8, in first par., inserted ''(1) the term'' before '' 'bankruptcy petition preparer' '' and substituted ''; and'' for period at end and, in second par., inserted ''(2) the term'' before '' 'document for filing' '' and substituted ''title 11'' for ''this title''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

Section effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as an Effective Date of 1994 Amendment note under section 101 of Title 11.

§ 157. Bankruptcy fraud

A person who, having devised or intending to devise a scheme or artifice to defraud and for

the purpose of executing or concealing such a scheme or artifice or attempting to do so—

(1) files a petition under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title;

(2) files a document in a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 103–394, title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub. L. 109–8, title III, § 332(c), Apr. 20, 2005, 119 Stat. 103.)

AMENDMENTS

2005—Pars. (1) to (3). Pub. L. 109–8, which directed insertion of ", including a fraudulent involuntary bankruptcy petition under section 303 of such title" after "title 11", was executed by making the insertion after "title 11" wherever appearing, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

Section effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as an Effective Date of 1994 Amendment note under section 101 of Title 11.

§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) UNITED STATES ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

(1) the United States attorney for each judicial district of the United States; and

(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

(Added Pub. L. 109–8, title II, § 203(b)(1), Apr. 20, 2005, 119 Stat. 49.)

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of Title 11.

CHAPTER 10—BIOLOGICAL WEAPONS

Sec.
175. Prohibitions with respect to biological weapons.
175a. Requests for military assistance to enforce prohibition in certain emergencies.
175b. Select agents; certain other agents.[1]
175c. Variola virus.
176. Seizure, forfeiture, and destruction.
177. Injunctions.
178. Definitions.

AMENDMENTS

2004—Pub. L. 108–458, title VI, § 6911(b), Dec. 17, 2004, 118 Stat. 3775, added item 175c.

2002—Pub. L. 107–188, title II, § 231(b)(2), June 12, 2002, 116 Stat. 661, substituted "Select agents; certain other agents" for "Possession by restricted persons" in item 175b.

2001—Pub. L. 107–56, title VIII, § 817(3), Oct. 26, 2001, 115 Stat. 386, added item 175b.

1996—Pub. L. 104–201, div. A, title XIV, § 1416(c)(1)(B), Sept. 23, 1996, 110 Stat. 2723, added item 175a.

§ 175. Prohibitions with respect to biological weapons

(a) IN GENERAL.—Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. In this subsection, the terms "biological agent" and "toxin" do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

[1] So in original. Does not conform to section catchline.

(c) DEFINITION.—For purposes of this section, the term ''for use as a weapon'' includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for other than prophylactic, protective, bona fide research, or other peaceful purposes.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 201; amended Pub. L. 104–132, title V, § 511(b)(1), Apr. 24, 1996, 110 Stat. 1284; Pub. L. 107–56, title VIII, § 817(1), Oct. 26, 2001, 115 Stat. 385; Pub. L. 107–188, title II, § 231(c)(1), June 12, 2002, 116 Stat. 661.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–188 substituted ''protective, bona fide research, or other peaceful purposes'' for ''protective bona fide research, or other peaceful purposes''.

2001—Subsec. (b). Pub. L. 107–56, § 817(1)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Pub. L. 107–56, § 817(1)(A), substituted ''includes'' for ''does not include'' and inserted ''other than'' after ''delivery system for'' and ''bona fide research'' after ''protective''.

Subsec. (c). Pub. L. 107–56, § 817(1)(B), redesignated subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104–132 inserted ''or attempts, threatens, or conspires to do the same,'' before ''shall be fined under this title''.

SHORT TITLE

Section 1 of Pub. L. 101–298 provided that: ''This Act [enacting this chapter and amending section 2516 of this title] may be cited as the 'Biological Weapons Anti-Terrorism Act of 1989'.''

PURPOSE AND INTENT

Section 2 of Pub. L. 101–298 provided that:

''(a) PURPOSE.—The purpose of this Act [see Short Title note above] is to—

''(1) implement the Biological Weapons Convention, an international agreement unanimously ratified by the United States Senate in 1974 and signed by more than 100 other nations, including the Soviet Union; and

''(2) protect the United States against the threat of biological terrorism.

''(b) INTENT OF ACT.—Nothing in this Act is intended to restrain or restrict peaceful scientific research or development.''

§ 175a. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

(Added Pub. L. 104–201, div. A, title XIV, § 1416(c)(1)(A), Sept. 23, 1996, 110 Stat. 2723.)

§ 175b. Possession by restricted persons

(a)(1) No restricted person shall ship or transport in or affecting interstate or foreign commerce, or possess in or affecting interstate or foreign commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations.

(2) Whoever knowingly violates this section shall be fined as provided in this title, imprisoned not more than 10 years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized United States governmental activity.

(b) TRANSFER TO UNREGISTERED PERSON.—

(1) SELECT AGENTS.—Whoever transfers a select agent to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 351A of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) CERTAIN OTHER BIOLOGICAL AGENTS AND TOXINS.—Whoever transfers a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 to a person who the transferor knows or has reasonable cause to believe is not registered as required by regulations under subsection (b) or (c) of section 212 of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(c) UNREGISTERED FOR POSSESSION.—

(1) SELECT AGENTS.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a select agent for which such person has not obtained a registration required by regulations under section 351A(c) of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(2) CERTAIN OTHER BIOLOGICAL AGENTS AND TOXINS.—Whoever knowingly possesses a biological agent or toxin where such agent or toxin is a biological agent or toxin listed pursuant to section 212(a)(1) of the Agricultural Bioterrorism Protection Act of 2002 for which such person has not obtained a registration required by regulations under section 212(c) of such Act shall be fined under this title, or imprisoned for not more than 5 years, or both.

(d) In this section:

(1) The term ''select agent'' means a biological agent or toxin to which subsection (a) applies. Such term (including for purposes of subsection (a)) does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

(2) The term ''restricted person'' means an individual who—

(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(C) is a fugitive from justice;

(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(E) is an alien illegally or unlawfully in the United States;

(F) has been adjudicated as a mental defective or has been committed to any mental institution;

(G)(i) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism, or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph;

(H) has been discharged from the Armed Services of the United States under dishonorable conditions; or

(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).

(3) The term ''alien'' has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(4) The term ''lawfully admitted for permanent residence'' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(Added Pub. L. 107–56, title VIII, § 817(2), Oct. 26, 2001, 115 Stat. 385; amended Pub. L. 107–188, title II, § 231(a), (b)(1), (c)(2), June 12, 2002, 116 Stat. 660, 661; Pub. L. 107–273, div. B, title IV, § 4005(g), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–458, title VI, § 6802(c), (d)(1), Dec. 17, 2004, 118 Stat. 3767.)

REFERENCES IN TEXT

Section 351A of the Public Health Service Act, referred to in subsecs. (a)(1), (b)(1), and (c)(1), is classified to section 262a of Title 42, The Public Health and Welfare.

Section 212 of the Agricultural Bioterrorism Protection Act of 2002, referred to in subsecs. (b)(2) and (c)(2), is classified to section 8401 of Title 7, Agriculture.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 6802(d)(1), substituted ''as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations'' for ''as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations''.

Subsec. (d)(2)(G). Pub. L. 108–458, § 6802(c)(1), designated existing provisions as cl. (i), added cl. (ii), and struck out ''or'' at end.

Subsec. (d)(2)(H). Pub. L. 108–458, § 6802(c)(2), substituted ''; or'' for period at end.

Subsec. (d)(2)(I). Pub. L. 108–458, § 6802(c)(3), added subpar. (I).

2002—Pub. L. 107–273 substituted ''Possession by restricted persons'' for ''Select agents; certain other agents'' in section catchline.

Pub. L. 107–188, § 231(b)(1)(B), substituted ''Select agents; certain other agents'' for ''Possession by restricted persons'' in section catchline.

Subsec. (a)(1). Pub. L. 107–188, § 231(a)(1), (c)(2)(A), designated existing provisions of subsec. (a) as par. (1) and substituted ''shall ship or transport in or affecting interstate or foreign commerce, or possess in or affecting interstate or foreign commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not exempted under subsection (h) of section 72.6, or Appendix A of part 72, of title 42, Code of Federal Regulations'' for ''described in subsection (b) shall ship or transport interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or appendix A of part 72 of the Code of Regulations''.

Subsec. (a)(2). Pub. L. 107–188, § 231(a)(2), (3), redesignated and transferred subsec. (c) as par. (2) of subsec. (a).

Subsec. (b). Pub. L. 107–188, § 231(a)(5), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 107–188, § 231(a)(5), added subsec. (c). Former subsec. (c) redesignated (a)(2).

Subsec. (d). Pub. L. 107–188, § 231(a)(4), redesignated subsec. (b) as (d).

Subsec. (d)(1). Pub. L. 107–188, § 231(b)(1)(A), substituted ''The term 'select agent' means a biological agent or toxin to which subsection (a) applies. Such term (including for purposes of subsection (a)) does not include'' for ''The term 'select agent' does not include''.

Subsec. (d)(3). Pub. L. 107–188, § 231(c)(2)(B), substituted ''section 101(a)(3)'' for ''section 1010(a)(3)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6802(d)(2), Dec. 17, 2004, 118 Stat. 3767, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective [probably means the effective date of the final rule revising sections 73.4, 73.5, and 73.6 of title 42, C.F.R., which was Apr. 18, 2005, see 70 F.R. 13294].''

§ 175c. Variola virus

(a) UNLAWFUL CONDUCT.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

(d) DEFINITION.—As used in this section, the term ''variola virus'' means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.

(Added Pub. L. 108–458, title VI, § 6906, Dec. 17, 2004, 118 Stat. 3773.)

FINDINGS AND PURPOSE

Pub. L. 108–458, title VI, § 6902, Dec. 17, 2004, 118 Stat. 3769, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The criminal use of man-portable air defense systems (referred to in this section as 'MANPADS') presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

''(2) Atomic weapons or weapons designed to release radiation (commonly known as 'dirty bombs') could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

''(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

''(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

''(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

''(b) PURPOSE.—The purpose of this subtitle [subtitle J (§§ 6901–6911) of title VI of Pub. L. 108–458, see Short Title of 2004 Amendment note set out under section 1 of this title] is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy (and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States.''

§ 176. Seizure, forfeiture, and destruction

(a) IN GENERAL.—(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that—

(A) pertains to conduct prohibited under section 175 of this title; or

(B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant.

(b) PROCEDURE.—Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure or forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section.

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense against a forfeiture under subsection (a)(1)(B) of this section that—

(1) such biological agent, toxin, or delivery system is for a prophylactic, protective, or other peaceful purpose; and

(2) such biological agent, toxin, or delivery system, is of a type and quantity reasonable for that purpose.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 103–322, title XXXIII,

§ 330010(16), Sept. 13, 1994, 108 Stat. 2144; Pub. L. 107–188, title II, § 231(c)(3), June 12, 2002, 116 Stat. 661.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (b), are classified generally to Title 19, Customs Duties.

AMENDMENTS

2002—Subsec. (a)(1)(A). Pub. L. 107–188 substituted ''pertains to'' for ''exists by reason of''.

1994—Subsec. (b). Pub. L. 103–322 substituted ''the Government'' for ''the government''.

§ 177. Injunctions

(a) IN GENERAL.—The United States may obtain in a civil action an injunction against—

(1) the conduct prohibited under section 175 of this title;

(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under section 175 of this title; or

(3) the development, production, stockpiling, transferring, acquisition, retention, or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention, or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.

(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense against an injunction under subsection (a)(3) of this section that—

(1) the conduct sought to be enjoined is for a prophylactic, protective, or other peaceful purpose; and

(2) such biological agent, toxin, or delivery system is of a type and quantity reasonable for that purpose.

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 104–132, title V, § 511(b)(2), Apr. 24, 1996, 110 Stat. 1284.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–132 inserted ''threat,'' after ''attempt,''.

§ 178. Definitions

As used in this chapter—

(1) the term ''biological agent'' means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance, capable of causing—

(A) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(B) deterioration of food, water, equipment, supplies, or material of any kind; or

(C) deleterious alteration of the environment;

(2) the term ''toxin'' means the toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes—

(A) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) any poisonous isomer or biological product, homolog, or derivative of such a substance;

(3) the term ''delivery system'' means—

(A) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(B) any vector;

(4) the term ''vector'' means a living organism, or molecule, including a recombinant or synthesized molecule, capable of carrying a biological agent or toxin to a host; and

(5) the term ''national of the United States'' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(Added Pub. L. 101–298, § 3(a), May 22, 1990, 104 Stat. 202; amended Pub. L. 104–132, title V, § 511(b)(3), title VII, § 721(h), Apr. 24, 1996, 110 Stat. 1284, 1299; Pub. L. 107–188, title II, § 231(c)(4), June 12, 2002, 116 Stat. 661.)

AMENDMENTS

2002—Par. (1). Pub. L. 107–188, § 231(c)(4)(A), in introductory provisions substituted ''means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance, capable of'' for ''means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of''.

Par. (2). Pub. L. 107–188, § 231(c)(4)(B), in introductory provisions substituted ''means the toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes—'' for ''means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including—''.

Par. (4). Pub. L. 107–188, § 231(c)(4)(C), substituted ''recombinant or synthesized molecule,'' for ''recombinant molecule, or biological product that may be engineered as a result of biotechnology,''.

1996—Par. (1). Pub. L. 104–132, § 511(b)(3)(A), substituted ''infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product'' for ''or infectious substance'' in introductory provisions.

Par. (2). Pub. L. 104–132, § 511(b)(3)(B)(i), (ii), in introductory provisions, inserted ''the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule'' after ''means'' and substituted ''production, including—'' for ''production—''.

Par. (2)(A). Pub. L. 104–132, § 511(b)(3)(B)(iii), inserted ''or biological product that may be engineered as a result of biotechnology'' after ''poisonous substance''.

Par. (2)(B). Pub. L. 104–132, § 511(b)(3)(B)(iv), inserted ''or biological product'' after ''isomer''.

Par. (4). Pub. L. 104–132, § 511(b)(3)(C), inserted '', or molecule, including a recombinant molecule, or bio-

logical product that may be engineered as a result of biotechnology,'' after ''organism''.

Par. (5). Pub. L. 104–132, § 721(h), added par. (5).

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

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AMENDMENTS

2006—Pub. L. 109–177, title III, § 309(b), Mar. 9, 2006, 120 Stat. 242, added item 226.

2003—Pub. L. 108–198, § 2(b), Dec. 19, 2003, 117 Stat. 2900, added items 212 and 213 and struck out former items 212 ''Offer of loan or gratuity to bank examiner'' and 213 ''Acceptance of loan or gratuity by bank examiner''.

1994—Pub. L. 103–322, title XXXIII, § 330010(12), Sept. 13, 1994, 108 Stat. 2144, substituted ''officers, and others in'' for ''officers and others, in'' in item 203 and inserted ''the'' after ''Federal Claims or'' in item 204.

1992—Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in item 204.

1990—Pub. L. 101–647, title XXV, § 2510(b), title XXXV, § 3509, Nov. 29, 1990, 104 Stat. 4863, 4922, substituted ''to Members'' for ''of Members'' in item 203, substituted ''United States Claims Court or United States Court of Appeals for the Federal Circuit'' for ''Court of Claims'' in item 204, and added item 225.

1989—Pub. L. 101–194, title I, § 101(b), title IV, § 407(b), Nov. 30, 1989, 103 Stat. 1724, 1753, substituted ''Restrictions on former officers, employees, and elected officials of the executive and legislative branches'' for ''Disqualification of former officers and employees; disqualification of partners of current officers and employees'' in item 207 and added item 216.

1984—Pub. L. 98–473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146, substituted ''Repealed'' for ''Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions'' in item 216.

1978—Pub. L. 95–521, title V, § 501(b), Oct. 26, 1978, 92 Stat. 1867, struck out ''in matters connected with former duties or official responsibilities'' after ''officers and employees'' and inserted ''of current officers and employees'' after ''partners of'' in item 207.

1966—Pub. L. 89–486, § 8(c)(2), July 4, 1966, 80 Stat. 249, added item 219.

1964—Pub. L. 88–316, § 1(b), June 6, 1964, 78 Stat. 204, added item 224.

1962—Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1119, included conflicts of interests in chapter heading, and amended analysis generally to contain items 201 to 218. Prior to amendment, the analysis contained items 201 to 223.

1958—Pub. L. 85–699, title VII, § 702(d), Aug. 21 1958, 72 Stat. 698, included small business transactions in item 221.

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term ''public official'' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term ''person who has been selected to be a public official'' means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term ''official act'' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly,

corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(Added Pub. L. 87–849, §1(a), Oct. 23, 1962, 76 Stat. 1119; amended Pub. L. 91–405, title II, §204(d)(1), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99–646, §46(a)–(*l*), Nov. 10, 1986, 100 Stat. 3601–3604; Pub. L. 103–322, title XXXIII, §§330011(b), 330016(2)(D), Sept. 13, 1994, 108 Stat. 2144, 2148.)

PRIOR PROVISIONS

A prior section 201, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for anyone who offered or gave anything of value to an officer or other person to influence his decisions, prior to the general amendment of this chapter by Pub. L. 87–849, and is substantially covered by revised section 201.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322, §330016(2)(D), which directed the amendment of "section 201" by inserting "under this title or" after "be fined" and "whichever is greater," before "or imprisoned", was executed by making the insertions in text of last par. of subsec. (b), and not in last par. of subsec. (c), to reflect the probable intent of Congress.

Pub. L. 103–322, §330011(b)(A), amended Pub. L. 99–646, §46(b)(1). See 1986 Amendment note below.

Subsec. (b)(1). Pub. L. 103–322, §330011(b), amended Pub. L. 99–646, §46(b). See 1986 Amendment note below.

1986—Pub. L. 99–646, §46(*l*), provided for alignment of margins of each subsection, paragraph, and subparagraph of this section.

Subsec. (a). Pub. L. 99–646, §46(a), substituted "section—" for "section:", designated provision defining "public official" as par. (1), inserted "the term" after "(1)", and substituted "Delegate" for "Delegate from the District of Columbia", "after such official has qualified" for "after he has qualified", and "juror;" for "juror; and"; designated provision defining "person who has been selected to be a public official" as par. (2), inserted "the term" after "(2)", and substituted "such person" for "he"; and designated provision defining "official act" as par. (3), inserted "the term" after "(3)", and substituted "in such official's official capacity, or in such official's" for "in his official capacity, or in his".

Subsec. (b). Pub. L. 99–646, §46(b)(1), as amended by Pub. L. 103–322, §330011(b)(A), substituted "Whoever—" for "Whoever," and inserted "(1)" before "directly".

Pub. L. 99–646, § 46(e)(5), redesignated the undesignated par. which followed former subsec. (e) as concluding par. of subsec. (b) and substituted ''shall be fined not more than'' for ''Shall be fined not more than $20,000 or'' and ''thing of value,'' for ''thing of value, whichever is greater,''.

Subsec. (b)(1). Pub. L. 99–646, § 46(b), as amended by Pub. L. 103–322, § 330011(b), redesignated former subsec. (b) as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, and in subpar. (C) substituted ''the lawful duty of such official or person;'' for ''his lawful duty, or''.

Subsec. (b)(2). Pub. L. 99–646, § 46(c), redesignated former subsec. (c) as par. (2), struck out ''Whoever,'' before ''being'', substituted ''corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally'' for ''corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, in subpar. (A) substituted ''the performance'' for ''his performance'' and struck out ''or'' after ''act;'', and in subpar. (C) substituted ''the official duty of such official or person;'' for ''his official duty; or''.

Subsec. (b)(3). Pub. L. 99–646, § 46(d), redesignated former subsec. (d) as par. (3) and substituted ''directly'' for ''Whoever, directly'' and ''therefrom;'' for ''therefrom; or''.

Subsec. (b)(4). Pub. L. 99–646, § 46(e), redesignated former subsec. (e) as par. (4), substituted ''directly'' for ''Whoever, directly'', ''demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally'' for ''asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself'', ''in testimony'' for ''in his testimony'', and ''therefrom;'' for ''therefrom—''.

Subsec. (c). Pub. L. 99–646, § 46(f), (g)(1), (h)(1), (i)(1), redesignated former subsecs. (f) to (i) as subsec. (c)(1)(A), (B), (2), and (3), respectively. Former subsec. (c) redesignated (b)(2).

Pub. L. 99–646, § 46(i)(6), redesignated the undesignated par. which followed former subsec. (i) as concluding par. of subsec. (c) and substituted ''shall be fined under this title'' for ''Shall be fined not more than $10,000''.

Subsec. (c)(1). Pub. L. 99–646, § 46(f), (g), redesignated former subsec. (f) as par. (1) and substituted ''(1) otherwise'' for '', otherwise'' and ''(A) directly'' for '', directly'', redesignated former subsec. (g) as subpar. (B) and substituted ''being'' for ''Whoever, being'', ''indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally'' for ''indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself'', and ''by such official or person;'' for ''by him; or''.

Subsec. (c)(2). Pub. L. 99–646, § 46(h), redesignated former subsec. (h) as par. (2) and substituted ''directly'' for ''Whoever, directly'' and ''such person's absence therefrom;'' for ''his absence therefrom; or''.

Subsec. (c)(3). Pub. L. 99–646, § 46(i), redesignated former subsec. (i) as par. (3) and substituted ''directly'' for ''Whoever, directly'', ''demands, seeks, receives, accepts, or agrees to receive or accept'' for ''asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive'', ''personally'' for ''for himself'', ''by such person'' for ''by him'', and ''such person's absence therefrom;'' for ''his absence therefrom—''.

Subsec. (d). Pub. L. 99–646, § 46(j), redesignated former subsec. (j) as (d), substituted ''Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c)'' for ''Subsections (d), (e), (h), and (i)'' and struck out ''involving a technical or professional opinion,'' after ''expert witnesses,''. Former subsec. (d) redesignated (b)(3).

Subsecs. (e) to (k). Pub. L. 99–646, § 46(f)–(k), redesignated former subsecs. (e) to (k) as (b)(4), (c)(1)(A), (B), (2), (3), (d), and (e), respectively.

1970—Subsec. (a). Pub. L. 91–405 included Delegate from District of Columbia in definition of ''public official''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(b) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 46(b) of Pub. L. 99–646 took effect.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 46(m) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE

Section 4 of Pub. L. 87–849 provided that: ''This Act [enacting this section and sections 202 to 209 and 218 of this title, redesignating sections 214, 215, 217 to 222 as 210, 211, 212 to 217 of this title respectively, repealing sections 223, 282, 284, 434, and 1914 of this title, and section 99 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under section 281 and 282 of this title] shall take effect ninety days after the date of its enactment [Oct. 23, 1962]''.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–198, § 1, Dec. 19, 2003, 117 Stat. 2899, provided that: ''This Act [enacting sections 212 and 213 of this title and repealing former sections 212 and 213 of this title] may be cited as the 'Preserving Independence of Financial Institution Examinations Act of 2003'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–177, § 1, Aug. 6, 1996, 110 Stat. 1563, provided that: ''This Act [amending section 205 of this title] may be cited as the 'Federal Employee Representation Improvement Act of 1996'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–370, § 1, Aug. 4, 1986, 100 Stat. 779, provided that: ''This Act [amending section 215 of this title and enacting provisions set out as a note under section 215 of this title] may be cited as the 'Bank Bribery Amendments Act of 1985'.''

EXECUTIVE ORDER NO. 11222

Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which established standards of ethical conduct for government officers and employees, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12565

Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which amended Ex. Ord. No. 11222, formerly set out above, and provided confidentiality for financial reports filed pursuant to Ex. Ord. No. 11222, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

MEMORANDUM OF ATTORNEY GENERAL REGARDING CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849, FEB. 1, 1963, 28 F.R. 985

JANUARY 28, 1963.

Public Law 87–849, ''To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes,'' came into force January 21, 1963. A number of departments and agencies of the Government have suggested that the Department of Justice prepare and distribute a memorandum analyzing the conflict of interest provisions contained in the new act. I am therefore distributing the attached memorandum.

One of the main purposes of the new legislation merits specific mention. That purpose is to help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government. For the most part the conflict of interest statutes superseded by Public Law 87–849 imposed the same restraints on a person serving the Government temporarily or intermittently as on a full-time employee, and those statutes often had an unnecessarily severe impact on the former. As a result, they impeded the departments and agencies in the recruitment of experts for important work. Public Law 87–849 meets this difficulty by imposing a lesser array of prohibitions on temporary and intermittent employees than on regular employees. I believe that a widespread appreciation of this aspect of the new law will lead to a significant expansion of the pool of talent on which the departments and agencies can draw for their special needs.

ROBERT F. KENNEDY,
Attorney General.

MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87–849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the ''conflict of interest'' laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87–849 (sometimes referred to hereinafter as ''the Act'') repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1] In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively.[2] It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES [NEW 18 U.S.C. 202(a)]

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87–849:[3]

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87–849. The Act dealt with the problem by creating a category of Government employees termed ''special Government employees'' and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term ''special Government employee'' to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

SUMMARY OF THE MAIN CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibilities[4] during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has in interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3, and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source, does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.[5]

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the Federal Register, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain post-employment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.[6] The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.[7] Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a ''national interest'' certification published in the FEDERAL REGISTER.

Subsections (a) and (b) describe the activities they forbid as being in connection with ''particular matter[s] involving a specific party or parties'' in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.[8] An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the ''claims against the United States'' covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example, the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with a lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matter, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with post-employment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the ''transaction of business with * * * [a] business entity'' to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act. (72 Stat. 327, 5 U.S.C. 2301–2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87–849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTEREST OR BRIBERY LAWS

Public Law 87–849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and, under Presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a ''final conviction'' for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers it grants are ''in addition to any other remedies provided by law.'' Accordingly, it would not seem to override the decision in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no ''final conviction.''

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87–849 and a list of recent material which is pertinent to a study of the act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUBLIC LAW 87–849 (H.R. 8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation*.
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong., Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflicts of Interest*.
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

OTHER MATERIAL

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.
2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 F.R. 1341.
3. 42 Op. A.G. No. 6, January 31, 1962.
4. Memorandum of December 10, 1956, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.
5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).
6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).

FOOTNOTES

[1] Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87–849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of post-employment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87–849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87–849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

[2] See section 2 of Public Law 87–849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see ''Retired Officers of the Armed Forces,'' *infra*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

[4] The term ''official responsibility'' is defined by the new 18 U.S.C. 202(b) to mean ''the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.''

[5] These two provisions of section 205 refer to an ''officer or employee'' and not, as do certain of the other provisions of the Act, to an ''officer or employee, including a special Government employee.'' However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term ''officer or employee.'' There would seem to be little doubt, therefore, that the instant provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

[6] The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

[7] Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a *former* special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have ''official responsibility,'' as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87–849, made it unlawful for a former officer or employee to act as agent or attorney for, *or aid or assist*, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

§ 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ''special Government employee'' shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d)[1] of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms ''officer or employee'' and ''special Government employee'' as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 205 and 207 of this title, the term ''official responsibility'' means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(c) Except as otherwise provided in such sections, the terms ''officer'' and ''employee'' in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

(d) The term ''Member of Congress'' in sections 204 and 207 means—

(1) a United States Senator; and

(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

(e) As used in this chapter, the term—

(1) ''executive branch'' includes each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

(2) ''judicial branch'' means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Court of Federal Claims, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

(3) ''legislative branch'' means—

(A) the Congress; and

(B) the Office of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 90–578, title III, § 301(b), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 100–191, § 3(a),

[1] See References in Text note below.

Dec. 15, 1987, 101 Stat. 1306; Pub. L. 101–194, title IV, § 401, Nov. 30, 1989, 103 Stat. 1747; Pub. L. 101–280, § 5(a), May 4, 1990, 104 Stat. 158; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), referred to in subsec. (a), was repealed and the provisions thereof were reenacted as sections 502, 2105(d), and 5534, of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 278.

PRIOR PROVISIONS

A prior section 202, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for any officer or other person who accepted or solicited anything of value to influence his decision, prior to the general amendment of this chapter by Pub. L. 87–849, and is substantially covered by revised section 201.

AMENDMENTS

2004—Subsec. (e)(3)(B). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1994—Subsec. (e)(2). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (e)(2). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (c). Pub. L. 101–280, § 5(a)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Except as otherwise provided in such sections, the terms 'officer' and 'employee' in sections 203, 205, 207, 208, and 209 of this title, mean those individuals defined in sections 2104 and 2105 of title 5. The terms 'officer' and 'employee' shall not include the President, the Vice President, a Member of Congress, or a Federal judge.''

Subsec. (d). Pub. L. 101–280, § 5(a)(2), substituted ''means'' for ''shall include''.

Subsec. (e)(1). Pub. L. 101–280, § 5(a)(3)(1), substituted ''includes each'' for ''means any''.

Subsec. (e)(3)(A). Pub. L. 101–280, § 5(a)(3)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a Member of Congress, or any officer or employee of the United States Senate or United States House of Representatives; and''.

Subsec. (e)(3)(B). Pub. L. 101–280, § 5(a)(3)(2)(B), substituted ''the Office'' for ''an officer or employee''.

1989—Subsecs. (c) to (e). Pub. L. 101–194 added subsecs. (c) to (e).

1987—Subsec. (a). Pub. L. 100–191 expanded definition of ''special Government employee'' to include an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28, regardless of the number of days of appointment.

1968—Subsec. (a). Pub. L. 90–578 substituted ''a part-time United States commissioner, or a part-time United States magistrate'' for ''or a part-time United States Commissioner''.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to independent counsel proceedings under 28 U.S.C. 591 et seq. pending on that date as well as to proceedings on and after that date, see section 6 of Pub. L. 100–191, set out as a note under section 591 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be ren-

dered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

(Added Pub. L. 87–849, §1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 91–405, title II, §204(d)(2), (3), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99–646, §47(a), Nov. 10, 1986, 100 Stat. 3604; Pub. L. 101–194, title IV, §402, Nov. 30, 1989, 103 Stat. 1748; Pub. L. 101–280, §5(b), May 4, 1990, 104 Stat. 159.)

PRIOR PROVISIONS

A prior section 203, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance or demand by district attorneys, or marshals and their assistants of any fee other than provided by law, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 281 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

1990—Subsec. (a)(1)(B). Pub. L. 101–280, §5(b)(1), inserted ''or Federal judge'' after ''employee''.

Subsec. (a)(2). Pub. L. 101–280, §5(b)(2), inserted ''Commissioner Elect, Federal judge,'' after ''Commissioner,''.

Subsec. (b)(2). Pub. L. 101–280, §5(b)(3), inserted ''representational'' before ''services''.

Subsec. (d)(1). Pub. L. 101–280, §5(b)(4), substituted ''Government employee or as a special Government employee'' for ''Government employee,''.

Subsec. (f). Pub. L. 101–280, §5(b)(5), added subsec. (f).

1989—Subsec. (a). Pub. L. 101–194, §402(3), in concluding provisions, substituted ''shall be subject to the penalties set forth in section 216 of this title'' for ''shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States''.

Subsec. (a)(1). Pub. L. 101–194, §402(1), (2), (7), in introductory provisions, substituted ''representational services, as agent or attorney or otherwise,'' for ''services'', in concluding provisions, inserted ''court,'' after ''department, agency,'' and in subpar. (B), struck out ''including the District of Columbia,'' after ''agency of the United States''.

Subsec. (a)(2). Pub. L. 101–194, §402(4)–(6), inserted ''representational'' before ''services'', ''Member Elect,'' after ''Member,'' and ''Delegate Elect,'' after ''Delegate,''.

Subsec. (b). Pub. L. 101–194, §402(9), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101–194, §402(8), redesignated subsec. (b) as (c) and substituted ''subsections (a) and (b)'' for ''subsection (a)''.

Subsecs. (d), (e). Pub. L. 101–194, §402(10), added subsecs. (d) and (e).

1986—Pub. L. 99–646, §47(a)(3)(D), provided for alignment of margins of each subsection, paragraph, and subparagraph of this section.

Subsec. (a). Pub. L. 99–646, §47(a)(1), (2), substituted ''indirectly—'' for ''indirectly'' in introductory provisions, redesignated the undesignated par. which followed former subsec. (b) as concluding par. of subsec. (a), and substituted ''shall be fined under this title'' for ''Shall be fined not more than $10,000''.

Subsec. (a)(1). Pub. L. 99–646, §47(a)(1), substituted ''(1) demands, seeks, receives, accepts, or agrees to receive or accept any'' for ''receives or agrees to receive, or asks, demands, solicits, or seeks, any'' and ''personally or by'' for ''by himself or'', redesignated former par. (1) as subpar. (A) and substituted ''such person'' for ''he'' and ''Delegate, Delegate Elect'' for ''Delegate from the District of Columbia, Delegate Elect from the District of Columbia'', redesignated former par. (2) as subpar. (B) and substituted ''such person'' for ''he'', and in closing provisions substituted ''commission; or'' for ''commission, or''.

Subsec. (a)(2). Pub. L. 99–646, §47(a)(2), redesignated former subsec. (b) as par. (2) and substituted ''knowingly gives'' for ''Whoever, knowingly, otherwise than as provided by law for the proper discharge of official

duties, directly or indirectly gives'' and ''employee;'' for ''employee—''.

Subsecs. (b), (c). Pub. L. 99–646, § 47(a)(3), (4), redesignated former subsec. (c) as (b) and substituted ''parties—'' for ''parties'', ''such employee'' for ''he'', ''otherwise; or'' for ''otherwise, or'', and ''in which such employee is serving except that paragraph (2) of this subsection'' for ''in which he is serving: *Provided*, That clause (2)''. Former subsec. (b) redesignated (a)(2).

1970—Subsec. (a)(1). Pub. L. 91–405, § 204(d)(2), included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

Subsec. (b). Pub. L. 91–405, § 204(d)(3), included reference to Delegate.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 47(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

DELEGATION OF AUTHORITY

Authority of President under subsec. (d) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of President under subsec. (d) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to President, see section 402 of Ex Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

EXEMPTIONS

Section 2 of Pub. L. 87–849 provided in part that: ''All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act [see Effective Date note under section 201 of this title] shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.''

PRIVATE SECTOR REPRESENTATIVES ON UNITED STATES DELEGATIONS TO INTERNATIONAL TELECOMMUNICATIONS MEETINGS AND CONFERENCES

Pub. L. 97–241, title I, § 120, Aug. 24, 1982, 96 Stat. 280, provided that:

''(a) Sections 203, 205, 207, and 208 of title 18, United States Code, shall not apply to a private sector representative on the United States delegation to an international telecommunications meeting or conference who is specifically designated to speak on behalf of or otherwise represent the interests of the United States at such meeting or conference with respect to a particular matter, if the Secretary of State (or the Secretary's designee) certifies that no Government employee on the delegation is as well qualified to represent United States interests with respect to such matter and that such designation serves the national interest. All such representatives shall have on file with the Department of State the financial disclosure report required for special Government employees.

''(b) As used in this section, the term 'international telecommunications meeting or conference' means the conferences of the International Telecommunications Union, meetings of its International Consultative Committees for Radio and for Telephone and Telegraph, and such other international telecommunications meetings or conferences as the Secretary of State may designate.''

§ 204. Practice in United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress or Member of Congress Elect, practices in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit shall be subject to the penalties set forth in section 216 of this title.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1122; amended Pub. L. 91–405, title II, § 204(d)(2), Sept. 22, 1970, 84 Stat. 853; Pub. L. 97–164, title I, § 147, Apr. 2, 1982, 96 Stat. 45; Pub. L. 101–194, title IV, § 403, Nov. 30, 1989, 103 Stat. 1749; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 204, act June 25, 1948, ch. 645, 62 Stat. 692, related to an offer to influence a Member of Congress, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

Provisions similar to this section were contained in former section 282 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in section catchline and in text.

1989—Pub. L. 101–194 amended section generally. Prior to amendment, section read as follows: ''Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.''

1982—Pub. L. 97–164 substituted ''United States Claims Court or the United States Court of Appeals for the Federal Circuit'' for ''Court of Claims''.

1970—Pub. L. 91–405 included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under

section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

EXEMPTIONS

Exemptions from former section 282 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87–849, set out as a note under section 203 of this title.

§205. Activities of officers and employees in claims against and other matters affecting the Government

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—

(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—

(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d)(1) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of that officer's or employee's duties, from acting without compensation as agent or attorney for, or otherwise representing—

(A) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or

(B) except as provided in paragraph (2), any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.

(2) Paragraph (1)(B) does not apply with respect to a covered matter that—

(A) is a claim under subsection (a)(1) or (b)(1);

(B) is a judicial or administrative proceeding where the organization or group is a party; or

(C) involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group.

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term ''covered matter'' means any judicial or other proceeding, application, request for a ruling or

other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(i) Nothing in this section prevents an employee from acting pursuant to—

(1) chapter 71 of title 5;

(2) section 1004 or chapter 12 of title 39;

(3) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b);

(4) chapter 10 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4104 et seq.); or

(5) any provision of any other Federal or District of Columbia law that authorizes labor-management relations between an agency or instrumentality of the United States or the District of Columbia and any labor organization that represents its employees.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1122; amended Pub. L. 101–194, title IV, § 404, Nov. 30, 1989, 103 Stat. 1750; Pub. L. 101–280, § 5(c), May 4, 1990, 104 Stat. 159; Pub. L. 104–177, § 2, Aug. 6, 1996, 110 Stat. 1563; Pub. L. 107–273, div. B, title IV, § 4002(a)(9), Nov. 2, 2002, 116 Stat. 1807.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (i)(4), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 10 of title I of the Act is classified generally to subchapter X (§ 4101 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 205, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance by a Member of Congress of anything of value to influence him, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 283 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

2002—Subsec. (d)(1)(B). Pub. L. 107–273 substituted ''group's'' for ''groups's''.

1996—Subsec. (d). Pub. L. 104–177, § 2(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.''

Subsec. (i). Pub. L. 104–177, § 2(b), added subsec. (i).

1990—Subsec. (a)(2). Pub. L. 101–280, § 5(c)(1), substituted ''civil'' for ''any civil''.

Subsec. (b)(2). Pub. L. 101–280, § 5(c)(2), substituted ''commission'' for ''any commission''.

1989—Pub. L. 101–194 amended section generally, revising and restating as subsecs. (a) to (h) provisions formerly consisting of eight undesignated pars.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

DELEGATION OF AUTHORITY

Authority of President under subsec. (e) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of President under subsec. (e) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to President, see section 402 of Ex Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

EXEMPTIONS

Exemptions from former section 283 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87–849, set out as a note under section 203 of this title.

§ 206. Exemption of retired officers of the uniformed services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

PRIOR PROVISIONS

A prior section 206, act June 25, 1948, ch. 645, 62 Stat. 692, related to an offer to a judge or judicial officer to influence him, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) CLARIFICATION OF RESTRICTIONS.—The restrictions contained in paragraphs (1) and (2) shall apply—

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

(1) IN GENERAL.—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this paragraph—

(A) the term ''trade negotiation'' means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term ''treaty'' means an international agreement made by the President that requires the advice and consent of the Senate.

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the National Defense Authorization Act for Fiscal Year 2004, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to

or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 of title 5.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) PERSONS WHO MAY NOT BE CONTACTED.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance be-

fore any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) LIMITATION ON RESTRICTIONS.—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) DEFINITIONS.—As used in this subsection—

(A) the term ''committee of Congress'' includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term ''employee of the House of Representatives'' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term ''employee of the Senate'' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term ''employee of any other legislative office of the Congress'' means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term ''employee on the leadership staff of the House of Representatives'' means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term ''employee on the leadership staff of the Senate'' means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term ''Member of Congress'' means a Senator or a Member of the House of Representatives;

(K) the term ''Member of the House of Representatives'' means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term ''Member of the leadership of the House of Representatives'' means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term ''Member of the leadership of the Senate'' means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) SPECIAL RULE FOR TRADE REPRESENTATIVE.—With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) DEFINITION.—For purposes of this subsection, the term ''foreign entity'' means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

(1) DESIGNATIONS.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) DEFINITIONS.—For purposes of this section—

(1) the term ''officer or employee'', when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term ''participated'' means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term ''particular matter'' includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) EXCEPTIONS.—

(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance,

communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) SPECIAL KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term ''officer or employee'' includes the Vice President.

(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) POLITICAL PARTIES AND CAMPAIGN COMMITTEES.—(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to—

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections[1] (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph—

(i) the term ''candidate'' means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term ''authorized committee'' means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term ''national committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term ''national Federal campaign committee'' means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term ''State committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

[1] So in original. Probably should be ''subsection''.

(vi) the term ''political party'' means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term ''civil service'' has the meaning given that term in section 2101 of title 5.

(*l*) CONTRACT ADVICE BY FORMER DETAILS.—Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123; amended Pub. L. 95–521, title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub. L. 96–28, June 22, 1979, 93 Stat. 76; Pub. L. 101–189, div. A, title VIII, § 814(d)(2), Nov. 29, 1989, 103 Stat. 1499; Pub. L. 101–194, title I, § 101(a), Nov. 30, 1989, 103 Stat. 1716; Pub. L. 101–280, §§ 2(a), 5(d), May 4, 1990, 104 Stat. 149, 159; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(8)(A)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 102–25, title VII, § 705(a), Apr. 6, 1991, 105 Stat. 120; Pub. L. 102–190, div. C, title XXXI, § 3138(a), Dec. 5, 1991, 105 Stat. 1579; Pub. L. 102–395, title VI, § 609(a), Oct. 6, 1992, 106 Stat. 1873; Pub. L. 103–322, title XXXIII, §§ 330002(i), 330010(15), Sept. 13, 1994, 108 Stat. 2140, 2144; Pub. L. 104–65, § 21(a), Dec. 19, 1995, 109 Stat. 704; Pub. L. 104–179, §§ 5, 6, Aug. 6, 1996, 110 Stat. 1567, 1568; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 635], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363; Pub. L. 105–244, title I, § 102(a)(5), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107–347, title II, § 209(d)(1), (3), Dec. 17, 2002, 116 Stat. 2930; Pub. L. 108–136, div. A, title XI, § 1125(b)(1), Nov. 24, 2003, 117 Stat. 1639; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (b)(2)(A), is classified to section 2902 of Title 19, Customs Duties.

Levels I and II of the Executive Schedule, referred to in subsecs. (c)(2)(A)(ii) and (d)(1)(B), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

The National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (c)(2)(A)(ii), is Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1392. For complete classification of this Act to the Code, see Tables.

Senior Executive Service, referred to in subsecs. (c)(2)(A)(ii) and (e)(6)(B), see section 5382 of Title 5, Government Organization and Employees.

Section 102(a) of the Ethics Reform Act of 1989, referred to in subsec. (e)(7)(L), (M), is section 102(a) of Pub. L. 101–194, which is set out below.

Section 1(e) and (f) of the Foreign Agents Registration Act of 1938, referred to in subsec. (f)(3), is classified to section 611(e) and (f) of Title 22, Foreign Relations and Intercourse.

Section 101 of the Higher Education Act of 1965, referred to in subsec. (j)(2)(B), is classified to section 1001 of Title 20, Education.

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (j)(2)(B), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

CODIFICATION

Another section 501(a) of Pub. L. 95–521, as added by Pub. L. 101–194, title VI, §601(a), Nov. 30, 1989, 103 Stat. 1760, is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 207, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance of a bribe by a judge, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 284 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

2004—Subsec. (e)(7)(G). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2003—Subsec. (c)(2)(A)(ii). Pub. L. 108–136 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,''.

2002—Subsec. (c)(2)(A)(v). Pub. L. 107–347, §209(d)(1), added cl. (v).

Subsec. (*l*). Pub. L. 107–347, §209(d)(3), added subsec. (*l*).

1998—Subsec. (j)(2)(B). Pub. L. 105–244 substituted ''section 101'' for ''section 1201(a)''.

1996—Subsec. (c)(2)(A)(ii). Pub. L. 104–179, §6, substituted ''level 5 of the Senior Executive Service,'' for ''level V of the Executive Schedule,''.

Subsec. (e)(6)(B). Pub. L. 104–208 substituted ''level 5 of the Senior Executive Service'' for ''level V of the Executive Schedule''.

Subsec. (j). Pub. L. 104–179, §5, added par. (7).

1995—Subsec. (f)(2). Pub. L. 104–65 inserted ''or Deputy United States Trade Representative'' after ''is the United States Trade Representative'' and substituted ''at any time'' for ''within 3 years''.

1994—Subsec. (a)(3). Pub. L. 103–322, §330010(15), substituted ''restrictions'' for ''Restrictions'' in heading.

Subsec. (c)(2)(A)(ii). Pub. L. 103–322, §330002(i), substituted a comma for semicolon at end.

1992—Subsec. (f)(2), (3). Pub. L. 102–395 added par. (2) and redesignated former par. (2) as (3).

1991—Subsec. (k). Pub. L. 102–25 reinstated subsec. (k) as originally enacted by Pub. L. 101–189. See 1989 Amendment note and Effective Date of 1991 Amendments note below.

Subsec. (k)(1)(B). Pub. L. 102–190 designated existing provisions as cl. (i) and added cl. (ii).

1990—Subsec. (a)(1). Pub. L. 101–280, §2(a)(1), amended subsec. (a)(1), as amended by Pub. L. 101–194, by inserting ''(including any special Government employee)'' after ''who is an officer or employee'', striking out ''Government'' after ''executive branch of the United States'', ''and any special Government employee'' after ''independent agency of the United States'', ''Government'' after ''employment with the United States'', ''as the case may be,'' before ''knowingly makes'' and before ''on behalf of'', inserting ''or the District of Columbia'' after ''(except the United States'', and in subpar. (A) inserting ''or the District of Columbia'' after ''United States''.

Subsec. (a)(2). Pub. L. 101–280, §2(a), amended subsec. (a)(2), as amended by Pub. L. 101–194, by substituting ''or the District of Columbia, knowingly'' for ''Government, knowingly'' and ''(except the United States or the District of Columbia)'' for ''(except the United States)'', in subpar. (A) inserting ''or the District of Columbia'' after ''United States)'', and in subpar. (B) striking out ''Government'' after ''United States''.

Subsec. (a)(3). Pub. L. 101–280, §2(a)(3), amended subsec. (a), as amended by Pub. L. 101–194, by adding par. (3).

Subsec. (b)(1). Pub. L. 101–280, §2(a)(4), amended subsec. (b)(1), as amended by Pub. L. 101–194, by substituting ''a former officer or employee of the executive branch of the United States (including any independent agency) and is'' for ''a former officer or employee'', substituting ''or any person who is a former officer or employee of the legislative branch or a former Member of Congress'' for ''and any person described in subsection (e)(7)'', substituting ''which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent'' for ''and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent'', inserting ''a period of'' before ''1 year'', and striking out ''Government'' before ''terminates''.

Subsec. (c). Pub. L. 101–280, §5(d), substituted ''shall be subject to the penalties set forth in section 216 of this title'' for ''shall be fined not more than $10,000 or imprisoned for not more than two years, or both'' in concluding provisions of subsec. (c) as in effect on May 4, 1990.

Subsec. (c)(1). Pub. L. 101–280, §2(a)(5)(A), amended subsec. (c)(1), as amended by Pub. L. 101–194, by substituting ''(including any special Government employee) of the executive branch of the United States'' for ''of the executive branch''.

Subsec. (c)(2)(A)(i). Pub. L. 101–280, §2(a)(5)(B)(i), amended subsec. (c)(2)(A)(i), as amended by Pub. L. 101–194, by inserting ''specified in or'' after ''employed at a rate of pay'' and striking out ''or a comparable or greater rate of pay under other authority,'' after ''chapter 53 of title 5,''.

Subsec. (c)(2)(A)(ii). Pub. L. 101–509, §529 [title I, §101(b)(8)(A)(i)], added cl. (ii) and struck out former cl. (ii) which read as follows: ''employed in a position which is not referred to in clause (i) and for which the rate of basic pay is equal to or greater than the rate of basic pay payable for GS–17 of the General Schedule,''.

Pub. L. 101–280, §2(a)(5)(B)(ii), amended subsec. (a)(2)(A)(ii), as amended by Pub. L. 101–194, by substituting ''rate of basic'' for ''basic rate of'' wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101–280, §2(a)(5)(B)(iii), amended subsec. (c)(2)(C), (D), as amended by Pub. L. 101–194, by redesignating subpar. (D) as (C) and striking out former subpar. (C) which read as follows: ''Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph.''

Subsec. (d)(1)(B). Pub. L. 101–280, §2(a)(6)(A), amended subsec. (d)(1)(B), as amended by Pub. L. 101–194, by substituting ''in the executive branch of the United States (including any independent agency)'' for ''paid''.

Subsec. (d)(2). Pub. L. 101–280, §2(a)(6)(B), amended subsec. (d)(2), as amended by Pub. L. 101–194, by substituting ''Persons who may not be contacted'' for ''Entities to which restrictions apply'' in heading, and striking out ''other'' after ''any'' in subpar. (B).

Subsec. (e)(6). Pub. L. 101–509, §529 [title I, §101(b)(8)(A)(ii)], added par. (6) and struck out former par. (6) which read as follows: ''The restrictions contained in paragraphs (2), (3), (4), and (5) apply only to

acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid for such service at a rate of basic pay equal to or greater than the rate of basic pay payable for GS–17 of the General Schedule under section 5332 of title 5.''

Pub. L. 101–280, § 2(a)(7)(A), amended subsec. (e)(6), as amended by Pub. L. 101–194, by substituting ''rate of basic'' for ''basic rate of'' wherever appearing.

Subsec. (e)(7)(L), (M). Pub. L. 101–280, § 2(a)(7)(B), amended subsec. (e)(7)(L), (M), as amended by Pub. L. 101–194, by inserting ''on or'' before ''after the effective date''.

Subsec. (f)(1). Pub. L. 101–280, § 2(a)(8)(A), amended subsec. (f)(1), as amended by Pub. L. 101–194, by substituting ''such subsection'' for ''subsection (c), (d), or (e), as the case may be''.

Subsec. (f)(1)(A). Pub. L. 101–280, § 2(a)(8)(B), amended subsec. (f)(1)(A), as amended by Pub. L. 101–194, by striking out ''the interests of'' after ''represents'' and ''of the Government'' after ''department or agency''.

Subsec. (f)(1)(B). Pub. L. 101–280, § 2(a)(8)(C), amended subsec. (f)(1)(B), as amended by Pub. L. 101–194, by striking out ''of the Government'' after ''department or agency''.

Subsec. (i)(1). Pub. L. 101–280, § 2(a)(9), amended subsec. (i)(1), as amended by Pub. L. 101–194, by adding par. (1) and striking out former par. (1) which read as follows: ''the term 'intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;''.

Subsec. (j)(1). Pub. L. 101–280, § 2(a)(10)(A), amended subsec. (j)(1), as amended by Pub. L. 101–194, by substituting ''this section'' for ''subsections (a), (c), (d), and (e)'', ''on behalf of'' for ''as an officer or employee of'', and ''or the District of Columbia'' for ''Government''.

Subsec. (j)(3). Pub. L. 101–280, § 2(a)(10)(B), amended subsec. (j)(3), as amended by Pub. L. 101–194, by substituting ''this section'' for ''subsections (c), (d), and (e)'' and ''in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States'' for ''of which the United States is a member''.

Subsec. (j)(4). Pub. L. 101–280, § 2(a)(10)(C), amended subsec. (j)(4), as amended by Pub. L. 101–194, by substituting ''Special'' for ''Personal matters and special'' in heading, substituting ''prevent an individual'' for ''apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections prevent a former officer or employee'', substituting ''individual's'' for ''former officer's or employee's'', and striking out '', other than that regularly provided for by law or regulation for witnesses'' after ''if no compensation is thereby received''.

Subsec. (j)(5). Pub. L. 101–280, § 2(a)(10)(D), amended subsec. (j)(5), as amended by Pub. L. 101–194, by substituting ''and (d)'' for ''(d), and (e)'' and inserting ''For purposes of this paragraph, the term 'officer or employee' includes the Vice President.''

Subsec. (j)(6). Pub. L. 101–280, § 2(a)(10)(E)(ii), amended subsec. (j)(6), as amended by Pub. L. 101–194, by substituting ''sentence—'' for ''sentence, a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter.'' and adding subpars. (A) and (B).

Pub. L. 101–280, § 2(a)(10)(E)(i), amended subsec. (j)(6), as amended by Pub. L. 101–194, by substituting ''an individual'' for ''a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee)''.

1989—Pub. L. 101–194 amended section generally, substituting ''Restrictions on former officers, employees, and elected officials of the executive and legislative branches'' for ''Disqualification of former officers and employees; disqualification of partners of current officers and employees'' as section catchline and making extensive changes in content and structure of text. For text of section as it existed prior to the general amendment by Pub. L. 101–194, see Effective Date of 1989 Amendment; Effect on Employment note set out below.

Subsec. (k). Pub. L. 101–189 added subsec. (k).

1979—Subsec. (b). Pub. L. 96–28, § 1, substituted ''by personal presence at any formal or informal appearance'' for ''concerning any formal or informal appearance'' in cl. (ii) of provisions before par. (1), and, in par. (3), inserted ''as to (i),'' before ''which was actually pending'' and '', as to (ii),'' before ''in which he participated''.

Subsec. (d). Pub. L. 96–28, § 2, designated existing provisions as par. (1), designated existing pars. (1) and (3) as subpars. (A) and (B) of par. (1) as so designated, and added subpar. (C) of par. (1) and par. (2), incorporating into the new par. and subpar. portions of former provisions relating to positions for which the basic rate of pay was equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of Title 5 and who had significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned, and provisions relating to the designation of positions by the Director of the Office of Government Ethics.

1978—Pub. L. 95–521 expanded section to include provisions designed to more effectively deal with the problem of the disproportionate influence former officers and employees might have upon the government processes and decision-making in their previous departments or agencies when they return in the role of representatives or advocates of nongovernmental groups or interests before those same departments or agencies.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective on first day of first pay period beginning on or after Jan. 1, 2004, see section 1125(c)(1) of Pub. L. 108–136, set out as a note under section 5304 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 21(c) of Pub. L. 104–65 provided that: ''The amendments made by this section [amending this section and section 2171 of Title 19, Customs Duties] shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act [Dec. 19, 1995].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 609(b) of Pub. L. 102–395 provided that: ''This section [amending this section] shall not apply to the person serving as the United States Trade Representative at the date of enactment of this Act [Oct. 6, 1992].''

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 3138(b) of Pub. L. 102–190 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment

of this Act [Dec. 5, 1991] and shall apply to persons granted waivers under section 207(k)(1) of title 18, United States Code, on or after that date.''

Section 705(a) of Pub. L. 102–25 provided that subsec. (k), added by Pub. L. 101–189 and omitted in the general amendment of this section by Pub. L. 101–194, is reinstated as originally enacted, effective as of Jan. 1, 1991.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 529 [title I, §101(b)(8)(B)] of Pub. L. 101–509 provided that: ''The amendments made by subparagraph (A) [amending this section] take effect on January 1, 1991.''

Amendment by Pub. L. 101–280 effective May 4, 1990, see section 11 of Pub. L. 101–280, set out as a note under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT; EFFECT ON EMPLOYMENT

Section 102 of Pub. L. 101–194, as amended by Pub. L. 101–280, §2(b), May 4, 1990, 104 Stat. 152, provided that:

''(a) IN GENERAL.—(1) Subject to paragraph (2) and to subsection (b), the amendments made by section 101 [amending this section] take effect on January 1, 1991.

''(2) Subject to subsection (b), the amendments made by section 101 take effect at noon on January 3, 1991, with respect to Members of Congress (within the meaning of section 207 of title 18, United States Code).

''(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by section 101 apply only to persons whose service as a Member of Congress, the Vice President, or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

''(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code, as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service.''

Prior to the effective date of the amendment by Pub. L. 101–194, section 207 read as follows:

''§207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

''(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

''(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

''(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

''(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

''(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

''(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

''(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

''(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

''(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

''(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

''(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

''(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be subject to the penalties set forth in section 216 of this title.

''(d)(1) Subsection (c) of this section shall apply to a person employed—

''(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

''(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O–9 or above as described in section 201 of title 37, United States Code; or

''(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O–7 or O–8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same depart-

ment or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

''(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

''(A) an elected official of a State or local government, or

''(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

''(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

''(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

''(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

''(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

''(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

''(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

''(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

''(B) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

''(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

''(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

''(A) the officer or employee covered by the waiver by name and by position, and

''(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

''(4) The President may not delegate the authority provided by this subsection.

''(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

''(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

''(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

''(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

''(E) As used in this subsection, the term 'civil service' has the meaning given that term in section 2101 of title 5.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 503 of Pub. L. 95–521, which provided that the amendments made by section 501 (amending this section) shall become effective on July 1, 1979, was amended generally by Pub. L. 101–194, title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1761, and is now set out in the Appendix to Title 5, Government Organization and Employees.

Section 502 of Pub. L. 95–521, which provided that the amendments made by section 501 (amending this section) shall not apply to those individuals who left Government service prior to the effective date of such amendments (July 1, 1979) or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation, was amended generally by Pub. L. 101–194, title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1761, and is now set out in the Appendix to Title 5.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

REGULATIONS

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

AGENCIES WITHIN EXECUTIVE OFFICE OF PRESIDENT

For provisions relating to treatment of agencies within the Executive Office of the President as one agency under subsec. (c) of this section, see Ex. Ord. No. 12674, § 202, Apr. 12, 1989, 54 F.R. 15160, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

EXEMPTIONS

Exemptions from former section 284 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87–849, set out as a note under section 203 of this title.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) if the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which

is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

(d)(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1124; amended Pub. L. 95–188, title II, § 205, Nov. 16, 1977, 91 Stat. 1388; Pub. L. 101–194, title IV, § 405, Nov. 30, 1989, 103 Stat. 1751; Pub. L. 101–280, § 5(e), May 4, 1990, 104 Stat. 159; Pub. L. 103–322, title XXXIII, §§ 330002(b), 330008(6), Sept. 13, 1994, 108 Stat. 2140, 2143.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsecs. (b)(3) and (d)(1), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b)(4)(A), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 208, act June 25, 1948, ch. 645, 62 Stat. 693, related to the acceptance of solicitation of a bribe by a judicial officer, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 434 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–322, § 330008(6), inserted ''if'' after ''(4)''.

Subsec. (c)(1). Pub. L. 103–322, § 330002(b), substituted ''banks'' for ''Banks''.

1990—Subsec. (a). Pub. L. 101–280, § 5(e)(2), made technical correction to directory language of Pub. L. 101–194, § 405(1)(C). See 1989 Amendment note below.

Subsec. (b)(2). Pub. L. 101–280, § 5(e)(1)(A), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (b)(3). Pub. L. 101–280, § 5(e)(1)(B), struck out ''section 107 of'' after ''individual pursuant to''.

Subsec. (d)(1). Pub. L. 101–280, § 5(e)(1)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A copy of any determination by other than the Director of the Office of Government Ethics granting an exemption pursuant to subsection (b)(1) or (b)(3) shall be submitted to the Director, who shall make all determinations available to the public pursuant to section 105 of the Ethics in Government Act of 1978. For determinations pursuant to subsection (b)(3), the information from the financial disclosure report of the officer or employee involved describing the asset or assets that necessitated the waiver shall also be made available to the public. This subsection shall not apply, however, if the head of the agency or his or her designee determines that the determination under subsection (b)(1) or (b)(3), as the case may be, involves classified information.''

1989—Subsec. (a). Pub. L. 101–194, § 405(1), as amended by Pub. L. 101–280, § 5(e)(2), inserted ''or'' after ''United States Government,'' and ''an officer or employee'' before ''of the District of Columbia'', substituted ''general partner'' for ''partner'' in two places, and substituted ''Shall be subject to the penalties set forth in section 216 of this title'' for ''Shall be fined not more than $10,000, or imprisoned not more than two years, or both''.

Subsec. (b). Pub. L. 101–194, § 405(2), added subsec. (b) and struck out former subsec. (b), which read as follows: ''Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.''

Subsecs. (c), (d). Pub. L. 101–194, §405(2), added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–188, §205(a), extended conflicts of interest prohibition to a Federal Reserve bank director, officer, or employee.

Subsec. (b). Pub. L. 95–188, §205(b), inserted at end ''In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.''

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

EXEMPTIONS

Exemptions from former section 434 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87–849, set out as a note under section 203 of this title.

REGULATIONS

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

DELEGATION OF AUTHORITY

Authority of the President under subsec. (b) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of the President under subsec. (b) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to the President, see section 402 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

''PARTICULAR MATTER'' DEFINED

Pub. L. 100–446, title III, §319, Sept. 27, 1988, 102 Stat. 1826, which provided that notwithstanding any other provision of law, for the purposes of this section ''particular matter'', as applied to employees of the Department of the Interior and the Indian Health Service, means ''particular matter involving specific parties'', was repealed by Pub. L. 101–194, title V, §505(b), Nov. 30, 1989, 103 Stat. 1756, as amended by Pub. L. 101–280, §6(c), May 4, 1990, 104 Stat. 160.

Similar provisions were contained in Pub. L. 100–202, §101(g) [title III, §318], Dec. 22, 1987, 101 Stat. 1329–213, 1329–255.

§209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of chapter 41 of title 5.

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code.

(g)(1) This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(2) For purposes of this subsection, the term ''agency'' means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.

(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member's employment had not been interrupted by such call or order to active duty.

(Added Pub. L. 87–849, §1(a), Oct. 23, 1962, 76 Stat. 1125; amended Pub. L. 96–174, Dec. 29, 1979, 93 Stat. 1288; Pub. L. 97–171, Apr. 13, 1982, 96 Stat. 67; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–646, §70, Nov. 10, 1986, 100 Stat. 3617; Pub. L. 101–194, title IV, §406, Nov. 30, 1989, 103

Stat. 1753; Pub. L. 101–647, title XXXV, § 3510, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 103–322, title XXXIII, § 330008(7), Sept. 13, 1994, 108 Stat. 2143; Pub. L. 107–273, div. A, title III, § 302(3), Nov. 2, 2002, 116 Stat. 1781; Pub. L. 107–347, title II, § 209(g)(2), Dec. 17, 2002, 116 Stat. 2932; Pub. L. 108–375, div. A, title VI, § 663, Oct. 28, 2004, 118 Stat. 1974.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 501 of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 209, act June 25, 1948, ch. 645, 62 Stat. 693, related to an offer of a bribe to a witness, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered by section 201.

Provisions similar to those comprising this section were contained in section 1914 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87–849.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–375 added subsec. (h).

2002—Subsec. (a). Pub. L. 107–273, in second par., substituted ''makes'' for ''or makes'' and ''supplements, the salary of any'' for ''supplements the salary of, any''.

Subsec. (g). Pub. L. 107–347 added subsec. (g).

1994—Subsec. (d). Pub. L. 103–322 struck out ''the'' before ''chapter 41''.

1990—Subsec. (d). Pub. L. 101–647 substituted ''chapter 41 of title 5'' for ''Government Employees Training Act (Public Law 85–507, 72 Stat. 327; 5 U.S.C. 2301–2319, July 7, 1958)''.

1989—Subsec. (a). Pub. L. 101–194 substituted at end ''Shall be subject to the penalties set forth in section 216 of this title.'' for ''Shall be fined not more than $5,000 or imprisoned not more than one year, or both.''

1986—Subsec. (e). Pub. L. 99–646 inserted ''or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days''.

Subsec. (f). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—Subsec. (f). Pub. L. 97–171 added subsec. (f).

1979—Subsec. (e). Pub. L. 96–174 added subsec. (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

EXEMPTIONS

Exemptions from former section 1914 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87–849, set out as a note under section 203 of this title.

PROMULGATION OF REGULATIONS

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

§ 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 694, § 210, formerly § 214; renumbered § 210, Pub. L. 87–849, § 1(b), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on Title 18, U. S.C., 1940 ed., §§ 149 and 151 (Dec. 11, 1926, c. 3, §§ 1, 3, 44 Stat. 918).

Changes of style and substance were made in this section.

Term ''or place'' was inserted after words ''appointive office'' in order to give broader scope to the section and also to follow the phraseology used in similar provisions of section 202 of Title 18, U.S.C., 1940 ed., now section 216 [repealed] of this title. (See 46 Corpus Juris 924, where it is explained that the work ''places'' is used in a less technical sense than the word ''offices''.)

The punishment provision, added at the end of this section and section 215 [now section 211] of this title to secure uniformity of style throughout this chapter, was originally enacted as a separate section, incorporating the other two by reference. 80th Congress House Report No. 304.

PRIOR PROVISIONS

A prior section 210, act June 25, 1948, ch. 645, 62 Stat. 693, related to acceptance of a bribe by a witness, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered in revised section 201.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 694, § 211, formerly § 215; Sept. 13, 1951, ch. 380, 65 Stat. 320; renumbered § 211, Pub. L. 87–849, § 1(b), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 150 and 151 (Dec. 11, 1926, ch. 3, §§ 2, 3, 44 Stat. 918).

Same changes of style and substance were made in this section as in section 214 of this title.

PRIOR PROVISIONS

A prior section 211, act June 25, 1948, ch. 645, 62 Stat. 693, related to an offer of a gratuity to a revenue officer, prior to the general amendment of this chapter by Pub. L. 87–849 and is substantially covered in revised section 201.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in two places.

1951—Act Sept. 13, 1951, inserted second paragraph.

§212. Offer of loan or gratuity to financial institution examiner

(a) IN GENERAL.—Except as provided in subsection (b), whoever, being an officer, director, or employee of a financial institution, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution—

(1) shall be fined under this title, imprisoned not more than 1 year, or both; and

(2) may be fined a further sum equal to the money so loaned or gratuity given.

(b) REGULATIONS.—A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and on the application and receipt of residential mortgage loans under this section, after consulting with each other Federal financial institution regulatory agency.

(c) DEFINITIONS.—In this section:

(1) EXAMINER.—The term ''examiner'' means any person—

(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

(B) elected under the law of any State to conduct examinations of any financial institutions.

(2) FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCY.—The term ''Federal financial institution regulatory agency'' means—

(A) the Office of the Comptroller of the Currency;

(B) the Board of Governors of the Federal Reserve System;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Housing Finance Board;

(F) the Farm Credit Administration;

(G) the Farm Credit System Insurance Corporation; and

(H) the Small Business Administration.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' does not include a credit union, a Federal Reserve Bank, a Federal home loan bank, or a depository institution holding company.

(4) LOAN.—The term ''loan'' does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property that is the principal residence of the examiner, if—

(A) the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

(B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers cardholders[1] in comparable circumstances under open end consumer credit plans or for residential real property loans; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

(Added Pub. L. 108–198, §2(a), Dec. 19, 2003, 117 Stat. 2899.)

PRIOR PROVISIONS

A prior section 212, acts June 25, 1948, ch. 645, 62 Stat. 694, §212, formerly §217; Pub. L. 85–699, title VII, §701(a), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86–168, title I, §104(h), Aug. 18, 1959, 73 Stat. 387; renumbered §212, Pub. L. 87–849, §1(d), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 101–73, title IX, §962(a)(1), Aug. 9, 1989, 103 Stat. 501; Pub. L. 101–647, title XXV, §2597(b), Nov. 29, 1990, 104 Stat. 4908; Pub. L. 103–322, title XXXIII, §§330004(1), 330010(1), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2141, 2143, 2147, related to offer of loan or gratuity to bank examiner, prior to repeal by Pub. L. 108–198, §2(a), Dec. 19, 2003, 117 Stat. 2899.

Another prior section 212, act June 25, 1948, ch. 645, 62 Stat. 693, related to an offer or threat to a customs officer or employee, prior to the general amendment to this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

§213. Acceptance of loan or gratuity by financial institution examiner

(a) IN GENERAL.—Whoever, being an examiner or assistant examiner, accepts a loan or gratuity from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, shall—

(1) be fined under this title, imprisoned not more than 1 year, or both;

(2) may be fined a further sum equal to the money so loaned or gratuity given; and

(3) shall be disqualified from holding office as an examiner.

(b) DEFINITIONS.—In this section, the terms ''examiner'', ''Federal financial institution regulatory agency'', ''financial institution'', and ''loan'' have the same meanings as in section 212.

(Added Pub. L. 108–198, §2(a), Dec. 19, 2003, 117 Stat. 2900.)

PRIOR PROVISIONS

A prior section 213, acts June 25, 1948, ch. 645, 62 Stat. 695, §213, formerly §218; Pub. L. 85–699, title VII, §701(b), Aug. 21, 1958, 72 Stat. 698; renumbered §213, Pub. L. 87–849, §1(d), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 101–73, title IX, §962(a)(2), Aug. 9, 1989, 103 Stat. 502; Pub. L.

[1] So in original.

101–647, title XXV, § 2597(c), Nov. 29, 1990, 104 Stat. 4909; Pub. L. 103–322, title XXXIII, §§ 330004(2), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2141, 2147, related to acceptance of loan or gratuity by bank examiner, prior to repeal by Pub. L. 108–198, § 2(a), Dec. 19, 2003, 117 Stat. 2899.

Another prior section 213, act June 25, 1948, ch. 645, 62 Stat. 693, related to the acceptance or demand of a bribe by a customs officer or employee, prior to the general amendment to this chapter by Pub. L. 87–849 and is substantially covered by revised section 201.

§ 214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper

Whoever stipulates for or gives or receives, or consents or agrees to give or receive, any fee, commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit or discount or purchase of any obligation or commitment with respect thereto, either directly from such Federal Reserve bank or indirectly through any financing institution, unless such fee, commission, bonus, or thing of value and all material facts with respect to the arrangement or understanding therefor shall be disclosed in writing in the application or request for such advance, loan, extension of credit, discount, purchase, or commitment, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 695, § 214, formerly § 219; renumbered § 214, Pub. L. 87–849, § 1(d), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

Historical and Revision Notes

Based on section 599 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22(k), as added by act June 19, 1934, ch. 653, § 3, 48 Stat. 1108).

Final sentence of said section 599, imposing civil liability on violators, was omitted as unnecessary, being merely a declaration of that rule of common law which in the absence of statute fixes civil liability on the wrongdoer.

Minor changes were made in phraseology.

Prior Provisions

A prior section 214 of this title was renumbered section 210.

Amendments

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 215. Receipt of commissions or gifts for procuring loans

(a) Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than $1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed $1,000, shall be fined under this title or imprisoned not more than one year, or both.

[(b) Transferred]

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

(June 25, 1948, ch. 645, 62 Stat. 695, § 215, formerly § 220; Sept. 21, 1950, ch. 967, § 4, 64 Stat. 894; renumbered § 215, Pub. L. 87–849, § 1(d), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 98–473, title II, § 1107(a), Oct. 12, 1984, 98 Stat. 2145; Pub. L. 99–370, § 2, Aug. 4, 1986, 100 Stat. 779; Pub. L. 101–73, title IX, §§ 961(a), 962(e)(1), Aug. 9, 1989, 103 Stat. 499, 503; Pub. L. 101–647, title XXV, § 2504(a), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

Historical and Revision Notes

Based on sections 595, 1125, and 1315 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, first sentence of second paragraph, 38 Stat. 272; July 17, 1916, ch. 245, § 211(e), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; June 21, 1917, ch. 32, § 11, 40 Stat. 240; Sept. 26, 1918, ch. 177, § 5, part 22(c), 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, § 216(e), 42 Stat. 1472).

The punishment provisions of the three sections were identical, and all other provisions thereof were similar, except that section 595 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to officers, directors, employees, or attorneys of member banks of the Federal Reserve System, did not include the terms ''agent'' and ''acceptance'' and did not include the phrase ''or extension or renewal of loan or substitution of security''.

Words ''shall be deemed guilty of a misdemeanor'' were omitted because of definition of misdemeanor in section 1 of this title.

Words ''and upon conviction'' and ''and shall upon conviction thereof'' were omitted as surplusage because punishment cannot be imposed until after conviction.

Verbal changes were made for style purposes.

Prior Provisions

A prior section 215 of this title was renumbered section 211.

Amendments

1996—Subsec. (a). Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in concluding provisions.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in concluding provisions.

1990—Subsec. (a). Pub. L. 101–647 substituted ''30'' for ''20'' before ''years'' in concluding provisions.

1989—Subsec. (a). Pub. L. 101–73, § 961(a), in closing provisions, substituted ''$1,000,000'' for ''$5,000'' and ''20 years'' for ''five years''.

Subsec. (b). Pub. L. 101–73, §962(e)(1), transferred subsec. (b) to section 20 of this title.

1986—Pub. L. 99–370 amended section generally, combining in subsec. (a) the statement of prohibited activities formerly set out in subsecs. (a) and (b), transferring to subsec. (b) and expanding provisions formerly set out in subsec. (c) which defined ''financial institution'', transferring to subsec. (c) and amending provisions formerly set out in subsec. (d) relating to applicability of section, and adding new subsec. (d) relating to establishment of guidelines to assist financial institutions in complying with this section.

1984—Pub. L. 98–473 amended section generally. Prior to amendment section read as follows: ''Whoever, being an officer, director, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee, commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both.''

1950—Act Sept. 21, 1950, substituted ''any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation'' for ''a member bank of the Federal Reserve System''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3 of Pub. L. 99–370 provided that: ''This Act and the amendments made by this Act [amending this section and enacting a provision set out as a note under section 201 of this title] shall take effect 30 days after the date of the enactment of this Act [Aug. 4, 1986].''

§216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(Added Pub. L. 101–194, title IV, §407(a), Nov. 30, 1989, 103 Stat. 1753; amended Pub. L. 101–280, §5(f), May 4, 1990, 104 Stat. 159.)

PRIOR PROVISIONS

A prior section 216, acts June 25, 1948, ch. 645, 62 Stat. 695, §216, formerly §221, amended Aug. 21, 1958, Pub. L. 85–699, title VII, §702(a)–(c), 72 Stat. 698; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub. L. 87–849, §1(d), 76 Stat. 1125, related to receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions, prior to repeal by Pub. L. 98–473, title II, §1107(b), Oct. 12, 1984, 98 Stat. 2146.

Another prior section 216, act June 25, 1948, ch. 645, 62 Stat. 694, which related to procurement of a contract by an officer or Member of Congress, was repealed by section 1(c) of Pub. L. 87–849.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–280, §5(f)(1), substituted ''section 203, 204, 205, 207, 208, or 209'' for ''sections 203, 204, 205, 207, 208, and 209''.

Subsec. (b). Pub. L. 101–280, §5(f)(2), substituted ''section 203, 204, 205, 207, 208, or 209'' for ''sections 203, 204, 205, 207, 208, and 209''.

§217. Acceptance of consideration for adjustment of farm indebtedness

Whoever, being an officer or employee of, or person acting for the United States or any agency thereof, accepts any fee, commission, gift, or other consideration in connection with the compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 696, §217, formerly §222; renumbered §217, Pub. L. 87–849, §1(d), Oct. 23, 1962, 76 Stat. 1125; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1150c(b) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 20, 1944, ch. 623, §4(b), 58 Stat. 837).

Words ''upon conviction thereof'' were omitted as surplusage, since punishment cannot be imposed until after conviction.

Other changes were made in phraseology without change of substance.

PRIOR PROVISIONS

A prior section 217 was renumbered section 212 of this title and subsequently repealed.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§218. Voiding transactions in violation of chapter; recovery by the United States

In addition to any other remedies provided by law the President or, under regulations pre-

scribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

(Added Pub. L. 87–849, § 1(e), Oct. 23, 1962, 76 Stat. 1125.)

PRIOR PROVISIONS

A prior section 218 was renumbered section 213 of this title and subsequently repealed.

EFFECTIVE DATE

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as a note under section 201 of this title.

EX. ORD. NO. 12448. EXERCISE OF AUTHORITY

Ex. Ord. No. 12448, Nov. 4, 1983, 48 F.R. 51281, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 218 of title 18 of the United States Code, and in order to provide federal agencies with the authority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

SECTION 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code in relation to which there has been a final conviction for any violation of chapter 11 of title 18.

SEC. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

SEC. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

(a) Written notice of the proposed action shall be given in each case to the person or entity affected;

(b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;

(c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and

(d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218, provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.

RONALD REAGAN.

§ 219. Officers and employees acting as agents of foreign principals

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section ''public official'' means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

(Added Pub. L. 89–486, § 8(b), July 4, 1966, 80 Stat. 249; amended Pub. L. 98–473, title II, § 1116, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 99–646, § 30, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 101–647, title XXXV, § 3511, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 104–65, § 12(b), Dec. 19, 1995, 109 Stat. 701.)

REFERENCES IN TEXT

The Foreign Agents Registration Act of 1938, as amended, referred to in subsec. (a), is act June 8, 1938, ch. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (§ 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. Section 6 of the Foreign Agents Registration Act of 1938 is classified to section 616 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

The Lobbying Disclosure Act of 1995, referred to in subsec. (a), is Pub. L. 104–65, Dec. 19, 1995, 109 Stat. 691, which is classified principally to chapter 26 (§ 1601 et seq.) of Title 2, The Congress. Section 3(6) of the Act is classified to section 1602(6) of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 219 was renumbered section 214.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–65 substituted ''or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act'' for '', as amended,''.

1990—Subsec. (c). Pub. L. 101–647 substituted ''Government'' for ''Governments'' before ''thereof''.

1986—Subsec. (a). Pub. L. 99–646, § 30(1), designated first par. as subsec. (a) and amended it generally, which

prior to amendment read as follows: ''Whoever, being a public official of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.''

Subsec. (b). Pub. L. 99–646, § 30(2), designated second par. as subsec. (b).

Subsec. (c). Pub. L. 99–646, § 30(2), (3), designated third par. as subsec. (c) and substituted ''Delegate'' for ''Delegate from the District of Columbia'' and ''branch of Government'' for ''branch of Government, or a juror''.

1984—Pub. L. 98–473 substituted ''a public official'' for ''an officer or employee'' in first par., and inserted par. defining ''public official''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

EFFECTIVE DATE

Section effective ninety days after July 4, 1966, see section 9 of Pub. L. 89–486, set out as an Effective Date of 1966 Amendment note under section 611 of Title 22, Foreign Relations and Intercourse.

[§§ 220 to 222. Renumbered §§ 215 to 217]

[§ 223. Repealed. Pub. L. 87–849, § 1(c), Oct. 23, 1962, 76 Stat. 1125]

Section, act June 25, 1948, ch. 645, 62 Stat. 696, related to transactions of the Home Owners' Loan Corporation.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

§ 224. Bribery in sporting contests

(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

(c) As used in this section—

(1) The term ''scheme in commerce'' means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

(2) The term ''sporting contest'' means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

(3) The term ''person'' means any individual and any partnership, corporation, association, or other entity.

(Added Pub. L. 88–316, § 1(a), June 6, 1964, 78 Stat. 203; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 225. Continuing financial crimes enterprise

(a) Whoever—

(1) organizes, manages, or supervises a continuing financial crimes enterprise; and

(2) receives $5,000,000 or more in gross receipts from such enterprise during any 24-month period,

shall be fined not more than $10,000,000 if an individual, or $20,000,000 if an organization, and imprisoned for a term of not less than 10 years and which may be life.

(b) For purposes of subsection (a), the term ''continuing financial crimes enterprise'' means a series of violations under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of this title, or section 1341 or 1343 affecting a financial institution, committed by at least 4 persons acting in concert.

(Added Pub. L. 101–647, title XXV, § 2510(a), Nov. 29, 1990, 104 Stat. 4863.)

§ 226. Bribery affecting port security

(a) IN GENERAL.—Whoever knowingly—

(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public or private person, with intent to commit international terrorism or domestic terrorism (as those terms are defined under section 2331), to—

(A) influence any action or any person to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud affecting any secure or restricted area or seaport; or

(B) induce any official or person to do or omit to do any act in violation of the lawful duty of such official or person that affects any secure or restricted area or seaport; or

(2) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for—

(A) being influenced in the performance of any official act affecting any secure or restricted area or seaport; and

(B) knowing that such influence will be used to commit, or plan to commit, international or domestic terrorism,

shall be fined under this title or imprisoned not more than 15 years, or both.

(b) DEFINITION.—In this section, the term ''secure or restricted area'' means an area of a vessel or facility designated as secure in an ap-

proved security plan, as required under section 70103 of title 46, United States Code, and the rules and regulations promulgated under that section.

(Added Pub. L. 109–177, title III, § 309(a), Mar. 9, 2006, 120 Stat. 241.)

CHAPTER 11A—CHILD SUPPORT

Sec.
228. Failure to pay legal child support obligations.

§ 228. Failure to pay legal child support obligations

(a) OFFENSE.—Any person who—

(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000;

(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than 1 year, or is greater than $5,000; or

(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than 2 years, or is greater than $10,000;

shall be punished as provided in subsection (c).

(b) PRESUMPTION.—The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(c) PUNISHMENT.—The punishment for an offense under this section is—

(1) in the case of a first offense under subsection (a)(1), a fine under this title, imprisonment for not more than 6 months, or both; and

(2) in the case of an offense under paragraph (2) or (3) of subsection (a), or a second or subsequent offense under subsection (a)(1), a fine under this title, imprisonment for not more than 2 years, or both.

(d) MANDATORY RESTITUTION.—Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

(e) VENUE.—With respect to an offense under this section, an action may be inquired of and prosecuted in a district court of the United States for—

(1) the district in which the child who is the subject of the support obligation involved resided during a period during which a person described in subsection (a) (referred to in this subsection as an ''obliger'') failed to meet that support obligation;

(2) the district in which the obliger resided during a period described in paragraph (1); or

(3) any other district with jurisdiction otherwise provided for by law.

(f) DEFINITIONS.—As used in this section—

(1) the term ''Indian tribe'' has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a);

(2) the term ''State'' includes any State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(3) the term ''support obligation'' means any amount determined under a court order or an order of an administrative process pursuant to the law of a State or of an Indian tribe to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living.

(Added Pub. L. 102–521, § 2(a), Oct. 25, 1992, 106 Stat. 3403; amended Pub. L. 104–294, title VI, § 607(*l*), Oct. 11, 1996, 110 Stat. 3512; Pub. L. 105–187, § 2, June 24, 1998, 112 Stat. 618.)

AMENDMENTS

1998—Pub. L. 105–187 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to a description of the offense, punishment for an offense, restitution upon conviction of an offense, and definitions of terms used in this section.

1996—Subsec. (d)(2). Pub. L. 104–294 inserted ''commonwealth,'' before ''possession or territory of the United States''.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–187, § 1, June 24, 1998, 112 Stat. 618, provided that: ''This Act [amending this section] may be cited as the 'Deadbeat Parents Punishment Act of 1998'.''

SHORT TITLE

Section 1 of Pub. L. 102–521 provided that: ''This Act [enacting this section and sections 3796cc to 3796cc–6 of Title 42, The Public Health and Welfare, amending section 3563 of this title and section 3797 of Title 42, and enacting provisions set out as a note under section 12301 of Title 42] may be cited as the 'Child Support Recovery Act of 1992'.''

CHAPTER 11B—CHEMICAL WEAPONS

Sec.
229. Prohibited activities.
229A. Penalties.
229B. Criminal forfeitures; destruction of weapons.
229C. Individual self-defense devices.
229D. Injunctions.
229E. Requests for military assistance to enforce prohibition in certain emergencies.
229F. Definitions.

§ 229. Prohibited activities

(a) UNLAWFUL CONDUCT.—Except as provided in subsection (b), it shall be unlawful for any person knowingly—

(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or

(2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

(b) EXEMPTED AGENCIES AND PERSONS.—

(1) IN GENERAL.—Subsection (a) does not apply to the retention, ownership, possession, transfer, or receipt of a chemical weapon by a department, agency, or other entity of the United States, or by a person described in paragraph (2), pending destruction of the weapon.

(2) EXEMPTED PERSONS.—A person referred to in paragraph (1) is—

(A) any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess, transfer, or receive the chemical weapon; or

(B) in an emergency situation, any otherwise nonculpable person if the person is attempting to destroy or seize the weapon.

(c) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct—

(1) takes place in the United States;

(2) takes place outside of the United States and is committed by a national of the United States;

(3) is committed against a national of the United States while the national is outside the United States; or

(4) is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–866.)

REGULATIONS

For authority to issue regulations under this chapter, see section 3 of Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, set out as a note under section 6711 of Title 22, Foreign Relations and Intercourse.

REVOCATIONS OF EXPORT PRIVILEGES

Pub. L. 105–277, div. I, title II, § 211, Oct. 21, 1998, 112 Stat. 2681–872, provided that: ''If the President determines, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that any person within the United States, or any national of the United States located outside the United States, has committed any violation of section 229 of title 18, United States Code, the President may issue an order for the suspension or revocation of the authority of the person to export from the United States any goods or technology (as such terms are defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415)).''

[For authority of Secretary of Commerce to suspend or revoke export privileges pursuant to section 211 of Pub. L. 105–277, set out above, see section 4 of Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, set out as a note under section 6711 of Title 22, Foreign Relations and Intercourse.]

§ 229A. Penalties

(a) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates section 229 of this title shall be fined under this title, or imprisoned for any term of years, or both.

(2) DEATH PENALTY.—Any person who violates section 229 of this title and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—The Attorney General may bring a civil action in the appropriate United States district court against any person who violates section 229 of this title and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(2) RELATION TO OTHER PROCEEDINGS.—The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) REIMBURSEMENT OF COSTS.—The court shall order any person convicted of an offense under subsection (a) to reimburse the United States for any expenses incurred by the United States incident to the seizure, storage, handling, transportation, and destruction or other disposition of any property that was seized in connection with an investigation of the commission of the offense by that person. A person ordered to reimburse the United States for expenses under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered under this subsection to reimburse the United States for the same expenses.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–867.)

§ 229B. Criminal forfeitures; destruction of weapons

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—Any person convicted under section 229A(a) shall forfeit to the United States irrespective of any provision of State law—

(1) any property, real or personal, owned, possessed, or used by a person involved in the offense;

(2) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(3) any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to section 229A(a), that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by section 229A(a), a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) PROCEDURES.—

(1) GENERAL.—Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsections (b) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except that any reference under those subsections to—

(A) ''this subchapter or subchapter II'' shall be deemed to be a reference to section 229A(a); and

(B) ''subsection (a)'' shall be deemed to be a reference to subsection (a) of this section.

(2) TEMPORARY RESTRAINING ORDERS.—

(A) IN GENERAL.—For the purposes of forfeiture proceedings under this section, a

temporary restraining order may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if, in addition to the circumstances described in section 413(e)(2) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2)), the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

(B) WARRANT OF SEIZURE.—If the court enters a temporary restraining order under this paragraph, it shall also issue a warrant authorizing the seizure of such property.

(C) APPLICABLE PROCEDURES.—The procedures and time limits applicable to temporary restraining orders under section 413(e)(2) and (3) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2) and (3)) shall apply to temporary restraining orders under this paragraph.

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense against a forfeiture under subsection (b) that the property—

(1) is for a purpose not prohibited under the Chemical Weapons Convention; and

(2) is of a type and quantity that under the circumstances is consistent with that purpose.

(d) DESTRUCTION OR OTHER DISPOSITION.—The Attorney General shall provide for the destruction or other appropriate disposition of any chemical weapon seized and forfeited pursuant to this section.

(e) ASSISTANCE.—The Attorney General may request the head of any agency of the United States to assist in the handling, storage, transportation, or destruction of property seized under this section.

(f) OWNER LIABILITY.—The owner or possessor of any property seized under this section shall be liable to the United States for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–868.)

§ 229C. Individual self-defense devices

Nothing in this chapter shall be construed to prohibit any individual self-defense device, including those using a pepper spray or chemical mace.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–869.)

§ 229D. Injunctions

The United States may obtain in a civil action an injunction against—

(1) the conduct prohibited under section 229 or 229C of this title; or

(2) the preparation or solicitation to engage in conduct prohibited under section 229 or 229D[1] of this title.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–869.)

§ 229E. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 229 of this title in an emergency situation involving a chemical weapon. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–869.)

§ 229F. Definitions

In this chapter:

(1) CHEMICAL WEAPON.—The term ''chemical weapon'' means the following, together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter as long as the type and quantity is consistent with such a purpose.

(B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

(2) CHEMICAL WEAPONS CONVENTION; CONVENTION.—The terms ''Chemical Weapons Convention'' and ''Convention'' mean the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

(3) KEY COMPONENT OF A BINARY OR MULTICOMPONENT CHEMICAL SYSTEM.—The term ''key component of a binary or multicomponent chemical system'' means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

(4) NATIONAL OF THE UNITED STATES.—The term ''national of the United States'' has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(5) PERSON.—The term ''person'', except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumen-

[1] So in original.

tality or political subdivision of any such government or nation, or other entity located in the United States.

(6) PRECURSOR.—

(A) IN GENERAL.—The term ''precursor'' means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

(B) LIST OF PRECURSORS.—Precursors which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(7) PURPOSES NOT PROHIBITED BY THIS CHAPTER.—The term ''purposes not prohibited by this chapter'' means the following:

(A) PEACEFUL PURPOSES.—Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity.

(B) PROTECTIVE PURPOSES.—Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

(C) UNRELATED MILITARY PURPOSES.—Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm.

(D) LAW ENFORCEMENT PURPOSES.—Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

(8) TOXIC CHEMICAL.—

(A) IN GENERAL.—The term ''toxic chemical'' means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(B) LIST OF TOXIC CHEMICALS.—Toxic chemicals which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(9) UNITED STATES.—The term ''United States'' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

(A) any of the places within the provisions of paragraph (41)[1] of section 40102 of title 49, United States Code;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (37),[1] respectively, of section 40102 of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 70502(b) of title 46, United States Code.

(Added Pub. L. 105–277, div. I, title II, § 201(a), Oct. 21, 1998, 112 Stat. 2681–869; amended Pub. L. 109–304, § 17(d)(1), Oct. 6, 2006, 120 Stat. 1707.)

REFERENCES IN TEXT

Paragraphs (17), (37), and (41) of section 40102 of title 49, referred to in par. (9)(A), (B), probably means paragraphs (17), (37), and (41) of subsection (a) of section 40102 of title 49. Paragraphs (37) and (41) were subsequently redesignated as (41) and (46), respectively, by Pub. L. 108–176, title II, § 225(a)(1), (3), Dec. 12, 2003, 117 Stat. 2528.

AMENDMENTS

2006—Par. (9)(C). Pub. L. 109–304 substituted ''section 70502(b) of title 46, United States Code'' for ''section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b))''.

CHAPTER 12—CIVIL DISORDERS

Sec.
231. Civil disorders.
232. Definitions.
233. Preemption.

AMENDMENTS

1968—Pub. L. 90–284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90, added chapter 12 and items 231 to 233.

§ 231. Civil disorders

(a)(1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or

(2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or

(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—

Shall be fined under this title or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

(Added Pub. L. 90–284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90; amended Pub. L. 103–322, title

[1] See References in Text note below.

XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in concluding par.

SHORT TITLE

Section 1001 of title X of Pub. L. 90–284 provided that: ''This title [enacting this chapter] may be cited as the 'Civil Obedience Act of 1968'.''

§ 232. Definitions

For purposes of this chapter:

(1) The term ''civil disorder'' means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

(2) The term ''commerce'' means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia.

(3) The term ''federally protected function'' means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof; and such term shall specifically include, but not be limited to, the collection and distribution of the United States mails.

(4) The term ''firearm'' means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

(5) The term ''explosive or incendiary device'' means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile, or similar device, and (C) any incendiary bomb or grenade, fire bomb, or similar device, including any device which (i) consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual acting alone.

(6) The term ''fireman'' means any member of a fire department (including a volunteer fire department) of any State, any political subdivision of a State, or the District of Columbia.

(7) The term ''law enforcement officer'' means any officer or employee of the United States, any State, any political subdivision of a State, or the District of Columbia, while engaged in the enforcement or prosecution of any of the criminal laws of the United States, a State, any political subdivision of a State, or the District of Columbia; and such term shall specifically include members of the National Guard (as defined in section 101 of title 10), members of the organized militia of any State, or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included within the National Guard (as defined in section 101 of title 10), and members of the Armed Forces of the United States, while engaged in suppressing acts of violence or restoring law and order during a civil disorder.

(8) The term ''State'' includes a State of the United States, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 90–284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 91; amended Pub. L. 101–647, title XII, § 1205(a), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 102–484, div. A, title X, § 1051(b)(1), Oct. 23, 1992, 106 Stat. 2498.)

AMENDMENTS

1992—Par. (7). Pub. L. 102–484 substituted ''members of the National Guard (as defined in section 101 of title 10),'' for '', but shall not be limited to, members of the National Guard, as defined in section 101(9) of title 10, United States Code,'' and ''not included within the National Guard (as defined in section 101 of title 10),'' for '', not included within the definition of National Guard as defined by such section 101(9),''.

1990—Par. (8). Pub. L. 101–647 added par. (8).

§ 233. Preemption

Nothing contained in this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which any provisions of the chapter operate to the exclusion of State or local laws on the same subject matter, nor shall any provision of this chapter be construed to invalidate any provision of State law unless such provision is inconsistent with any of the purposes of this chapter or any provision thereof.

(Added Pub. L. 90–284, title X, § 1002(a), Apr. 11, 1968, 82 Stat. 91.)

CHAPTER 13—CIVIL RIGHTS

Sec.
241. Conspiracy against rights.
242. Deprivation of rights under color of law.
243. Exclusion of jurors on account of race or color.
244. Discrimination against person wearing uniform of armed forces.
245. Federally protected activities.
246. Deprivation of relief benefits.
247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs.
248. Freedom of access to clinic entrances.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330023(a)(1), Sept. 13, 1994, 108 Stat. 2150, substituted ''Freedom of access to clinic entrances'' for ''Blocking access to reproductive health services'' in item 248.

Pub. L. 103–259, § 4, May 26, 1994, 108 Stat. 697, added item 248.

1988—Pub. L. 100–690, title VII, § 7018(b)(2), Nov. 18, 1988, 102 Stat. 4396, struck out ''of citizens'' after ''rights'' in item 241.

Pub. L. 100–346, § 3, June 24, 1988, 102 Stat. 645, added item 247.

1976—Pub. L. 94–453, § 4(b), Oct. 2, 1976, 90 Stat. 1517, added item 246.

1968—Pub. L. 90–284, title I, § 102, Apr. 11, 1968, 82 Stat. 75, added item 245.

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or

District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90–284, title I, § 103(a), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100–690, title VII, § 7018(a), (b)(1), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title VI, § 60006(a), title XXXII, §§ 320103(a), 320201(a), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104–294, title VI, §§ 604(b)(14)(A), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 51 (Mar. 4, 1909, ch. 321, § 19, 35 Stat. 1092).

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act.

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

AMENDMENTS

1996—Pub. L. 104–294, § 607(a), substituted ''any State, Territory, Commonwealth, Possession, or District'' for ''any State, Territory, or District'' in first par.

Pub. L. 104–294, § 604(b)(14)(A), repealed Pub. L. 103–322, § 320103(a)(1). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(1)(L), substituted ''They shall be fined under this title'' for ''They shall be fined not more than $10,000'' in third par.

Pub. L. 103–322, § 320201(a), substituted ''person in any State'' for ''inhabitant of any State'' in first par.

Pub. L. 103–322, § 320103(a)(2)–(4), in third par., substituted ''results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both'' for ''results, they shall be subject to imprisonment for any term of years or for life''.

Pub. L. 103–322, § 320103(a)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(L), above, was repealed by Pub. L. 104–294, § 604(b)(14)(A).

Pub. L. 103–322, § 60006(a), substituted '', or may be sentenced to death.'' for period at end of third par.

1988—Pub. L. 100–690 struck out ''of citizens'' after ''rights'' in section catchline and substituted ''inhabitant of any State, Territory, or District'' for ''citizen'' in text.

1968—Pub. L. 90–284 increased limitation on fines from $5,000 to $10,000 and provided for imprisonment for any term of years or for life when death results.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(14)(A) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–155, § 1, July 3, 1996, 110 Stat. 1392, provided that: ''This Act [amending section 247 of this title and section 10602 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under section 247 of this title, and amending provisions set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Church Arson Prevention Act of 1996'.''

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90–284, title I, § 103(b), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100–690, title VII, § 7019, Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title VI, § 60006(b), title XXXII, §§ 320103(b), 320201(b), title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104–294, title VI, §§ 604(b)(14)(B), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 52 (Mar. 4, 1909, ch. 321, § 20, 35 Stat. 1092).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

A minor change was made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294, § 607(a), substituted ''any State, Territory, Commonwealth, Possession, or District'' for ''any State, Territory, or District''.

Pub. L. 104–294, § 604(b)(14)(B), repealed Pub. L. 103–322, § 320103(b)(1). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(1)(H), substituted ''shall be fined under this title'' for ''shall be fined not more than $1,000'' after ''citizens,''.

Pub. L. 103–322, § 320201(b), substituted ''any person in any State'' for ''any inhabitant of any State'' and ''on

account of such person'' for ''on account of such inhabitant''.

Pub. L. 103–322, § 320103(b)(2)–(5), substituted ''bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both'' for ''bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life''.

Pub. L. 103–322, § 320103(b)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(14)(B).

Pub. L. 103–322, § 60006(b), inserted before period at end '', or may be sentenced to death''.

1988—Pub. L. 100–690 inserted ''and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both;'' after ''or both;''.

1968—Pub. L. 90–284 provided for imprisonment for any term of years or for life when death results.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(14)(B) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 243. Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

(June 25, 1948, ch. 645, 62 Stat. 696.)

HISTORICAL AND REVISION NOTES

Based on section 44 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Mar. 1, 1875, ch. 114, § 4, 18 Stat. 336).

Words ''be deemed guilty of a misdemeanor, and'' were deleted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Words ''on conviction thereof'' were omitted as unnecessary, since punishment follows only after conviction.

Minimum punishment provisions were omitted. (See reviser's note under section 203 of this title.)

Minor changes in phraseology were made.

§ 244. Discrimination against person wearing uniform of armed forces

Whoever, being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States, causes any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 697; May 24, 1949, ch. 139, § 5, 63 Stat. 90; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 523 (Mar. 1, 1911, ch. 187, 36 Stat. 963; Aug. 24, 1912, ch. 387, § 1, 37 Stat. 512; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800).

Words ''guilty of a misdemeanor'', following ''shall be'', were omitted as unnecessary in view of definition of ''misdemeanor'' in section 1 of this title. (See reviser's note under section 212 of this title.)

Changes were made in phraseology.

1949 ACT

This section [section 5] substitutes, in section 244 of title 18, U.S.C., ''any of the armed forces of the United States'' for the enumeration of specific branches and thereby includes the Air Force, formerly part of the Army. This clarification is necessary because of the establishment of the Air Force as a separate branch of the Armed Forces by the act of July 26, 1947.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1949—Act May 24, 1949, substituted ''any of the armed forces of the United States'' for enumeration of the specific branches.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under this title, or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death. As used in this section, the term ''participating lawfully in speech or peaceful assembly'' shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term ''law enforcement officer'' means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

(d) For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 90–284, title I, § 101(a), Apr. 11, 1968, 82 Stat. 73; amended Pub. L. 100–690, title VII, § 7020(a), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 101–647, title XII, § 1205(b), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 103–322, title VI, § 60006(c), title XXXII, § 320103(c), title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 1971, 2109, 2147; Pub. L. 104–294, title VI, § 604(b)(14)(C), (37), Oct. 11, 1996, 110 Stat. 3507, 3509.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 amended Pub. L. 103–322, § 320103(c). See 1994 Amendment notes below.

1994—Subsec. (b). Pub. L. 103–322, § 330016(1)(L), substituted ''shall be fined under this title'' for ''shall be fined not more than $10,000'' before '', or imprisoned not more than ten years'' in concluding provisions.

Pub. L. 103–322, § 330016(1)(H), substituted ''shall be fined under this title'' for ''shall be fined not more than $1,000'' before '', or imprisoned not more than one year'' in concluding provisions.

Pub. L. 103–322, § 320103(c)(4)–(6), in concluding provisions, inserted ''from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill,'' after ''death results'' and substituted ''shall be fined under this title or imprisoned for any term of years or for life, or both'' for ''shall be subject to imprisonment for any term of years or for life''.

Pub. L. 103–322, § 320103(c)(3), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(L), above, was repealed by Pub. L. 104–294, § 604(b)(14)(C).

Pub. L. 103–322, § 320103(c)(2), as amended by Pub. L. 104–294, § 604(b)(37), inserted ''from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire'' after ''bodily injury results'' in concluding provisions.

Pub. L. 103–322, § 320103(c)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(14)(C).

Pub. L. 103–322, § 60006(c), in concluding provisions, inserted '', or may be sentenced to death'' before ''. As used in this section''.

1990—Subsec. (d). Pub. L. 101–647 added subsec. (d).

1988—Subsec. (a)(1). Pub. L. 100–690 substituted '', the Deputy'' for ''or the Deputy'' and inserted '', the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General'' after ''Deputy Attorney General''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

FAIR HOUSING

Section 101(b) of Pub. L. 90–284 provided that: ''Nothing contained in this section [enacting this section] shall apply to or affect activities under title VIII of this Act [sections 3601 to 3619 of Title 42, The Public Health and Welfare].''

RIOTS OR CIVIL DISTURBANCES, SUPPRESSION AND RESTORATION OF LAW AND ORDER; ACTS OR OMISSIONS OF ENFORCEMENT OFFICERS AND MEMBERS OF MILITARY SERVICE NOT SUBJECT TO THIS SECTION

Section 101(c) of Pub. L. 90–284 provided that: ''The provisions of this section [enacting this section] shall not apply to acts or omissions on the part of law enforcement officers, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State or the District of Columbia, not covered by such section 101(9), or members of the Armed Forces of the United States, who are engaged in suppressing a riot or civil disturbance or restoring law and order during a riot or civil disturbance.''

§ 246. Deprivation of relief benefits

Whoever directly or indirectly deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible in whole or in part by any Act of Congress appropriating funds for work relief or relief purposes, on account of political affiliation, race, color, sex, religion, or national origin, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 94–453, § 4(a), Oct. 2, 1976, 90 Stat. 1517; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (d).

(b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce.

(c) Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be punished as provided in subsection (d).

(d) The punishment for a violation of subsection (a) of this section shall be—

(1) if death results from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death;

(2) if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment for not more that 40 years, or both;

(3) if bodily injury to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title and imprisonment for not more than 20 years, or both; and

(4) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.

(e) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(f) As used in this section, the term ''religious real property'' means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship.

(g) No person shall be prosecuted, tried, or punished for any noncapital offense under this section unless the indictment is found or the information is instituted not later than 7 years after the date on which the offense was committed.

(Added Pub. L. 100–346, §1, June 24, 1988, 102 Stat. 644; amended Pub. L. 103–322, title VI, §60006(d), title XXXII, §320103(d), Sept. 13, 1994, 108 Stat. 1971, 2110; Pub. L. 104–155, §3, July 3, 1996, 110 Stat. 1392; Pub. L. 104–294, title VI, §§601(c)(3), 605(r), Oct. 11, 1996, 110 Stat. 3499, 3511; Pub. L. 107–273, div. B, title IV, §4002(c)(1), (e)(4), Nov. 2, 2002, 116 Stat. 1808, 1810.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–273, §4002(c)(1), repealed amendment by Pub. L. 107–273, §605(r). See 1996 Amendment note below.

Subsec. (e). Pub. L. 107–273, §4002(e)(4), made technical correction to directory language of Pub. L. 104–294, §601(c)(3). See 1996 Amendment note below.

1996—Subsec. (a). Pub. L. 104–155, §3(1), substituted ''subsection (d)'' for ''subsection (c) of this section'' in concluding provisions.

Subsec. (b). Pub. L. 104–155, §3(3), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The circumstances referred to in subsection (a) are that—

''(1) in committing the offense, the defendant travels in interstate or foreign commerce, or uses a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce; and

''(2) in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction is more than $10,000.''

Subsec. (c). Pub. L. 104–155, §3(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–294, §605(r), which directed the substitution of ''certification'' for ''notification'' in subsec. (d), was repealed by Pub. L. 107–273, §4002(c)(1).

Subsec. (d). Pub. L. 104–155, §3(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 104–155, §3(4)(C), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 104–155, §3(4)(A), (B), redesignated par. (2) as (3), inserted ''to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section,'' after ''bodily injury'' and substituted ''20 years'' for ''ten years''. Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 104–155, §3(4)(B), redesignated par. (3) as (4).

Subsec. (e). Pub. L. 104–294, §601(c)(3), as amended by Pub. L. 107–273, §4002(e)(4), substituted ''certification'' for ''notification''.

Pub. L. 104–155, §3(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–155, §3(2), (5), redesignated subsec. (e) as (f), inserted '', including fixtures or religious objects contained within a place of religious worship'' before the period, and substituted ''religious real property'' for ''religious property'' in two places.

Subsec. (g). Pub. L. 104–155, §3(6), added subsec. (g).

1994—Subsec. (c)(1). Pub. L. 103–322, §320103(d)(1), inserted ''from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill'' after ''death results''.

Pub. L. 103–322, §60006(d), inserted '', or may be sentenced to death'' after ''or both''.

Subsec. (c)(2). Pub. L. 103–322, §320103(d)(2), struck out ''serious'' before ''bodily'' and inserted ''from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire'' after ''injury results''.

Subsec. (e). Pub. L. 103–322, §320103(d)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''As used in this section—

''(1) the term 'religious real property' means any church, synagogue, mosque, religious cemetery, or other religious real property; and

''(2) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

Pub. L. 107–273, div. B, title IV, §4002(e)(4), Nov. 2, 2002, 116 Stat. 1810, provided that the amendment made by section 4002(e)(4) is effective Oct. 11, 1996.

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 104–155 provided that: ''The Congress finds the following:

''(1) The incidence of arson or other destruction or vandalism of places of religious worship, and the incidence of violent interference with an individual's lawful exercise or attempted exercise of the right of religious freedom at a place of religious worship pose a serious national problem.

''(2) The incidence of arson of places of religious worship has recently increased, especially in the context of places of religious worship that serve predominantly African-American congregations.

''(3) Changes in Federal law are necessary to deal properly with this problem.

''(4) Although local jurisdictions have attempted to respond to the challenges posed by such acts of destruction or damage to religious property, the problem is sufficiently serious, widespread, and interstate in scope to warrant Federal intervention to assist State and local jurisdictions.

''(5) Congress has authority, pursuant to the Commerce Clause of the Constitution, to make acts of destruction or damage to religious property a violation of Federal law.

''(6) Congress has authority, pursuant to section 2 of the 13th amendment to the Constitution, to make actions of private citizens motivated by race, color, or ethnicity that interfere with the ability of citizens to hold or use religious property without fear of attack, violations of Federal criminal law.''

§248. Freedom of access to clinic entrances

(a) PROHIBITED ACTIVITIES.—Whoever—

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to in-

timidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

(b) PENALTIES.—Whoever violates this section shall—

(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than $10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall, notwithstanding section 3571, be not more than $25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

(c) CIVIL REMEDIES.—

(1) RIGHT OF ACTION.—

(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, the Attorney General may commence a civil action in any appropriate United States District Court.

(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

(i) in an amount not exceeding $10,000 for a nonviolent physical obstruction and $15,000 for other first violations; and

(ii) in an amount not exceeding $15,000 for a nonviolent physical obstruction and $25,000 for any other subsequent violation.

(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, such Attorney General may commence a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any appropriate United States District Court.

(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, occurring outside a facility, regardless of the point of view expressed, or to limit any existing legal remedies for such interference;

(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies; or

(4) to interfere with the enforcement of State or local laws regulating the performance of abortions or other reproductive health services.

(e) DEFINITIONS.—As used in this section:

(1) FACILITY.—The term ''facility'' includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(2) INTERFERE WITH.—The term ''interfere with'' means to restrict a person's freedom of movement.

(3) INTIMIDATE.—The term ''intimidate'' means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

(4) PHYSICAL OBSTRUCTION.—The term ''physical obstruction'' means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

(5) REPRODUCTIVE HEALTH SERVICES.—The term ''reproductive health services'' means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

(6) STATE.—The term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 103–259, § 3, May 26, 1994, 108 Stat. 694; amended Pub. L. 103–322, title XXXIII, § 330023(a)(2), (3), Sept. 13, 1994, 108 Stat. 2150.)

AMENDMENTS

1994—Pub. L. 103–322, § 330023(a)(2), amended section catchline generally. Prior to amendment, catchline read as follows: ''§ 248 Freedom of Access to Clinic Entrances.''

Subsec. (b). Pub. L. 103–322, § 330023(a)(3), in concluding provisions, inserted '', notwithstanding section 3571,'' before ''be not more than $25,000''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330023(b) of Pub. L. 103–322 provided that: ''The amendments made by this subsection (a) [amending this section] shall take effect on the date of enactment of the Freedom of Access to Clinic Entrances Act of 1994 [May 26, 1994].''

EFFECTIVE DATE

Section 6 of Pub. L. 103–259 provided that: ''This Act [see Short Title note below] takes effect on the date of the enactment of this Act [May 26, 1994], and shall apply only with respect to conduct occurring on or after such date.''

SHORT TITLE

Section 1 of Pub. L. 103–259 provided that: ''This Act [enacting this section and provisions set out as notes under this section] may be cited as the 'Freedom of Access to Clinic Entrances Act of 1994'.''

SEVERABILITY OF PROVISIONS

Section 5 of Pub. L. 103–259 provided that: ''If any provision of this Act [see Short Title note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any other person or circumstance shall not be affected thereby.''

CONGRESSIONAL STATEMENT OF PURPOSE

Section 2 of Pub. L. 103–259 provided that: ''Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article I of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act [see Short Title note above] to protect and promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services.''

CHAPTER 15—CLAIMS AND SERVICES IN MATTERS AFFECTING GOVERNMENT

Sec.
[281 to 284. Repealed.]
285. Taking or using papers relating to claims.
286. Conspiracy to defraud the Government with respect to claims.
287. False, fictitious or fraudulent claims.
288. False claims for postal losses.
289. False claims for pensions.
290. Discharge papers withheld by claim agent.
291. Purchase of claims for fees by court officials.
292. Solicitation of employment and receipt of unapproved fees concerning Federal employees' compensation.
[293. Repealed.]

AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, repealed amendment by Pub. L. 104–294, § 602(d). See 1996 Amendment note below.

1996—Pub. L. 104–106, div. D, title XLIII, § 4304(c)(2), Feb. 10, 1996, 110 Stat. 664, struck out item 281 ''Restrictions on retired military officers regarding certain matters affecting the Government''. Pub. L. 104–294, title VI, § 602(d), Oct. 11, 1996, 110 Stat. 3503, which amended analysis identically, was repealed by Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

1989—Pub. L. 101–123, § 3(a), Oct. 23, 1989, 103 Stat. 760, struck out item 293 ''Limitation on Government contract costs''.

1988—Pub. L. 100–700, § 3(b), Nov. 19, 1988, 102 Stat. 4633, added item 293.

1987—Pub. L. 100–180, div. A, title VIII, § 822(b)(2), Dec. 4, 1987, 101 Stat. 1133, added item 281, struck out former item 281 ''Compensation to Members of Congress, officers, and others in matters affecting Government'', item 282 ''Practice in Court of Claims by Members of Congress'', item 283 ''Officers or employees interested in claims against the Government'', and item 284 ''Disqualification of former officers and employees in matters connected with former duties''.

1966—Pub. L. 89–554, § 3(a), Sept. 6, 1966, 80 Stat. 608, added item 292.

[§ 281. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(3), Feb. 10, 1996, 110 Stat. 664; Pub. L. 104–294, title VI, § 602(d), Oct. 11, 1996, 110 Stat. 3503]

Section, added Pub. L. 100–180, div. A, title VIII, § 822(b)(1), Dec. 4, 1987, 101 Stat. 1132, related to restrictions on retired military officers regarding certain matters affecting the Government.

Pub. L. 104–294, title VI, § 602(d), Oct. 11, 1996, 110 Stat. 3503, which repealed this section, was repealed by Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

A prior section 281, acts June 25, 1948, ch. 645, 62 Stat. 697; May 24, 1949, ch. 139, § 6, 63 Stat. 90, which related to compensation to Members of Congress, officers and others in matters affecting the Government, was re-

pealed by Pub. L. 87–849, §§ 2, 4, Oct. 23, 1962, 76 Stat. 1126, eff. 90 days after Oct. 23, 1962, which repeal continued limited applicability to retired officers of the Armed Forces of the United States. Pub. L. 100–180, div. A, title VIII, § 822(a), Dec. 4, 1987, 101 Stat. 1132, repealed such prior section 281 to the extent that it had not been repealed by section 2 of Pub. L. 87–849. See section 203 of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

[§ 282. Repealed. Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, act June 25, 1948, ch. 645, 62 Stat. 697, related to practice in Court of Claims by Members of Congress. Section was supplanted by section 204 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

[§ 283. Repealed. Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126; Pub. L. 100–180, div. A, title VIII, § 822(a), Dec. 4, 1987, 101 Stat. 1132]

Section, acts June 25, 1948, ch. 645, 62 Stat. 697; June 28, 1949, ch. 268, § 2(b), 63 Stat. 280, related to officers or employees interested in claims against the government. Pub. L. 87–849 continued limited applicability to retired officers of the Armed Forces of the United States. Pub. L. 100–180 repealed section to the extent that it had not been repealed by section 2 of Pub. L. 87–849. Section was supplanted by section 205 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

[§ 284. Repealed. Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, acts June 25, 1948, ch. 645, 62 Stat. 698; May 24, 1949, ch. 139, § 7, 63 Stat. 90, related to disqualifications of former officers and employees in matters connected with former duties. Section was supplanted by section 207 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

§ 285. Taking or using papers relating to claims

Whoever, without authority, takes and carries away from the place where it was filed, deposited, or kept by authority of the United States, any certificate, affidavit, deposition, statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper prepared, fitted, or intended to be used or presented to procure the payment of money from or by the United States or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof has or has not already been allowed or paid; or

Whoever presents, uses, or attempts to use any such document, record, file, or paper so taken and carried away, to procure the payment of any money from or by the United States, or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 698; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 92 (Mar. 4, 1909, ch. 321, § 40, 35 Stat. 1096).

Word ''employee'' was inserted after ''officer'' in two places to clarify scope of section.

The words ''five years'' were substituted for ''ten years'' in the punishment provision to conform to like provisions in similar offenses. (See section 1001 of this title.)

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 698; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 83 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

To clarify meaning of ''department'' the word ''agency'' was inserted after it. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Words ''or any corporation in which the United States of America is a stockholder'' were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

(June 25, 1948, ch. 645, 62 Stat. 698; Pub. L. 99–562, § 7, Oct. 27, 1986, 100 Stat. 3169.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 80 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Section 80 of title 18, U.S.C., 1940 ed., was divided into two parts. That portion making it a crime to present false claims was retained as this section. The part relating to false statements is now section 1001 of this title.

To clarify meaning of ''department'' words ''agency'' and ''or agency'' were inserted after it. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Words ''or any corporation in which the United States of America is a stockholder'' which appeared in two places were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

The words ''five years'' were substituted for ''ten years'' to harmonize the punishment provisions of comparable sections involving offenses of the gravity of felonies, but not of such heinous character as to warrant a 10-year punishment. (See sections 914, 1001, 1002, 1005, 1006 of this title.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1986—Pub. L. 99–562 substituted ''imprisoned not more than five years and shall be subject to a fine in the amount provided in this title'' for ''fined not more than $10,000 or imprisoned not more than five years, or both''.

INCREASED PENALTIES FOR FALSE CLAIMS IN DEFENSE PROCUREMENT

Pub. L. 99–145, title IX, § 931(a), Nov. 8, 1985, 99 Stat. 699, provided that: ''Notwithstanding sections 287 and 3623 of title 18, United States Code, the maximum fine that may be imposed under such section for making or presenting any claim upon or against the United States related to a contract with the Department of Defense, knowing such claim to be false, fictitious, or fraudulent, is $1,000,000.''

[Section 931(c) of Pub. L. 99–145 provided that section 931(a) is applicable to claims made or presented on or after Nov. 8, 1985.]

§ 288. False claims for postal losses

Whoever makes, alleges, or presents any claim or application for indemnity for the loss of any registered or insured letter, parcel, package, or other article or matter, or the contents thereof, knowing such claim or application to be false, fictitious, or fraudulent; or

Whoever for the purpose of obtaining or aiding to obtain the payment or approval of any such claim or application, makes or uses any false statement, certificate, affidavit, or deposition; or

Whoever knowingly and willfully misrepresents, or misstates, or, for the purpose aforesaid, knowingly and willfully conceals any material fact or circumstance in respect of any such claim or application for indemnity—

Shall be fined under this title or imprisoned not more than one year, or both.

Where the amount of such claim or application for indemnity is less than $1,000 only a fine shall be imposed.

(June 25, 1948, ch. 645, 62 Stat. 698; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 354 (Mar. 4, 1909, ch. 321, § 224, 35 Stat. 1133; Aug. 5, 1939, ch. 429, 53 Stat. 1203).

Reference to persons causing, assisting, aiding, or abetting, was omitted as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in fifth par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in fourth par.

§ 289. False claims for pensions

Whoever knowingly and willfully makes, or presents any false, fictitious or fraudulent affidavit, declaration, certificate, voucher, endorsement, or paper or writing purporting to be such, concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Secretary of Veterans Affairs, or knowingly or willfully makes or presents any paper required as a voucher in drawing a pension, which paper bears a date subsequent to that upon which it was actually signed or acknowledged by the pensioner; or

Whoever knowingly and falsely certifies that the declarant, affiant, or witness named in such declaration, affidavit, voucher, endorsement, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 699; Pub. L. 102–54, § 13(f)(1), June 13, 1991, 105 Stat. 275; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 81 of title 18, section 126 of title 38, Pensions, Bonuses, and Veterans' Relief, and section 787 of title 43, Public Lands, all of U.S.C., 1940 ed. (R.S. § 4746; July 7, 1898, ch. 578, 30 Stat. 718; Aug. 17, 1912, ch. 301, § 1, 37 Stat. 312; July 3, 1930, ch. 863, § 2, 46 Stat. 1016).

Reference to persons aiding or assisting or causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''or bounty land'', before ''prosecution of any claim for pension'', were omitted as obsolete. (See reviser's note under section 290 of this title.)

Upon authority of 1930 enactment words ''Administrator of Veterans' Affairs'' were substituted for ''Commissioner of Pensions or of the Secretary of the Interior'', which appeared in 1898 enactment.

The fine was changed from ''$500'' for ''$10,000'' to conform with punishment provision of section 287 of this title.

Minor changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1991—Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

§ 290. Discharge papers withheld by claim agent

Whoever, being a claim agent, attorney, or other person engaged in the collection of claims for pay, pension, or other allowances for any sol-

dier, sailor, or marine, or for any commissioned officer of the military or naval forces, or for any person who may have been a soldier, sailor, marine, or officer of the regular or volunteer forces of the United States, or for his dependents or beneficiaries, retains, without the consent of the owner or owners thereof, or refuses to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers of any such soldier, sailor, or marine, or commissioned officer, which may have been placed in his hands for the purpose of collecting said claims, shall be fined under this title or imprisoned not more than six months, or both; and shall be debarred from prosecuting any such claim in any department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 699; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 100 of title 31, Money and Finance, section 130 of title 38, Pensions, Bonuses, and Veterans' Relief, and section 841 of title 43, Public Lands, all U.S.C., 1940 ed. (May 21, 1872, ch. 178, 17 Stat. 137).

Words ''deemed guilty of a misdemeanor'' were deleted as unnecessary. (See definition of ''misdemeanor'' in section 1 of this title.)

Words ''and shall upon conviction, be'' were omitted as surplusage since punishment can follow only after conviction.

To clarify meaning of ''executive department'' word ''executive'' before ''department'' was deleted and words ''or agency'' were inserted after it. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Words ''bounty'', before ''pension'', and ''or land warrant'', before ''of any such soldier'', were deleted as obsolete. According to regulations, Circular 1151, January 8, 1929, issued by the Secretary of the Interior and the General Land Office (see 43 CFR 131.1–131.2) ''warrants for bounty lands were and are issued by the Commissioner of Pensions (Administrator of Veterans' Affairs) for services in wars or battles prior to March 3, 1855 only.'' Further, it is stated that ''Warrants can not now be 'located' upon the public lands. The locating privilege was denied except in the state of Missouri after the passage of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. § 700), and there are no lands known to the General Land Office to be subject to warrant location in Missouri.''

Words ''and honorably discharged'' were omitted as unnecessary and words ''or for his dependents or beneficiaries'' were inserted after ''United States'' so as to embrace an important class of persons who employ attorneys or agents in the collection of claims permitted by statute.

Minor changes of phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 291. Purchase of claims for fees by court officials

Whoever, being a judge, clerk, or deputy clerk of any court of the United States or a Territory or Possession thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, magistrate judge, or other person holding any office or employment, or position of trust or profit under the United States, directly or indirectly purchases at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of such court, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 699; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 193 (Mar. 4, 1909, ch. 321, § 104, 35 Stat. 1107).

Word ''Possession'' was inserted to clarify scope of section.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrate'' substituted for ''commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

§ 292. Solicitation of employment and receipt of unapproved fees concerning Federal employees' compensation

Whoever solicits employment for himself or another in respect to a case, claim, or award for compensation under, or to be brought under, subchapter I of chapter 81 of title 5; or

Whoever receives a fee, other consideration, or gratuity on account of legal or other services furnished in respect to a case, claim, or award for compensation under subchapter I of chapter 81 of title 5, unless the fee, consideration, or gratuity is approved by the Secretary of Labor—

Shall, for each offense, be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(b), Sept. 6, 1966, 80 Stat. 608; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 773(b) (last sentence).	Oct. 14, 1949, ch. 691, § 208 ''Sec. 23(b) (last sentence)'', 63 Stat. 865.

The words ''under subchapter I of chapter 81 of title 5'' are substituted for ''under this Act'' (Federal Employees' Compensation Act) to reflect the codification of the Act in title 5, United States Code.

The words ''is approved by the Secretary of Labor'' are substituted for ''is so approved''. The words ''Secretary of Labor'' are substituted for ''Administrator'' (Federal Security Administrator) on authority of 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 64 Stat. 1271.

The words ''shall be guilty of a misdemeanor'' are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words ''and upon conviction thereof'' are omitted as unnecessary because punishment can be imposed only after conviction.

The words ''or both'' are substituted for ''or by both such fine and imprisonment''.

Minor changes in phraseology are made to conform to the style of title 18.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

[§ 293. Repealed. Pub. L. 101–123, § 3(a), Oct. 23, 1989, 103 Stat. 760]

Section, added Pub. L. 100–700, § 3(a), Nov. 19, 1988, 102 Stat. 4632, related to limitation on Government contract costs.

EFFECTIVE DATE OF REPEAL

Section 3(b) of Pub. L. 101–123 provided that: ''The repeal made by this section [repealing this section and provisions formerly set out as a note below] shall be deemed to be effective on the date of enactment of Public Law 100–700 [Nov. 19, 1988].''

EFFECTIVE DATE

Pub. L. 100–700, § 3(c), Nov. 19, 1988, 102 Stat. 4633, which provided that this section was to apply to contracts entered into after Nov. 19, 1988, was repealed by Pub. L. 101–123, § 3(a), Oct. 23, 1989, 103 Stat. 760.

CHAPTER 17—COINS AND CURRENCY

Sec.
331. Mutilation, diminution, and falsification of coins.
332. Debasement of coins; alteration of official scales, or embezzlement of metals.
333. Mutilation of national bank obligations.
334. Issuance of Federal Reserve or national bank notes.
335. Circulation of obligations of expired corporations.
336. Issuance of circulating obligations of less than $1.
337. Coins as security for loans.

AMENDMENTS

1965—Pub. L. 89–81, title II, § 212(b), July 23, 1965, 79 Stat. 257, added item 337.

§ 331. Mutilation, diminution, and falsification of coins

Whoever fraudulently alters, defaces, mutilates, impairs, diminishes, falsifies, scales, or lightens any of the coins coined at the mints of the United States, or any foreign coins which are by law made current or are in actual use or circulation as money within the United States; or

Whoever fraudulently possesses, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States, any such coin, knowing the same to be altered, defaced, mutilated, impaired, diminished, falsified, scaled, or lightened—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; July 16, 1951, ch. 226, § 1, 65 Stat. 121; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 279 (Mar. 4, 1909, ch. 321, § 165, 35 Stat. 1119).

Mandatory punishment provision was rephrased in the alternative.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Changes were also made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

1951—Act July 16, 1951, made section applicable to minor coins (5-cent and 1-cent pieces), and to fraudulent alteration of coins.

§ 332. Debasement of coins; alteration of official scales, or embezzlement of metals

If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 280 (Mar. 4, 1909, ch. 321, § 166, 35 Stat. 1120).

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 333. Mutilation of national bank obligations

Whoever mutilates, cuts, defaces, disfigures, or perforates, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt issued by any national banking association, or Federal Reserve bank, or the Federal Reserve System, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 291 (Mar. 4, 1909, ch. 321, § 176, 35 Stat. 1122).

Words ''or Federal Reserve bank, or the Federal Reserve System'' were inserted because the paper of such banks has almost supplanted national bank currency.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

§ 334. Issuance of Federal Reserve or national bank notes

Whoever, being a Federal Reserve Agent, or an agent or employee of such Federal Reserve Agent, or of the Board of Governors of the Federal Reserve System, issues or puts in circulation any Federal Reserve notes, without complying with or in violation of the provisions of law regulating the issuance and circulation of such Federal Reserve notes; or

Whoever, being an officer acting under the provisions of chapter 2 of Title 12, countersigns or delivers to any national banking association, or to any other company or person, any circulating notes contemplated by that chapter except in strict accordance with its provisions—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 581 and 592 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. §§ 5187, 5209; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

This section consolidates section 581 and part of section 592 of title 12, U.S.C., 1940 ed., Banks and Banking.

The punishment provision was drawn from said section 592 as being the latest expression of congressional intent, in preference to the provision of said section 581 which authorized a fine ''not more than double the amount so countersigned and delivered and imprisonment not more than 15 years''.

The words ''shall be guilty of a misdemeanor'' were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Likewise the words ''upon conviction in any district court of the United States'' were omitted as unnecessary since punishment can follow only after conviction.

(See reviser's note under section 656 of this title for statement of reasons for dividing said section 592 into three revised sections, with consequent changes in phraseology, style, and arrangement.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 335. Circulation of obligations of expired corporations

Whoever, being a director, officer, or agent of a corporation created by Act of Congress, the charter of which has expired, or trustee thereof, or an agent of such trustee, or a person having in his possession or under his control the property of such corporation for the purpose of paying or redeeming its notes and obligations, knowingly issues, reissues, or utters as money, or in any other way knowingly puts in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation, or by any officer thereof, or purporting to have been made under authority derived therefrom, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 700; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 289 (Mar. 4, 1909, ch. 321, § 174, 35 Stat. 1122).

The reference to persons aiding was omitted as unnecessary, since such persons are made principals by section 2 of this title.

The last sentence excepting bona fide holders in due course was omitted as surplusage.

Other changes in phraseology also were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 336. Issuance of circulating obligations of less than $1

Whoever makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a less sum than $1, intended to circulate as money or to be received or used in lieu of lawful money of the United States, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 293 (Mar. 4, 1909, ch. 321, § 178, 35 Stat. 1122).

Numerous suggestions, of which that of Mr. E. M. Million, of Arlington, Va., is typical, recommend that this section be omitted as obsolete or revised to except commercial obligations. However, since the decisions make it plain that only obligations intended to circulate as money are within the provisions of this section and that commercial checks of less than $1 are not affected, there seems no reason so to rewrite the section. (See *U.S. v. Monongahela Bridge Co.*, Fed. Cas. No. 15,796; *Stettinius v. U.S.*, Fed. Cas. No. 13,387.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 337. Coins as security for loans

Whoever lends or borrows money or credit upon the security of such coins of the United States as the Secretary of the Treasury may from time to time designate by proclamation published in the Federal Register, during any period designated in such a proclamation, shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–81, title II, § 212(a), July 23, 1965, 79 Stat. 257; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

EFFECTIVE DATE

Section 212(c) of Pub. L. 89–81 provided that: ''The amendments made by this section [enacting this section] shall apply only with respect to loans made, renewed, or increased on or after the 31st day after the date of enactment of this Act [July 23, 1965].''

CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

Sec.
341. Definitions.
342. Operation of a common carrier under the influence of alcohol or drugs.
343. Presumptions.

§341. Definitions

As used in this chapter, the term ''common carrier'' means a locomotive, a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

(Added Pub. L. 99–570, title I, §1971(a), Oct. 27, 1986, 100 Stat. 3207–59; amended Pub. L. 100–690, title VI, §6482(a), Nov. 18, 1988, 102 Stat. 4382.)

AMENDMENTS

1988—Pub. L. 100–690 inserted ''locomotive, a'' after ''means a''.

§342. Operation of a common carrier under the influence of alcohol or drugs

Whoever operates or directs the operation of a common carrier while under the influence of alcohol or any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), shall be imprisoned not more than fifteen years or fined under this title, or both.

(Added Pub. L. 99–570, title I, §1971(a), Oct. 27, 1986, 100 Stat. 3207–59; amended Pub. L. 100–690, title VI, §§6473(a), (b), 6482(b), Nov. 18, 1988, 102 Stat. 4379, 4382.)

AMENDMENTS

1988—Pub. L. 100–690 substituted ''any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))'' for ''drugs'', ''fifteen'' for ''five'', and ''fined under this title'' for ''fined not more than $10,000''.

§343. Presumptions

For purposes of this chapter—

(1) an individual with a blood alcohol content of .10 percent or more shall be presumed to be under the influence of alcohol; and

(2) an individual shall be presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.

(Added Pub. L. 99–570, title I, §1971(a), Oct. 27, 1986, 100 Stat. 3207–59; amended Pub. L. 100–690, title VI, §6473(c), Nov. 18, 1988, 102 Stat. 4379.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–690, §6473(c)(1), substituted ''.10 percent'' for ''.10'' and struck out ''conclusively'' after ''shall be''.

Par. (2). Pub. L. 100–690, §6473(c)(2), struck out ''conclusively'' after ''shall be''.

CHAPTER 18—CONGRESSIONAL, CABINET, AND SUPREME COURT ASSASSINATION, KIDNAPPING, AND ASSAULT

Sec.
351. Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title ''by striking 'kidnaping' each place it appears and inserting 'kidnapping' '', was executed by substituting ''KIDNAPPING'' for ''KIDNAPING'' in chapter heading, to reflect the probable intent of Congress.

Pub. L. 103–322, title XXXIII, §330021(1), Sept. 13, 1994, 108 Stat. 2150, substituted ''kidnapping'' for ''kidnaping'' in item 351.

1982—Pub. L. 97–285, §2(b), (c), Oct. 6, 1982, 96 Stat. 1219, substituted ''CONGRESSIONAL, CABINET, AND SUPREME COURT ASSASSINATION, KIDNAPING, AND ASSAULT'' for ''CONGRESSIONAL ASSASSINATION, KIDNAPING, AND ASSAULT'' as chapter heading and substituted ''Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault: penalties'' for ''Congressional assassination, kidnaping, and assault; penalties'' in item 351.

1971—Pub. L. 91–644, title IV, §15, Jan. 2, 1971, 84 Stat. 1891, added chapter 18 and item 351.

§351. Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties

(a) Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a) of this section shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.

(f) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under

any applicable State or local law, until Federal action is terminated.

(g) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(h) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an individual protected by this section.

(i) There is extraterritorial jurisdiction over the conduct prohibited by this section.

(Added Pub. L. 91–644, title IV, § 15, Jan. 2, 1971, 84 Stat. 1891; amended Pub. L. 97–285, §§ 1, 2(a), Oct. 6, 1982, 96 Stat. 1219; Pub. L. 99–646, § 62, Nov. 10, 1986, 100 Stat. 3614; Pub. L. 100–690, title VII, § 7074, Nov. 18, 1988, 102 Stat. 4405; Pub. L. 103–322, title XXXII, § 320101(d), title XXXIII, §§ 330016(1)(K), (L), 330021(1), Sept. 13, 1994, 108 Stat. 2108, 2147, 2150; Pub. L. 104–294, title VI, § 604(b)(12)(C), (c)(2), Oct. 11, 1996, 110 Stat. 3507, 3509.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–294, § 604(c)(2), substituted ''involved the use'' for ''involved in the use''.

Pub. L. 104–294, § 604(b)(12)(C), repealed Pub. L. 103–322, § 320101(d)(3). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping'' in section catchline.

Subsec. (e). Pub. L. 103–322, § 330016(1)(L), substituted ''shall be fined under this title'' for ''shall be fined not more than $10,000'' after ''personal injury results,''.

Pub. L. 103–322, § 320101(d)(4), substituted ''imprisoned not more than ten years'' for ''imprisoned for not more than ten years''.

Pub. L. 103–322, § 320101(d)(3), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(L), above, was repealed by Pub. L. 104–294, § 604(b)(12)(C).

Pub. L. 103–322, § 320101(d)(2), inserted ''the assault involved in the use of a dangerous weapon, or'' after ''and if''.

Pub. L. 103–322, §§ 320101(d)(1), 330016(1)(K), amended subsec. (e) identically, substituting ''shall be fined under this title'' for ''shall be fined not more than $5,000'' after ''subsection (a) of this section''.

1988—Subsec. (a). Pub. L. 100–690 inserted a comma after ''section 3056 of this title)''.

1986—Subsec. (a). Pub. L. 99–646, § 62(1), inserted ''a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title)''.

Subsec. (h). Pub. L. 99–646, § 62(2), substituted ''individual'' for ''official''.

1982—Pub. L. 97–285, § 2(a), substituted ''Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault; penalties'' for ''Congressional assassination, kidnaping, and assault'' in section catchline.

Subsec. (a). Pub. L. 97–285, § 1(a), expanded coverage of subsec. (a) to cover the killing of any individual who is a member of the executive branch of the Government and the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination.

Subsecs. (h), (i). Pub. L. 97–285, § 1(b), added subsecs. (h) and (i).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

REPORT TO MEMBER OF CONGRESS ON INVESTIGATION CONDUCTED SUBSEQUENT TO THREAT ON MEMBER'S LIFE

Pub. L. 95–624, § 19, Nov. 9, 1978, 92 Stat. 3466, provided that: ''The Federal Bureau of Investigation shall provide a written report to a Member of Congress on any investigation conducted based on a threat on the Member's life under section 351 of title 18 of the United States Code.''

CHAPTER 19—CONSPIRACY

Sec.
371. Conspiracy to commit offense or to defraud United States.
372. Conspiracy to impede or injure officer.
373. Solicitation to commit a crime of violence.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 1003(b), Oct. 12, 1984, 98 Stat. 2138, added item 373.

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, ch. 321, § 37, 35 Stat. 1096; Mar. 4, 1909, ch. 321, § 178a, as added Sept. 27, 1944, ch. 425, 58 Stat. 752).

This section consolidates said sections 88 and 294 of title 18, U.S.C., 1940 ed.

To reflect the construction placed upon said section 88 by the courts the words ''or any agency thereof'' were inserted. (See *Haas v. Henkel*, 1909, 30 S. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112, where court said: ''The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government.'' Also, see *United States v. Walter*, 1923, 44 S. Ct. 10, 263 U. S. 15, 68 L. Ed. 137, and definitions of department and agency in section 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If

the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 Federal Rules Decisions, pages 380–392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said section 294 of title 18 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under section 493 of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said section 294, the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in sections 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to sections 2153 and 2154 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(D), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 54 (Mar. 4, 1909, ch. 321, § 21, 35 Stat. 1092).

Scope of section was enlarged to cover all possessions of the United States. When the section was first enacted in 1861 there were no possessions, and hence the use of the words ''State or Territory'' was sufficient to describe the area then subject to the jurisdiction of the United States. The word ''District'' was inserted by the codifiers of the 1909 Criminal Code.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''under this title'' for ''not more than $5,000''.

§ 373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not ''voluntary and complete'' if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

(Added Pub. L. 98–473, title II, § 1003(a), Oct. 12, 1984, 98 Stat. 2138; amended Pub. L. 99–646, § 26, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 103–322, title XXXIII, § 330016(2)(A), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 inserted ''(notwithstanding section 3571)'' before ''fined not more than one-half''.

1986—Subsec. (a). Pub. L. 99–646 substituted ''property or against the person of another'' for ''the person or property of another'' and inserted ''life imprisonment or'' before ''death''.

CHAPTER 21—CONTEMPTS

Sec.
401. Power of court.
402. Contempts constituting crimes.
403. Protection of the privacy of child victims and child witnesses.

AMENDMENTS

1990—Pub. L. 101–647, title II, § 225(b)(2), Nov. 29, 1990, 104 Stat. 4806, added item 403.

1949—Act May 24, 1949, ch. 139, § 8(a), (b), 63 Stat. 90, struck out ''CONSTITUTING CRIMES'' in chapter heading and substituted ''Contempts constituting crimes'' for ''Criminal contempts'' in item 402.

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107–273, div. B, title III, § 3002(a)(1), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107–273 inserted ''or both,'' after ''fine or imprisonment,'' in introductory provisions.

§ 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 701; May 24, 1949, ch. 139, § 8(c), 63 Stat. 90; Pub. L. 101–647, title XII, § 1205(c), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 103–322, title XXXIII, §§ 330011(f), 330016(2)(E), Sept. 13, 1994, 108 Stat. 2145, 2148.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 386, 387, 389, and 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§ 1, 21, 22, 24, 38 Stat. 730, 738, 739).

Section 21 of the Clayton Act, section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, is here consolidated with parts of sections 1, 22, and 24 of the same act. Section 1 of said act, section 390a of title 28 U.S.C., 1940 ed., Judicial Code and Judiciary, defined person or persons. Section 22 of said act, section 387 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, regulated the procedure and provided for the punishment of contempts. Section 24 of said act, section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, limited the application of these sections to certain kinds of contempt.

In transferring these sections to this title and in consolidating them numerous changes of phraseology were necessary which do not, however, change their meaning or substance. Words ''corporation or association'' were inserted after ''any person'' in substitution for the definition provisions of section 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, which read as follows: ''The word 'person' or 'persons' wherever used in sections 381–383, 386–390a of this title, sections 12, 13, 14–19, 20, 21, 22–27 and 44 of title 15, and section 412 of title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.''

The words ''any person, corporation, or association,'' unqualified except by the context of the section mean all that the more lengthy definition included. Only those persons, corporations, and associations who were parties to the order or had actual notice of it may be punished for contempt. (See *McCauly v. First Trust & Savings Bank*, C.C.A. Ill. 1921, 276 F. 117. See, also *National Labor Relations Board v. Blackstone Mfg. Co.*, C.C.A. 1941, 123 F. 2d 633.) The fact that the contemnor was incorporated or organized under a foreign law or under the laws of a particular State or Territory would hardly be relevant to the issue of criminal contempt.

As noted above these sections were part of the Clayton Act, entitled ''An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.'' Whatever doubt might have existed as to whether the contempt provisions were variously limited to antitrust cases seems to be dispelled by the case of *Sandefur v. Canoe Creek Coal Co.* (C.C.A. Ky. 1923, 293 F. 379, certified question answered 45 S. Ct. 18, 266 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451), where the court says: ''The act, considered as a whole, covers several more or less distinct subjects. * * * The first eight sections pertain directly to the subject of trust and monopolies; section 9 concerns interstate commerce; section 10, combinations among common carriers; section 11, proceedings to enforce certain provisions of the act; sections 12–16, antitrust procedure and remedies; sections 17–19, regulations of injunction and restraining orders in all cases; section 20 limits the power of an equity court to issue any injunction in a certain class of cases, viz., between employer and the employee; and sections

21–24 pertain to procedure in any district court, punishing contemptuous disregard of any order of such court, providing the act constituting contempt is also a criminal offense. Observing this relation of the various parts of the act to each other, we think 'within the purview of this act' must refer to that portion of the act which most broadly covers the subject-matter to which section 22 is devoted, and this portion is section 21, which reaches all cases where the act of contempt is also a criminal offense. We know of nothing in the legislative history of the act, or within the common knowledge as to the then existing situation, which justifies us in thinking that 'within the purview of this act,' in section 22, meant to limit its effect to the employer-employee provisions of section 20, or even to the antitrust scope of some of the earlier sections.'' (See also *Michaelson v. United States*, 1924, 45 S. Ct. 18, 166 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451, and H. Rept. No. 613, 62d Cong., 2d sess., to accompany H.R. 15657.)

1949 ACT

This amendment [see section 8] corrects the catchline of section 402 of title 18, U.S.C., to better represent the section content.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(2)(E), substituted ''punished by a fine under this title'' for ''punished by fine'' in first par.

Pub. L. 103–322, § 330011(f), amended directory language of Pub. L. 101–647, § 1205(c). See 1990 Amendment note below.

1990—Pub. L. 101–647, § 1205(c), as amended by Pub. L. 103–322, § 330011(f), added par. defining ''State''.

1949—Act May 24, 1949, substituted ''Contempts constituting crimes'' for ''Criminal contempts'' in section catchline.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(f) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 1205(c) of Pub. L. 101–647, which amended this section, took effect.

§ 403. Protection of the privacy of child victims and child witnesses

A knowing or intentional violation of the privacy protection accorded by section 3509 of this title is a criminal contempt punishable by not more than one year's imprisonment, or a fine under this title, or both.

(Added Pub. L. 101–647, title II, § 225(b)(1), Nov. 29, 1990, 104 Stat. 4805.)

CHAPTER 23—CONTRACTS

Sec.
431. Contracts by Member of Congress.
432. Officer or employee contracting with Member of Congress.
433. Exemptions with respect to certain contracts.
[434. Repealed.]
435. Contracts in excess of specific appropriation.
436. Convict labor contracts.
[437. Repealed.]
438. Indian contracts for services generally.[1]
439. Indian enrollment contracts.[1]
440. Mail contracts.
441. Postal supply contracts.
442. Printing contracts.
443. War contracts.

AMENDMENTS

1996—Pub. L. 104–178, § 1(b), Aug. 6, 1996, 110 Stat. 1565, struck out item 437 ''Federal employees contracting or trading with Indians''.

1994—Pub. L. 103–322, title XXXIII, § 330010(13), Sept. 13, 1994, 108 Stat. 2144, struck out extraneous period after ''Indians'' in item 437.

1990—Pub. L. 101–647, title XXXV, § 3512, Nov. 29, 1990, 104 Stat. 4922, struck out item 434 ''Interested persons acting as Government agents'' and substituted ''Federal employees contracting or trading with Indians.'' for ''Indian contracts for goods and supplies'' in item 437.

1951—Act Oct. 31, 1951, ch. 655, § 18, 65 Stat. 717, struck out ''; exceptions'' from item 431.

§ 431. Contracts by Member of Congress

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in whole or in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined under this title.

All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States or any agency thereof, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department or agency under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties for the recovery of the money so advanced.

(June 25, 1948, ch. 645, 62 Stat. 702; Oct. 31, 1951, ch. 655, § 19, 65 Stat. 717; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 204 (Mar. 4, 1909, ch. 321, § 114, 35 Stat. 1109).

Word ''agency'' was inserted in three places to eliminate any ambiguity as to scope of section. (See definition of department or agency under section 6 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000'' in first par.

1951—Act Oct. 31, 1951, struck out ''; exceptions'', after ''Congress'' in section catchline.

§ 432. Officer or employee contracting with Member of Congress

Whoever, being an officer or employee of the United States, on behalf of the United States or any agency thereof, directly or indirectly makes or enters into any contract, bargain, or agreement, with any Member of or Delegate to Congress, or any Resident Commissioner, either before or after he has qualified, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 702; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 205 (Mar. 4, 1909, ch. 321, § 115, 35 Stat. 1109).

[1] Section repealed by Pub. L. 106–568 without corresponding amendment of chapter analysis.

Words ''agency'' and ''employee'' were inserted to eliminate any ambiguity as to scope of section. (See definition of agency under section 6 of this title.)

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

§ 433. Exemptions with respect to certain contracts

Sections 431 and 432 of this title shall not extend to any contract or agreement made or entered into, or accepted by any incorporated company for the general benefit of such corporation; nor to the purchase or sale of bills of exchange or other property where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to advances, loans, discounts, purchase or repurchase agreements, extensions, or renewals thereof, or acceptances, releases or substitutions of security therefor or other contracts or agreements made or entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

Any exemption permitted by this section shall be made a matter of public record.

(June 25, 1948, ch. 645, 62 Stat. 703; Pub. L. 87–353, § 3(*o*), Oct. 4, 1961, 75 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on section 1514(f) of title 7, U.S.C., 1940 ed., Agriculture; sections 264w, 598, 1138d(e), 1441(e), 1467(d) of title 12, U.S.C., 1940 ed., Banks and Banking; section 616(e) of title 15, U.S.C., 1940 ed., Commerce and Trade; title 18, U.S.C., 1940 ed., § 206 (Mar. 4, 1909, ch. 321, § 116, 35 Stat. 1109; Dec. 23, 1913, ch. 6, § 22(j), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Jan. 22, 1932, ch. 8, § 16(e), 47 Stat. 12; July 22, 1932, ch. 522, § 21, 47 Stat. 738; June 13, 1933, ch. 64, § 8, 48 Stat. 135; June 16, 1933, ch. 98, § 64, 48 Stat. 268, 269; Jan. 25, 1934, ch. 5, 48 Stat. 337; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 27, 1934, ch. 847, title V, § 510, 58 Stat. 1264; May 28, 1935, ch. 150, §§ 20, 21, 49 Stat. 298; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 703; Aug. 26, 1937, ch. 821, 50 Stat. 838; Feb. 16, 1938, ch. 30, title V, § 514, 52 Stat. 77).

These sections were consolidated with such changes of phraseology as were necessary to effect consolidation. Said section 206 of title 18, U.S.C., 1940 ed., was the principal source of this section, but the enumeration of the kinds of commitments exempted was drawn from the various sections of said title 12 set forth above. The reference to crop insurance agreements is drawn from section 1514(f) of Title 7, Agriculture.

The applicability provisions of the sections here consolidated were unclear and of doubtful value. As revised the section preserves everything of value without change of substance.

References to the Bankhead-Jones Farm Tenant Act and the Farmers' Home Administrative Act of 1946 were included in this revised section notwithstanding the omission (and consequent repeal) of former subsection (d) of section 52 of the said Bankhead-Jones Act (1937) (Title 7, U.S.C., 1940 ed., § 1026) in the amendment of said section 52 of such Act by section 3 of the said Farmers' Home Administration Act of 1946 (August 14, 1946, ch. 964, 60 Stat. 1062). The essential nature of the transactions under the several acts would render inconsistent any attempt to include some and exclude others.

REFERENCES IN TEXT

The Reconstruction Finance Corporation Act, referred to in text, is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, which was classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and has been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables.

The Agricultural Adjustment Act, referred to in text, is title I of act May 12, 1933, ch. 25, 48 Stat. 31, as amended, which is classified generally to chapter 26 (§ 601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables.

The Federal Farm Loan Act, referred to in text, is act July 17, 1916, ch. 245, 39 Stat. 360, as amended, which was classified principally to sections 641 et seq. of Title 12, Banks and Banking. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby ''shall be deemed to refer to comparable provisions of this Act''. For further details, see notes under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables.

The Emergency Farm Mortgage Act of 1933, referred to in text, is title II of act May 12, 1933, ch. 25, 48 Stat. 31, as amended. Such title II was substantially repealed by act June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208; act Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400; act Oct. 4, 1961, Pub. L. 87–353, § 3(a), (b), (w), 75 Stat. 773, 774; act Dec. 10, 1971, Pub. L. 92–181, title V, § 5.26(a), 85 Stat. 624. For complete classification of this Act to the Code, see Tables.

The Farm Credit Act of 1933, referred to in text, is act June 16, 1933, ch. 98, 48 Stat. 2, as amended, which was classified principally to subchapter IV (§ 1131 et seq.) of chapter 7 of Title 12, Banks and Banking. The Farm Credit Act of 1933, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby ''shall be deemed to refer to comparable provisions of this Act''. For further details, see notes under section 2001 of Title 12. For complete classification of the Farm Credit Act of 1933 to the Code prior to such repeal, see Tables.

The Home Owners Loan Act of 1933, referred to in text, is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, now known as the Home Owners' Loan Act, which is classified generally to chapter 12 (§ 1461 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1461 of Title 12 and Tables.

The Farmers' Home Administration Act of 1946, referred to in text, is act Aug. 14, 1946, ch. 964, 60 Stat. 1062, as amended. Such Act was substantially repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and act Aug. 8, 1961, Pub. L. 87–128, title III, § 341(a), 75 Stat. 318. For complete classification of this Act to the Code, see Tables.

The Bankhead-Jones Farm Tenant Act, referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

AMENDMENTS

1961—Pub. L. 87–353 struck out ''the Federal Farm Mortgage Corporation Act,'' after ''the Emergency Farm Mortgage Act of 1933,''.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

The Reconstruction Finance Corporation, which was created by the Reconstruction Finance Corporation Act, referred to in this section, was abolished by section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

The Home Owners' Loan Corporation, which was created by the Home Owners' Loan Act of 1933, referred to in this section, was dissolved and abolished by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, set out in note under section 1463 of Title 12, Banks and Banking.

[§ 434. Repealed. Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, act June 25, 1948, ch. 645, 62 Stat. 703, related to interested persons acting as Government agents. Section was supplanted by section 208 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

§ 435. Contracts in excess of specific appropriation

Whoever, being an officer or employee of the United States, knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined under this title[1] or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 703; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 184 (Mar. 4, 1909, ch. 321, § 98, 35 Stat. 1106).

Words "or employee" were inserted to remove any ambiguity as to scope of section.

The offense described in this section involves no moral turpitude, and therefore the punishment provisions were reduced from $2,000 to $1,000 and from 2 years to 1 year, so that the stigma of a felony would not attach to an offender. (See classification of felony and misdemeanor in section 1 of this title and note thereunder.)

Mandatory punishment provisions were rephrased in the alternative.

Changes were also made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting "fined under this title" for "fined not more than $5,000", was executed by making the substitution for "fined not more than $1,000", to reflect the probable intent of Congress.

§ 436. Convict labor contracts

Whoever, being an officer, employee, or agent of the United States or any department or agency thereof, contracts with any person or corporation, or permits any warden, agent, or official of any penal or correctional institution, to hire out the labor of any prisoners confined for violation of any laws of the United States, shall be fined under this title[1] or imprisoned not more than three years, or both.

[1] See 1994 Amendment note below.

[1] See 1994 Amendment note below.

(June 25, 1948, ch. 645, 62 Stat. 703; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 708, 709 (Feb. 23, 1887, ch. 213, §§ 1, 2, 24 Stat. 411).

This section consolidates sections 708 and 709 of title 18, U.S.C., 1940 ed., as the offense and penalty provisions, respectively.

Words "department or agency thereof" were inserted to clarify scope of section. See definition of department and agency in section 6 of this title.

To retain uniformity words "shall be deemed guilty of a misdemeanor, and," were omitted. The reference to misdemeanor is now covered by the definition in section 1 of this title.

Words "on conviction thereof" were omitted as unnecessary since punishment can follow only upon conviction.

The minimum punishment provisions "less than one year nor" and "less than $500 nor" were deleted to conform to the policy followed by codifiers of 1909 Criminal Code. (See reviser's note under section 203 of this title.)

Changes were also made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting "fined under this title" for "fined not more than $5,000", was executed by making the substitution for "fined not more than $1,000", to reflect the probable intent of Congress.

[§ 437. Repealed. Pub. L. 104–178, § 1(a), Aug. 6, 1996, 110 Stat. 1565]

Section, acts June 25, 1948, ch. 645, 62 Stat. 703; June 17, 1980, Pub. L. 96–277, § 1, 94 Stat. 544; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(L), 108 Stat. 2147, related to Federal employees contracting or trading with Indians.

EFFECTIVE DATE OF REPEAL

Section 1(c) of Pub. L. 104–178 provided that: "The repeal made by subsection (a) [repealing this section] shall—

"(1) take effect on the date of enactment of this Act [Aug. 6, 1996]; and

"(2) apply with respect to any contract obtained, and any purchase or sale occurring, on or after the date of enactment of this Act."

[§§ 438, 439. Repealed. Pub. L. 106–568, title VIII, § 812(c)(2), Dec. 27, 2000, 114 Stat. 2917]

Section 438, acts June 25, 1948, ch. 645, 62 Stat. 703; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147, related to Indian contracts for services generally.

Section 439, acts June 25, 1948, ch. 645, 62 Stat. 704; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147, related to Indian enrollment contracts.

§ 440. Mail contracts

Whoever, being a person employed in the Postal Service, becomes interested in any contract for carrying the mail, or acts as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service, shall be fined under this title[1] or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 704; Pub. L. 91–375, § 6(j)(3), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322,

[1] See 1994 Amendment note below.

title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 356 (Mar. 4, 1909, ch. 321, § 226, 35 Stat. 1134).

Provision for dismissal from office was omitted since this might be handled better administratively.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''fined under this title'' for ''fined not more than $10,000'', was executed by making the substitution for ''fined not more than $5,000'', to reflect the probable intent of Congress.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department'' before '', shall be fined''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 441. Postal supply contracts

No contract for furnishing supplies to the Postal Service shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for furnishing such supplies, or to fix a price or prices therefor, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract, or to bid at a specified price or prices thereon.

Whoever violates this section shall be fined under this title[1] or imprisoned not more than one year, or both; and if the offender is a contractor for furnishing such supplies his contract may be annulled.

(June 25, 1948, ch. 645, 62 Stat. 704; Pub. L. 91–375, § 6(j)(4), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 808 of title 39, U.S.C., 1940 ed., The Postal Service (Aug. 24, 1912, ch. 389, § 2, 37 Stat. 553).

Minimum punishment provisions ''less than $100 nor'' and ''less than three months nor'' were omitted to conform to policy followed by codifiers of 1909 Criminal Code.

Changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''fined under this title'' for ''fined not more than $10,000'', was executed by making the substitution for ''fined not more than $5,000'' in second par., to reflect the probable intent of Congress.

1970—Pub. L. 91–375 struck out ''Post Office Department or the'' before ''Postal Service''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

[1] See 1994 Amendment note below.

§ 442. Printing contracts

Neither the Public Printer, superintendent of printing, superintendent of binding, nor any of their assistants shall, during their continuance in office, have any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving.

Whoever violates this section shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 704; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 53 of title 44, U.S.C., 1940 ed., Public Printing and Documents (Jan. 12, 1895, ch. 23, § 34, 28 Stat. 605).

Words ''on conviction before any court of competent jurisdiction'' were omitted as unnecessary, since punishment cannot be imposed until there has been a conviction before a competent tribunal.

Words ''in the penitentiary'' were omitted as surplusage as section 4082 of this title commits all prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

The minimum punishment provision ''for a term of not less than one nor'' was omitted in keeping with policy of codifiers of 1909 Criminal Code.

Mandatory punishment provision was rephrased in the alternative.

The offense described in this section involves no moral turpitude, and therefore the punishment provisions were reduced from 5 years to 1 year, so that the stigma of a felony would not attach to an offender. The fine was increased from $500 to $1,000 as more proportionate to the 1-year term of imprisonment. (See classification of felony and misdemeanor in section 1 of this title and note thereunder.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in second par.

§ 443. War contracts

Whoever willfully secretes, mutilates, obliterates, or destroys—

(a) any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancellation or other termination, or settlement of a war contract of $25,000 or more; or

(b) any records of a war contractor or purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any government agency is $5,000 or more,

before the lapse of (1) five years after such disposition of termination inventory by such war contractor or government agency, or (2) five years after the final settlement of such war contract, whichever applicable period is longer, shall be fined under this title or imprisoned not more than five years, or both.

The Administrator of General Services, by regulation, may authorize the destruction of

such records upon such terms and conditions as he deems appropriate, including the requirement for the making and retaining of photographs or microphotographs, which shall have the same force and effect as the originals thereof.

The definitions of terms in section 103 of Title 41 shall apply to similar terms used in this section.

(June 25, 1948, ch. 645, 62 Stat. 704; Oct. 31, 1951, ch. 655, §20(a), 65 Stat. 717; Pub. L. 103–322, title XXXIII, §§330004(17), 330016(2)(F), Sept. 13, 1994, 108 Stat. 2142, 2148.)

HISTORICAL AND REVISION NOTES

Based on section 119, first and second paragraphs, of title 41 U.S.C., 1940 ed., Public Contracts (July 1, 1944, ch. 358, §19(a), 58 Stat. 667).

Section was rewritten with changes of phraseology to conform to the style adopted in the revision.

The definition of ''records'' was omitted as surplusage in order to avoid any inference that ''records'' as used in other sections was intended to have a different or more limited connotation than the broad and commonly understood meaning popularly assigned to the term.

The last paragraph was added to obviate any possibility of doubt as to meaning of terms defined in section 103 of Title 41, Public Contracts.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

AMENDMENTS

1994—Pub. L. 103–322, in concluding provisions of first par., struck out ''or (3) five years after 12 o'clock noon of December 31, 1946,'' after ''of such war contract,'' and substituted ''shall be fined under this title'' for ''shall, if a corporation, be fined not more than $50,000, and, if a natural person, be fined not more than $10,000''.

1951—Act Oct. 31, 1951, substituted ''12 o'clock noon of December 31, 1946'' for ''the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress'', and, in penultimate paragraph, substituted ''Administrator of General Services'' for ''Director of Contract Settlement''.

CHAPTER 25—COUNTERFEITING AND FORGERY

Sec.
470. Counterfeit acts committed outside the United States.
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513. Securities of the States and private entities.
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AMENDMENTS

2001—Pub. L. 107–56, title III, §§374(e)(4), 375(d)(4), Oct. 26, 2001, 115 Stat. 340, 341, substituted '', stones, or analog, digital, or electronic images'' for ''or stones'' in items 474 and 481.

1996—Pub. L. 104–208, div. A, title I, §101(f) [title VI, §648(b)(2)], title II, §2603(b)(2), Sept. 30, 1996, 110 Stat. 3009–314, 3009–368, 3009–470, amended analysis identically, adding item 514.

1994—Pub. L. 103–322, title XII, §120003(b)(1), title XXII, §220003(d)(2), title XXXIII, §330010(14), Sept. 13, 1994, 108 Stat. 2022, 2077, 2144, added item 470, struck out extraneous period after ''money'' in item 491, and added item 511A.

1992—Pub. L. 102–550, title XV, §1553(b), Oct. 28, 1992, 106 Stat. 4071, added item 474A.

1990—Pub. L. 101–647, title XXXV, §3513, Nov. 29, 1990, 104 Stat. 4922, substituted ''or paper used as money.'' for ''used as money or similar to coins'' in item 491, ''matters'' for ''entry certificates'' in item 496, and ''stamps, postage meter stamps,'' for ''stamps'' in item 501.

1986—Pub. L. 99–646, §31(b), Nov. 10, 1986, 100 Stat. 3598, redesignated second item 510, relating to securities of the State and private entities, as item 513 and substituted ''States'' for ''State''.

1984—Pub. L. 98–547, title II, §201(b), Oct. 25, 1984, 98 Stat. 2770, added items 511 and 512.

Pub. L. 98–473, title II, §1105(b), Oct. 12, 1984, 98 Stat. 2145, added second item 510 ''Securities of the State and private entities''.

1983—Pub. L. 98–151, §115(c), Nov. 14, 1983, 97 Stat. 977, added item 510, relating to forging endorsements.

1965—Pub. L. 89–81, title II, § 211(b), July 23, 1965, 79 Stat. 257, struck out ''Gold or silver'' before ''Coins or bars'' in item 485.

1958—Pub. L. 85–921, § 2, Sept. 2, 1958, 72 Stat. 1771, substituted ''Printing and filming of United States and foreign obligations and securities'' for ''Printing stamps for philatelic purposes'' in item 504.

1951—Act July 16, 1951, ch. 226, § 5(c), 65 Stat. 122, struck out ''; publisher's illustrations excepted'' in item 489.

§ 470. Counterfeit acts committed outside the United States

A person who, outside the United States, engages in the act of—

(1) making, dealing, or possessing any counterfeit obligation or other security of the United States; or

(2) making, dealing, or possessing any plate, stone, analog, digital, or electronic image, or other thing, or any part thereof, used to counterfeit such obligation or security,

if such act would constitute a violation of section 471, 473, or 474 if committed within the United States, shall be punished as is provided for the like offense within the United States.

(Added Pub. L. 103–322, title XII, § 120003(a), Sept. 13, 1994, 108 Stat. 2021; amended Pub. L. 107–56, title III, § 374(a), Oct. 26, 2001, 115 Stat. 340.)

AMENDMENTS

2001—Pub. L. 107–56, § 374(a)(2), in concluding provisions, substituted ''shall be punished as is provided for the like offense within the United States'' for ''shall be fined under this title, imprisoned not more than 20 years, or both''.

Par. (2). Pub. L. 107–56, § 374(a)(1), inserted ''analog, digital, or electronic image,'' after ''plate, stone,''.

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–550, title XV, § 1551, Oct. 28, 1992, 106 Stat. 4070, provided that: ''This subtitle [subtitle E (§§ 1551–1554) of title XV of Pub. L. 102–550, enacting section 474A of this title and amending sections 474 and 504 of this title] may be cited as the 'Counterfeit Deterrence Act of 1992'.''

COMBATTING INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY

Pub. L. 104–132, title VIII, § 807, Apr. 24, 1996, 110 Stat. 1308, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury (hereafter in this section referred to as the 'Secretary'), in consultation with the advanced counterfeit deterrence steering committee, shall—

''(1) study the use and holding of United States currency in foreign countries; and

''(2) develop useful estimates of the amount of counterfeit United States currency that circulates outside the United States each year.

''(b) EVALUATION AUDIT PLAN.—

''(1) IN GENERAL.—The Secretary shall develop an effective international evaluation audit plan that is designed to enable the Secretary to carry out the duties described in subsection (a) on a regular and thorough basis.

''(2) SUBMISSION OF DETAILED WRITTEN SUMMARY.—The Secretary shall submit a detailed written summary of the evaluation audit plan developed pursuant to paragraph (1) to the Congress before the end of the 6-month period beginning on the date of the enactment of this Act [Apr. 24, 1996].

''(3) FIRST EVALUATION AUDIT UNDER PLAN.—The Secretary shall begin the first evaluation audit pursuant to the evaluation audit plan no later than the end of the 1-year period beginning on the date of the enactment of this Act.

''(4) SUBSEQUENT EVALUATION AUDITS.—At least 1 evaluation audit shall be performed pursuant to the evaluation audit plan during each 3-year period beginning after the date of the commencement of the evaluation audit referred to in paragraph (3).

''(c) REPORTS.—

''(1) IN GENERAL.—The Secretary shall submit a written report to the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of each evaluation audit conducted pursuant to subsection (b) within 90 days after the completion of the evaluation audit.

''(2) CONTENTS.—In addition to such other information as the Secretary may determine to be appropriate, each report submitted to the Congress pursuant to paragraph (1) shall include the following information:

''(A) A detailed description of the evaluation audit process and the methods used to develop estimates of the amount of counterfeit United States currency in circulation outside the United States.

''(B) The method used to determine the currency sample examined in connection with the evaluation audit and a statistical analysis of the sample examined.

''(C) A list of the regions of the world, types of financial institutions, and other entities included.

''(D) An estimate of the total amount of United States currency found in each region of the world.

''(E) The total amount of counterfeit United States currency and the total quantity of each counterfeit denomination found in each region of the world.

''(3) CLASSIFICATION OF INFORMATION.—

''(A) IN GENERAL.—To the greatest extent possible, each report submitted to the Congress under this subsection shall be submitted in an unclassified form.

''(B) CLASSIFIED AND UNCLASSIFIED FORMS.—If, in the interest of submitting a complete report under this subsection, the Secretary determines that it is necessary to include classified information in the report, the report shall be submitted in a classified and an unclassified form.

''(d) SUNSET PROVISION.—This section shall cease to be effective as of the end of the 10-year period beginning on the date of the enactment of this Act [Apr. 24, 1996].

''(e) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing any entity to conduct investigations of counterfeit United States currency.

''(f) FINDINGS.—The Congress hereby finds the following:

''(1) United States currency is being counterfeited outside the United States.

''(2) The One Hundred Third Congress enacted, with the approval of the President on September 13, 1994, section 470 of title 18, United States Code, making such activity a crime under the laws of the United States.

''(3) The expeditious posting of agents of the United States Secret Service to overseas posts, which is necessary for the effective enforcement of section 470 and related criminal provisions, has been delayed.

''(4) While section 470 of title 18, United States Code, provides for a maximum term of imprisonment of 20 years as opposed to a maximum term of 15 years for domestic counterfeiting, the United States Sentencing Commission has failed to provide, in its sentencing guidelines, for an appropriate enhancement of punishment for defendants convicted of counterfeiting United States currency outside the United States.

''(g) TIMELY CONSIDERATION OF REQUESTS FOR CONCURRENCE IN CREATION OF OVERSEAS POSTS.—

''(1) IN GENERAL.—The Secretary of State shall—

''(A) consider in a timely manner the request by the Secretary of the Treasury for the placement of such number of agents of the United States Secret Service as the Secretary of the Treasury considers appropriate in posts in overseas embassies; and

''(B) reach an agreement with the Secretary of the Treasury on such posts as soon as possible and, in any event, not later than December 31, 1996.

''(2) COOPERATION OF TREASURY REQUIRED.—The Secretary of the Treasury shall promptly provide any information requested by the Secretary of State in connection with such requests.

''(3) REPORTS REQUIRED.—The Secretary of the Treasury and the Secretary of State shall each submit, by February 1, 1997, a written report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate explaining the reasons for the rejection, if any, of any proposed post and the reasons for the failure, if any, to fill any approved post by such date.

''(h) ENHANCED PENALTIES FOR INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.—Pursuant to the authority of the United States Sentencing Commission under section 994 of title 28, United States Code, the Commission shall amend the sentencing guidelines prescribed by the Commission to provide an appropriate enhancement of the punishment for a defendant convicted under section 470 of title 18 of such Code.''

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§471. Obligations or securities of United States

Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, §374(b), Oct. 26, 2001, 115 Stat. 340.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §262 (Mar. 4, 1909, ch. 321, §148, 35 Stat. 1115).

Mandatory punishment provision was rephrased in the alternative.

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''fifteen years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§472. Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, §374(c), Oct. 26, 2001, 115 Stat. 340.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §265 (Mar. 4, 1909, ch. 321, §151, 35 Stat. 1116).

Mandatory punishment provision was rephrased in the alternative.

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''fifteen years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§473. Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 705; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, §374(d), Oct. 26, 2001, 115 Stat. 340.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §268 (Mar. 4, 1909, ch. 321, §154, 35 Stat. 1117).

Reference to circulating notes of banking associations was omitted as covered by definition of obligation or other security in section 8 of this title.

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''ten years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§474. Plates, stones, or analog, digital, or electronic images for counterfeiting obligations or securities

(a) Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, uses such plate, stone, or other thing, or any part thereof, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or

Whoever makes or executes any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or

Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any obligation or other security of the United States; or

Whoever sells any such plate, stone, or other thing, or brings into the United States any such

plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or

Whoever has in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or

Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or

Whoever prints, photographs, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States, or brings into the United States, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States—

Is guilty of a class B felony.

(b) For purposes of this section, the term ''analog, digital, or electronic image'' includes any analog, digital, or electronic method used for the making, execution, acquisition, scanning, capturing, recording, retrieval, transmission, or reproduction of any obligation or security, unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system (pursuant to section 504) to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press and others shall not be unduly restricted.

(June 25, 1948, ch. 645, 62 Stat. 706; Pub. L. 102–550, title XV, § 1552, Oct. 28, 1992, 106 Stat. 4070; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 648(a)], title II, § 2603(a), Sept. 30, 1996, 110 Stat. 3009–314, 3009–367, 3009–470; Pub. L. 107–56, title III, § 374(e)(1)–(3), Oct. 26, 2001, 115 Stat. 340.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 264 (Mar. 4, 1909, ch. 321, § 150, 35 Stat. 1116).

References to persons causing, procuring, assisting or aiding were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56, § 374(e)(3), substituted '', stones, or analog, digital, or electronic images'' for ''or stones'' in section catchline.

Subsec. (a). Pub. L. 107–56, § 374(e)(1), inserted after second par. ''Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any obligation or other security of the United States; or''.

Subsec. (b). Pub. L. 107–56, § 374(e)(2), inserted first sentence and struck out former first sentence which read as follows: ''For purposes of this section, the terms 'plate', 'stone', 'thing', or 'other thing' includes any electronic method used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury.''

1996—Subsec. (a). Pub. L. 104–208, §§ 101(f) [title VI, § 648(a)] and 2603(a), amended subsec. (a) identically, substituting ''class B felony'' for ''class C felony'' in last par.

1992—Subsec. (a). Pub. L. 102–550, § 1552(1)–(4), designated existing provisions as subsec. (a), in sixth undesignated par., substituted ''United States—'' for ''United States; or'' at end, struck out seventh undesignated par. which read as follows: ''Whoever has or retains in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States—'', and amended last undesignated par. generally. Prior to amendment, last par. read as follows: ''Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.''

Subsec. (b). Pub. L. 102–550, § 1552(5), added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, § 648(c)] of div. A of Pub. L. 104–208 provided that: ''This section [enacting section 514 of this title and amending this section and section 474A of this title] and the amendments made by this section shall become effective on the date of enactment of this Act [Sept. 30, 1996] and shall remain in effect during each fiscal year following that date of enactment.''

§ 474A. Deterrents to counterfeiting of obligations and securities

(a) Whoever has in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury, is guilty of a class B felony.

(b) Whoever has in his control or possession, after a distinctive counterfeit deterrent has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States by publication in the Federal Register, any essentially identical feature or device adapted to the making of any such obligation or security, except under the authority of the Secretary of the Treasury, is guilty of a class B felony.

(c) As used in this section—

(1) the term ''distinctive paper'' includes any distinctive medium of which currency is made, whether of wood pulp, rag, plastic substrate, or other natural or artificial fibers or materials; and

(2) the term ''distinctive counterfeit deterrent'' includes any ink, watermark, seal, security thread, optically variable device, or other feature or device;

(A) in which the United States has an exclusive property interest; or

(B) which is not otherwise in commercial use or in the public domain and which the Secretary designates as being necessary in

preventing the counterfeiting of obligations or other securities of the United States.

(Added Pub. L. 102–550, title XV, § 1553(a), Oct. 28, 1992, 106 Stat. 4070; amended Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 648(a)], title II, § 2603(a), Sept. 30, 1996, 110 Stat. 3009–314, 3009–367, 3009–470.)

AMENDMENTS

1996—Subsecs. (a), (b). Pub. L. 104–208, §§ 101(f) [title VI, § 648(a)] and 2603(a), amended section identically, substituting ''class B felony'' for ''class C felony''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and to remain in effect for each fiscal year following Sept. 30, 1996, see section 101(f) [title VI, § 648(c)] of Pub. L. 104–208, set out as a note under section 474 of this title.

§ 475. Imitating obligations or securities; advertisements

Whoever designs, engraves, prints, makes, or executes, or utters, issues, distributes, circulates, or uses any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any obligation or security of the United States issued under or authorized by any Act of Congress or writes, prints, or otherwise impresses upon or attaches to any such instrument, obligation, or security, or any coin of the United States, any business or professional card, notice, or advertisement, or any notice or advertisement whatever, shall be fined under this title. Nothing in this section applies to evidence of postage payment approved by the United States Postal Service.

(June 25, 1948, ch. 645, 62 Stat. 706; July 16, 1951, ch. 226, § 2, 65 Stat. 122; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–162, title XI, § 1192, Jan. 5, 2006, 119 Stat. 3129.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 292 (Mar. 4, 1909, ch. 321, § 177, 35 Stat. 1122).

Enumeration of obligations of the United States was omitted in view of definition in section 8 of this title.

Changes in phraseology were also made.

AMENDMENTS

2006—Pub. L. 109–162 inserted at end ''Nothing in this section applies to evidence of postage payment approved by the United States Postal Service.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1951—Act July 16, 1951, prohibited use of notices or advertising prints or labels on United States coins.

§ 476. Taking impressions of tools used for obligations or securities

Whoever, without authority from the United States, takes, procures, or makes an impression, stamp, analog, digital, or electronic image, or imprint of, from or by the use of any tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any obligation or other security of the United States, shall be fined under this title or imprisoned not more than 25 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(f), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 266 (Mar. 4, 1909, ch. 321, § 152, 35 Stat. 1117).

Enumeration of substances on which impressions could be made and enumeration of various kinds of tools to be used were omitted as unnecessary.

Reference to circulating note or evidence of debt was omitted in view of definition of obligations and securities in section 8 of this title.

Changes in phraseology were also made.

AMENDMENTS

2001—Pub. L. 107–56 inserted ''analog, digital, or electronic image,'' after ''impression, stamp,'' and substituted ''25 years'' for ''ten years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 477. Possessing or selling impressions of tools used for obligations or securities

Whoever, with intent to defraud, possesses, keeps, safeguards, or controls, without authority from the United States, any imprint, stamp, analog, digital, or electronic image, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument or thing, used, fitted or intended to be used, for any of the purposes mentioned in section 476 of this title; or

Whoever, with intent to defraud, sells, gives, or delivers any such imprint, stamp, analog, digital, or electronic image, or impression to any other person—

Shall be fined under this title or imprisoned not more than 25 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(g), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 267 (Mar. 4, 1909, ch. 321, § 153, 35 Stat. 1117).

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 inserted ''analog, digital, or electronic image,'' after ''imprint, stamp,'' in first and second pars. and substituted ''25 years'' for ''ten years'' in third par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 478. Foreign obligations or securities

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(a), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 270 (Mar. 4, 1909, ch. 321, § 156, 35 Stat. 1117).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were also made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 479. Uttering counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 478 of this title, whether or not the same was made, altered, forged, or counterfeited within the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(b), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 271 (Mar. 4, 1909, ch. 321, § 157, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''three years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

§ 480. Possessing counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, possesses or delivers any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 707; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(c), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 274 (Mar. 4, 1909, ch. 321, § 160, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were also made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''one year''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 481. Plates, stones, or analog, digital, or electronic images for counterfeiting foreign obligations or securities

Whoever, within the United States except by lawful authority, controls, holds, or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or uses such plate, stone, or other thing, or knowingly permits or suffers the same to be used in counterfeiting such foreign obligations, or any part thereof; or

Whoever, except by lawful authority, makes or engraves any plate, stone, or other thing in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or

Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any bond, certificate, obligation, or other security of any foreign government, or of any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money; or

Whoever, except by lawful authority, prints, photographs, or makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or

Whoever brings into the United States any counterfeit plate, stone, or other thing, engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation—

Shall be fined under this title or imprisoned not more than 25 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(d)(1)–(3), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 275 (Mar. 4, 1909, ch. 321, § 161, 35 Stat. 1118).

References to persons causing, procuring, assisting or aiding were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 substituted '', stones, or analog, digital, or electronic images'' for ''or stones'' in section catchline and ''25 years'' for ''five years'' in last par. and inserted after second par. ''Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an ana-

log, digital, or electronic image of any bond, certificate, obligation, or other security of any foreign government, or of any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money; or''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 482. Foreign bank notes

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(e), Oct. 26, 2001, 115 Stat. 342.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 272 (Mar. 4, 1909, ch. 321, § 158, 35 Stat. 1118).

Reference to persons causing, procuring, aiding and assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 inserted ''20 years'' for ''two years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 483. Uttering counterfeit foreign bank notes

Whoever, within the United States, utters, passes, puts off, or tenders in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, mentioned in section 482 of this title, knowing the same to be so false, forged, altered, and counterfeited, whether or not the same was made, forged, altered, or counterfeited within the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 375(f), Oct. 26, 2001, 115 Stat. 342.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 273 (Mar. 4, 1909, ch. 321, § 159, 35 Stat. 1118).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''20 years'' for ''one year''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 484. Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(h), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 276 (Mar. 4, 1909, ch. 321, § 162, 35 Stat. 1119).

Minor changes in phraseology were made.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''10 years'' for ''five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 485. Coins or bars

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined under this title or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 708; Pub. L. 89–81, title II, § 211(a), July 23, 1965, 79 Stat. 257; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 277 (Mar. 4, 1909, ch. 321, § 163, 35 Stat. 1119).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

The provision for imprisonment for 10 years was changed to 15 years to conform to sections 471 and 472 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1965—Pub. L. 89–81 struck out ''Gold or silver'' before ''Coins or bars'' in section catchline, changed the description of the United States coins covered in first par. from gold or silver coins to any coin of a denomination higher than 5 cents, and made minor structural changes in second par.

§ 486. Uttering coins of gold, silver or other metal

Whoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass,

any coins of gold or silver or other metal, or alloys of metals, intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined under this title[1] or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 281 (Mar. 4, 1909, ch. 321, § 167, 35 Stat. 1120).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''fined under this title'' for ''fined not more than $2,000'', was executed by making the substitution for ''fined not more than $3,000'', to reflect the probable intent of Congress.

§ 487. Making or possessing counterfeit dies for coins

Whoever, without lawful authority, makes any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins coined at the mints of the United States; or

Whoever, without lawful authority, possesses any such die, hub, or mold, or any part thereof, or permits the same to be used for or in aid of the counterfeiting of any such coins of the United States—

Shall be fined under this title or imprisoned not more than fifteen years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 283 (Mar. 4, 1909, ch. 321, § 169, 35 Stat. 1120).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

The provision for imprisonment for 10 years was changed to 15 years to conform to section 471 of this title.

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 488. Making or possessing counterfeit dies for foreign coins

Whoever, within the United States, without lawful authority, makes any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or

Whoever, without lawful authority, possesses any such die, hub, or mold, or any part thereof, or conceals, or knowingly suffers the same to be used for the counterfeiting of any foreign coin—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 284 (Mar. 4, 1909, ch. 321, § 170, 35 Stat. 1120).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Provision for $2,000 fine was increased to $5,000 to conform with section 481 of this title.

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 489. Making or possessing likeness of coins

Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 709; July 16, 1951, ch. 226, § 3, 65 Stat. 122; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 285 (Mar. 4, 1909, ch. 321, § 171, 35 Stat. 1121; Feb. 15, 1912, ch. 38, 37 Stat. 64).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

1951—Act July 16, 1951, struck out ''publisher's illustrations excepted'' in section catchline, struck out from text all language which could be interpreted to prohibit or restrict the making and printing of coin illustrations in magazines and other publications, and gave the Secretary of the Treasury the authority to make exceptions to the application of this section.

§ 490. Minor coins

Whoever falsely makes, forges, or counterfeits any coin in the resemblance or similitude of any of the one-cent and 5-cent coins minted at the mints of the United States; or

[1] See 1994 Amendment note below.

Whoever passes, utters, publishes, or sells, or brings into the United States, or possesses any such false, forged, or counterfeited coin, with intent to defraud any person, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 98–216, §3(b)(1), Feb. 14, 1984, 98 Stat. 6; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §278 (Mar. 4, 1909, ch. 321, §164, 35 Stat. 1119).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1984—Pub. L. 98–216 substituted ''one-cent and 5-cent coins minted'' for ''minor coins coined''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(c) of Pub. L. 98–216 provided that: ''The amendments made by sections 1(3), (4), and (7) and 3(b)(1) of this Act [amending this section and sections 3322, 3528, and 5132 of Title 31, Money and Finance] are effective as of September 13, 1982.''

§491. Tokens or paper used as money

(a) Whoever, being 18 years of age or over, not lawfully authorized, makes, issues, or passes any coin, card, token, or device in metal, or its compounds, intended to be used as money, or whoever, being 18 years of age or over, with intent to defraud, makes, utters, inserts, or uses any card, token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States or any coin or other currency not legal tender in the United States, to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States, shall be fined under this title, or imprisoned not more than one year, or both.

(b) Whoever manufactures, sells, offers, or advertises for sale, or exposes or keeps with intent to furnish or sell any token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States, or any token, disk, paper, or other device issued or authorized in connection with rationing or food and fiber distribution by any agency of the United States, with knowledge or reason to believe that such tokens, slugs, disks, devices, papers, or other things are intended to be used unlawfully or fraudulently to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter, or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States shall be fined under this title or imprisoned not more than one year, or both.

Nothing contained in this section shall create immunity from criminal prosecution under the laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(c) ''Knowledge or reason to believe'', within the meaning of paragraph (b) of this section, may be shown by proof that any law-enforcement officer has, prior to the commission of the offense with which the defendant is charged, informed the defendant that tokens, slugs, disks, or other devices of the kind manufactured, sold, offered, or advertised for sale by him or exposed or kept with intent to furnish or sell, are being used unlawfully or fraudulently to operate certain specified automatic merchandise vending machines, postage-stamp machines, turnstiles, fare boxes, coin-box telephones, parking meters, or other receptacles, depositories, or contrivances, designed to receive or to be operated by lawful coins of the United States.

(June 25, 1948, ch. 645, 62 Stat. 710; Pub. L. 87–667, Sept. 19, 1962, 76 Stat. 555; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§282, 282a (Mar. 4, 1909, ch. 321, §168, 35 Stat. 1120, and §168a as added Apr. 1, 1944, ch. 151, 58 Stat. 149).

Mandatory punishment provision in subsection (a) was rephrased in the alternative.

Sections were consolidated and changes were made in phraseology.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Punishment provision in paragraph (a) of 5 years was changed to 1 year to make the offense a misdemeanor as was done in paragraph (b) of this section, which represents the latest expression of the intention of Congress. See definition of felony and misdemeanor in section 1 of this title and note thereunder.

In paragraph (b) the $3,000 fine was reduced to $1,000 to conform to paragraph (a) and as more in keeping with the gravity of offense.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1962—Subsec. (a). Pub. L. 87–667 inserted ''being 18 years of age or over,'' before ''not lawfully authorized'', and ''or whoever, being 18 years of age or over, with intent to defraud, makes, utters, inserts, or uses any card, token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States or any coin or other currency not legal tender in the United States, to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, postage-stamp machine, turnstile, fare box, coinbox telephone, parking meter or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States,'' and deleted ''for any 1-cent, 2-cent, 3-cent, or 5-cent piece, authorized by law, or for coins of equal value'' after ''intended to be used as money''.

Subsec. (b). Pub. L. 87–667 substituted ''device, paper, or other thing similar'' for ''device similar'', ''paper, or

other device issued or authorized in connection with rationing or food and fiber distribution'' for ''or other device issued or authorized in connection with rationing'', and ''devices, papers, or other things are intended to be used unlawfully'' for ''or other devices may be used unlawfully'', inserted ''or other currency'' before ''of the United States'' in two places, and ''lawful'' before ''receptacle, depository'', and provided that nothing in this section shall create immunity from criminal prosecution under the laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

§ 492. Forfeiture of counterfeit paraphernalia

All counterfeits of any coins or obligations or other securities of the United States or of any foreign government, or any articles, devices, and other things made, possessed, or used in violation of this chapter or of sections 331–333, 335, 336, 642 or 1720, of this title, or any material or apparatus used or fitted or intended to be used, in the making of such counterfeits, articles, devices or things, found in the possession of any person without authority from the Secretary of the Treasury or other proper officer, shall be forfeited to the United States.

Whoever, having the custody or control of any such counterfeits, material, apparatus, articles, devices, or other things, fails or refuses to surrender possession thereof upon request by any authorized agent of the Treasury Department, or other proper officer, shall be fined under this title or imprisoned not more than one year, or both.

Whenever, except as hereinafter in this section provided, any person interested in any article, device, or other thing, or material or apparatus seized under this section files with the Secretary of the Treasury, before the disposition thereof, a petition for the remission or mitigation of such forfeiture, the Secretary of the Treasury, if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or the mitigation of such forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just.

If the seizure involves offenses other than offenses against the coinage, currency, obligations or securities of the United States or any foreign government, the petition for the remission or mitigation of forfeiture shall be referred to the Attorney General, who may remit or mitigate the forfeiture upon such terms as he deems reasonable and just.

(June 25, 1948, ch. 645, 62 Stat. 710; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(A), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 286 (Mar. 4, 1909, ch. 321, § 172, 35 Stat. 1121; Jan. 27, 1938, ch. 10, § 4, 52 Stat. 7).

Section was materially shortened through merger of former third and fourth sentences with present first and second paragraphs by extending latter to include ''articles, devices, and other things''. This necessitated many insertions and deletions in the first two paragraphs, which, however, did not affect the substance of the section.

A reference in the former third sentence to violations of certain sections was broadened to read ''in violation of this chapter or of sections 331–333, 335–336, 642, 1720, of this title'' and incorporated in the first paragraph. This translation extends for the first time the provisions of this section to subject matter of sections 493–496, 498, 499, 504–509 of this title. All of the sections covered by the original reference in this section are represented in the translation except section 261, now section 8 of this title, and section 287 of title 18, U.S.C., 1940 ed., which were omitted therefrom as unnecessary, since the former is definitive and the latter related to procedure only, and is superseded by rule 41(a), (b) of the Federal Rules of Criminal Procedure.

The revised section was so written as to limit the authority of the Secretary of the Treasury to forfeitures within the enforcement powers of the Treasury Department, which advises that it does not investigate counterfeiting offenses not involving coins, currency, or Government obligations and securities. The Attorney General is the appropriate officer to remit or mitigate other forfeitures.

Changes in phraseology were also made.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''under this title'' for ''not more than $100'' in second par.

§ 493. Bonds and obligations of certain lending agencies

Whoever falsely makes, forges, counterfeits or alters any note, bond, debenture, coupon, obligation, instrument, or writing in imitation or purporting to be in imitation of, a note, bond, debenture, coupon, obligation, instrument or writing, issued by the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, or any land bank, intermediate credit bank, insured credit union, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States, shall be fined under this title or imprisoned not more than 10 years, or both.

Whoever passes, utters, or publishes, or attempts to pass, utter or publish any note, bond, debenture, coupon, obligation, instrument or document knowing the same to have been falsely made, forged, counterfeited or altered, contrary to the provisions of this section, shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711; Pub. L. 87–353, § 3(p), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90–19, § 24(a), May 25, 1967, 81 Stat. 27; Pub. L. 91–468, § 3, Oct. 19, 1970, 84 Stat. 1016; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title III, § 374(i), Oct. 26, 2001, 115 Stat. 341.)

HISTORICAL AND REVISION NOTES

Based on sections 264(t), 982, 1126, 1138d(b), 1316, 1441(b), 1467(b), 1731(b) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(b) of title 15, U.S.C. 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 12B(t), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178, and amended Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684; July 17, 1916, ch. 245, § 31 (second paragraph), 39 Stat. 383; July 17, 1916, ch. 245, § 211(f), as added Mar. 4, 1923, ch. 252, title I, § 2, 42 Stat. 1460; Mar. 4, 1923, ch. 252, title II, § 216(f), 42

Stat. 1472; Jan. 22, 1932, ch. 8, §16(b), 47 Stat. 11; July 22, 1932, ch. 522, §21(b), 47 Stat. 738; June 13, 1933, ch. 64, §8(b), 48 Stat. 134; June 16, 1933, ch. 98, §64(b), 48 Stat. 268; June 27, 1934, ch. 847, §512(b), 48 Stat. 1265).

Each of the nine sections from which this section was derived contained similar provisions with respect to one or more named agencies or corporations. The punishment was the same in each section except that in sections 982, 1126, and 1316 of title 12, U.S.C., 1940 ed., Banks and Banking, the maximum fine was $5,000. This section adopts the $10,000 maximum fine provided in the other six former sections.

This section condenses and simplifies the form of the former sections without change of substance, except where the maximum fine differs as noted above.

The enumeration of ''note, bond, debenture, coupon, obligation, instrument, or writing'' does not occur in any one of the original sections but is an adequate enumeration of the instruments mentioned in each.

Certain specific agencies are enumerated by name as are ''land bank, intermediate credit bank, bank for cooperatives,'' but the phrase ''or any lending, mortgage, insurance, credit, or savings and loan corporation or association'' was used to embrace the following: National Farm Loan Association, Federal Savings and Loan Insurance Corporation, Federal Savings and Loan Associations, National Agricultural Credit Corporation, Production Credit Corporations, Production Credit Associations, Home Loan Banks, National Mortgage Associations, and Central Bank for Cooperatives, Regional Agricultural Credit Corporation, or any instrumentalities created for similar purposes.

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary, such persons being principals by section 2 of this title.

The section was written in two paragraphs; the first denouncing forgery, counterfeiting, and altering; the second, passing, uttering, and publishing. This arrangement, together with the simplified style of the rewritten section, will permit the repeal of similar provisions in at least nine complicated sections now in title 12, U.S.C., 1940 ed., Banks and Banking.

Section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, was omitted from this revision and recommended for repeal. It provides as follows: ''Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, on conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful act.''

The only case construing such subsection (f) is *United States v. Halbrook*, D.C. Mo. 1941, 36 F. Supp. 345, in which the District Judge said by way of obiter dictum in a footnote that ''Under this section no overt act need be shown as is true in the case of a prosecution under section 37 of the Criminal Code'', now section 371 of this title.

Indeed the indictment upon which Halbrook was acquitted was drawn under section 88 of title 18, U.S.C., 1940 ed., now section 371 of this title, which required allegation and proof of an overt act and provided punishment by fine of not more than $10,000, or imprisonment for not more than 2 years, or both. The second indictment charged only substantive violations and involved neither conspiracy section.

It will be noted that section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, applies in terms only to the Farm Credit Administration, intermediate credit banks, Federal Farm Mortgage Corporation, and by reference to the banks for cooperatives, Production Credit Associations and Production Credit Corporations, and is not applicable to land banks, loan associations, Federal Housing Administration, Home Owners' Loan Corporation, or other institutions.

It is also noted that in the only reported case involving this section, the United States attorney drew his conspiracy indictment not under section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, but under section 88 of title 18, U.S.C., 1940 ed., which is now section 371 of this title, indicating considerable doubt as to the scope and effect of section 1138d(f) of said title 12, U.S.C., 1940 ed., Banks and Banking.

There is no sound reason for differentiating between types of credit, insurance, banking and lending agencies in the punishment of conspiracy or in the requirement as to proof of overt acts. Since conspiracies involving offenses equally serious such as obstruction of justice, bribery, embezzlements, counterfeiting and false statements and offenses against the Treasury of the United States as well as the Federal Deposit Insurance Corporation and the Home Owners' Loan Corporation are punishable under the general conspiracy statute, the same rule should be applied to lesser agencies.

The blanket provision for punishment of ''any person who willfully violates any other provision of this Act'' was omitted as useless, in view of the specific provisions for penalties elsewhere in the Act.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''10 years'' for ''five years'' in two places.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in two places.

1970—Pub. L. 91–468 inserted National Credit Union Administration and insured credit unions in enumeration of lending agencies.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration''.

1961—Pub. L. 87–353 struck out reference to the Federal Farm Mortgage Corporation.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of corporations of Department of Agriculture, boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Reconstruction Finance Corporation.

ABOLITION OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolition of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, §21, 67 Stat. 126, see note set out under section 1463 of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084 set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

§494. Contractors' bonds, bids, and public records

Whoever falsely makes, alters, forges, or counterfeits any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or

Whoever utters or publishes as true or possesses with intent to utter or publish as true, any such false, forged, altered, or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited; or

Whoever transmits to, or presents at any office or to any officer of the United States, any

such false, forged, altered, or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 72 (Mar. 4, 1909, ch. 321, § 28, 35 Stat. 1094).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were also made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 495. Contracts, deeds, and powers of attorney

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 73 (Mar. 4, 1909, ch. 321, § 29, 35 Stat. 1094).

Reference in first paragraph to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 496. Customs matters

Whoever forges, counterfeits or falsely alters any writing made or required to be made in connection with the entry or withdrawal of imports or collection of customs duties, or uses any such writing knowing the same to be forged, counterfeited or falsely altered, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 711; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 119 (Mar. 4, 1909, ch. 321, § 63, 35 Stat. 1100).

Section was rewritten to apply to all customs documents or writings. The Treasury Department advises that certificates of entry are obsolete.

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 497. Letters patent

Whoever falsely makes, forges, counterfeits, or alters any letters patent granted or purporting to have been granted by the President of the United States; or

Whoever passes, utters, or publishes, or attempts to pass, utter, or publish as genuine, any such letters patent, knowing the same to be forged, counterfeited or falsely altered—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 71 (Mar. 4, 1909, ch. 321, § 27, 35 Stat. 1094).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 498. Military or naval discharge certificates

Whoever forges, counterfeits, or falsely alters any certificate of discharge from the military or naval service of the United States, or uses, unlawfully possesses or exhibits any such certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined under this title[1] or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 712; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940, ed., § 136 (Mar. 4, 1917, ch. 180, 39 Stat. 1182).

Reference to any person causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

At the end of this section words ''in the discretion of the court'' were omitted as unnecessary, as the punishment provisions, being framed in the alternative by the use of the disjunctive ''or,'' vest in the court the power to impose a fine or prison sentence in its discretion.

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''fined under this title'' for ''fined not more than $5,000'', was executed by mak-

[1] See 1994 Amendment note below.

ing the substitution for ''fined not more than $1,000'', to reflect the probable intent of Congress.

§ 499. Military, naval, or official passes

Whoever falsely makes, forges, counterfeits, alters, or tampers with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with intent to defraud uses or possesses any such pass or permit, or personates or falsely represents himself to be or not to be a person to whom such pass or permit has been duly issued, or willfully allows any other person to have or use any such pass or permit, issued for his use alone, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 132 (June 15, 1917, ch. 30, title X, § 3, 40 Stat. 228).

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 500. Money orders

Whoever, with intent to defraud, falsely makes, forges, counterfeits, engraves, or prints any order in imitation of or purporting to be a blank money order or a money order issued by or under the direction of the Post Office Department or Postal Service; or

Whoever forges or counterfeits the signature or initials of any person authorized to issue money orders upon or to any money order, postal note, or blank therefor provided or issued by or under the direction of the Post Office Department or Postal Service, or post office department or corporation of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereof; or

Whoever falsely alters, in any material respect, any such money order or postal note; or

Whoever, with intent to defraud, passes, utters or publishes or attempts to pass, utter or publish any such forged or altered money order or postal note, knowing any material initials, signature, stamp impression or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or

Whoever issues any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States or Postal Service, or any officer, employee, or agent thereof, any sum of money whatever; or

Whoever embezzles, steals, or knowingly converts to his own use or to the use of another, or without authority converts or disposes of any blank money order form provided by or under the authority of the Post Office Department or Postal Service; or

Whoever receives or possesses any such money order form with the intent to convert it to his own use or gain or use or gain of another knowing it to have been embezzled, stolen or converted; or

Whoever, with intent to defraud the United States, the Postal Service, or any person, transmits, presents, or causes to be transmitted or presented, any money order or postal note knowing the same—

(1) to contain any forged or counterfeited signature, initials, or any stamped impression, or

(2) to contain any material alteration therein unlawfully made, or

(3) to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, or

(4) to have been stamped without lawful authority; or

Whoever steals, or with intent to defraud or without being lawfully authorized by the Post Office Department or Postal Service, receives, possesses, disposes of or attempts to dispose of any postal money order machine or any stamp, tool, or instrument specifically designed to be used in preparing or filling out the blanks on postal money order forms—

Shall be fined under this title[1] or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 712; Pub. L. 91–375, § 6(j)(5), Aug. 12, 1970, 84 Stat. 777; Pub. L. 92–430, Sept. 23, 1972, 86 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 347 (Mar. 4, 1909, ch. 321, § 218, 35 Stat. 1131).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''fined under this title'' for ''fined not more than $10,000'', was executed by making the substitution for ''fined not more than $5,000'' in last par., to reflect the probable intent of Congress.

1972—Pub. L. 92–430 substituted ''a blank money order or a money order issued by or under the direction of'' for ''a money order issued by'' and struck out '', or by any officer or employee thereof'' in first par.; substituted ''or initials of any person authorized to issue money orders'' for ''of any officer or employee of the Postal Service,'' in second par.; inserted ''or attempts to pass, utter or publish'' before ''any such forged'' and substituted ''material initials, signature, stamp impression'' for ''material signature'' in fourth par.; inserted ''or Postal Service'' after ''the United States'' in fifth par.; inserted sixth and seventh pars.; inserted '', the Postal Service'' after ''the United States'', and substituted ''presents, or causes to be transmitted or presented, any money order'' for ''or presents to any officer or employee, or at any office of the United States, any money order'' and designated material after ''knowing the same'' as cls. (1) to (3) with minor changes and added cl. (4) in eighth par.; inserted ninth par., and enacted provisions of former seventh par. as tenth par.

[1] See 1994 Amendment note below.

1970—Pub. L. 91–375 inserted reference to Postal Service and substituted ''officer or employee'' for ''postmaster or agent'' in first par. and substituted ''officer or employee of the Postal Service'' for ''postmaster, assistant postmaster, chief clerk, or clerk'' and ''Post Office Department or the Postal Service, or post office department or corporation of any foreign country'' for ''Post Office Department of the United States, or of any foreign country'' in second par.

CHANGE OF NAME

Post Office Department redesignated United States Postal Service pursuant to Pub. L. 91–375, § 6(*o*), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 501. Postage stamps, postage meter stamps, and postal cards

Whoever forges or counterfeits any postage stamp, postage meter stamp, or any stamp printed upon any stamped envelope, or postal card, or any die, plate, or engraving thereof; or

Whoever makes or prints, or knowingly uses or sells, or possesses with intent to use or sell, any such forged or counterfeited postage stamp, postage meter stamp, stamped envelope, postal card, die, plate, or engraving; or

Whoever makes, or knowingly uses or sells, or possesses with intent to use or sell, any paper bearing the watermark of any stamped envelope, or postal card, or any fraudulent imitation thereof; or

Whoever makes or prints, or authorizes to be made or printed, any postage stamp, postage meter stamp, stamped envelope, or postal card, of the kind authorized and provided by the Post Office Department or by the Postal Service, without the special authority and direction of the Department or Postal Service; or

Whoever after such postage stamp, postage meter stamp, stamped envelope, or postal card has been printed, with intent to defraud, delivers the same to any person not authorized by an instrument in writing, duly executed under the hand of the Postmaster General and the seal of the Post Office Department or the Postal Service, to receive it—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713; Pub. L. 91–375, § 6(j)(6), Aug. 12, 1970, 84 Stat. 777; Pub. L. 91–448, § 1(a), Oct. 14, 1970, 84 Stat. 920; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 348 (Mar. 4, 1909, ch. 321, § 219, 35 Stat. 1132).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes of phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in last par.

1970—Pub. L. 91–448 inserted references to the Postal Service and to postage meter stamps. Pub. L. 91–448, § 1(b), repealed section 6(j)(6) of the Postal Reorganization Act, Pub. L. 91–375, Aug. 12, 1970, 84 Stat. 719, by which the references to the Postal Service had been inserted earlier.

Pub. L. 91–375 inserted ''or by the Postal Service,'' after ''Post Office Department,'' and substituted ''the Department or Postal Service'' for ''said department'' in fourth par. and struck out the comma after ''stamped envelope'' and ''to defraud'' and inserted ''or the Postal Service'' after ''Post Office Department'' in fifth par.

CHANGE OF NAME

Post Office Department redesignated United States Postal Service pursuant to Pub. L. 91–375, § 6(*o*), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 502. Postage and revenue stamps of foreign governments

Whoever forges, or counterfeits, or knowingly utters or uses any forged or counterfeit postage stamp or revenue stamp of any foreign government, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 349 (Mar. 4, 1909, ch. 321, § 220, 35 Stat. 1132; May 26, 1926, ch. 396, 44 Stat. 653).

A paragraph defining ''foreign government'' was combined with other like provisions to form section 11 of this title. A proviso against repeal, ''Provided, however, That nothing in this section shall be held to repeal or modify section 350 of this title [now section 504 of this title]'', was deleted as unnecessary since that section by express reference to this one makes it clear that these sections are in pari materia.

Minor changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 503. Postmarking stamps

Whoever forges or counterfeits any postmarking stamp, or impression thereof with intent to make it appear that such impression is a genuine postmark, or makes or knowingly uses or sells, or possesses with intent to use or sell, any forged or counterfeited postmarking stamp, die, plate, or engraving, or such impression thereof, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 713; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 349a (Aug. 26, 1935, ch. 692, 49 Stat. 866).

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§504. Printing and filming of United States and foreign obligations and securities

Notwithstanding any other provision of this chapter, the following are permitted:

(1) The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) postage stamps of the United States,

(B) revenue stamps of the United States,

(C) any other obligation or other security of the United States, and

(D) postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation.

Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government and stamps issued under the Migratory Bird Hunting Stamp Act of 1934 may be in color;

(ii) all illustrations (including illustrations of uncanceled postage stamps in color and illustrations of stamps issued under the Migratory Bird Hunting Stamp Act of 1934 in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) the negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

The Secretary of the Treasury shall prescribe regulations to permit color illustrations of such currency of the United States as the Secretary determines may be appropriate for such purposes.

(2) The provisions of this section shall not permit the reproduction of illustrations of obligations or other securities, by or through electronic methods used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press or others shall not be unduly restricted.

(3) The making or importation of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term ''postage stamp'' includes postage meter stamps.

(June 25, 1948, ch. 645, 62 Stat. 713; Pub. L. 85–921, §1, Sept. 2, 1958, 72 Stat. 1771; Pub. L. 90–353, §1, June 20, 1968, 82 Stat. 240; Pub. L. 91–448, §2, Oct. 14, 1970, 84 Stat. 921; Pub. L. 98–369, div. A, title X, §1077(b)(1), (2), July 18, 1984, 98 Stat. 1054; Pub. L. 102–550, title XV, §1554, Oct. 28, 1992, 106 Stat. 4071; Pub. L. 104–294, title VI, §601(e), (f)(3), Oct. 11, 1996, 110 Stat. 3499.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §350 (Mar. 3, 1923, ch. 218, 42 Stat. 1437; Jan. 27, 1938, ch. 10, §2, 52 Stat. 6).

Minor changes in phraseology were made.

REFERENCES IN TEXT

The Migratory Bird Hunting Stamp Act, referred to in par. (1)(i), (ii), subsequently renamed the Migratory Bird Hunting and Conservation Stamp Act, is act Mar. 16, 1934, ch. 71, 48 Stat. 451, as amended, which is classified generally to subchapter IV (§718 et seq.) of chapter 7 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 718 of Title 16 and Tables.

AMENDMENTS

1996—Par. (1). Pub. L. 104–294, §601(e)(1), substituted ''The printing'' for ''the printing'' in introductory provisions.

Par. (3). Pub. L. 104–294, §601(e)(2), (f)(3), substituted ''The making or importation of'' for ''the making or importation, of''.

1992—Par. (1). Pub. L. 102–550, §1554(1), (2), in subpar. (D), substituted a period for the comma at end, in provisions following subpar. (D), struck out ''for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums).'' before ''Illustrations permitted'', and inserted at end ''The Secretary of the Treasury shall prescribe regulations to permit color illustrations of such currency of the United States as the Secretary determines may be appropriate for such purposes.''

Par. (2). Pub. L. 102–550, §1554(3), added par. (2). Former par. (2) redesignated (3).

Par. (3). Pub. L. 102–550, §1554(3), (4), redesignated par. (2) as (3) and struck out ''but not for advertising purposes except philatelic advertising,'' after ''or importation,''.

1984—Par. (1)(i). Pub. L. 98–369, §1077(b)(1), inserted ''and stamps issued under the Migratory Bird Hunting Stamp Act of 1934''.

Par. (1)(ii). Pub. L. 98–369, §1077(b)(2), inserted ''and illustrations of stamps issued under the Migratory Bird Hunting Stamp Act of 1934 in color''.

1970—Pub. L. 91–448 inserted provision including postage meter stamp within the meaning of postage stamp for the purposes of this section.

1968—Par. (1). Pub. L. 90–353 inserted provisions so as to permit colored illustrations of canceled United States postage stamps in the exact size of genuine stamps and colored illustrations of uncanceled United States and foreign stamps if the size of the illustra-

tions is less than three-fourths or more than one and one-half times the size of the genuine stamps and permitted the use of colored illustrations of stamps in public documents relating to stamps printed by the Government Printing Office at the request of the Postmaster General.

1958—Pub. L. 85–921 permitted black and white illustrations of revenue stamps of the United States for philatelic and numismatic purposes, black and white illustrations of United States and foreign paper money and other obligations and securities for educational, historical, and newsworthy purposes, and permitted motion picture films, microfilms, and slides of United States and foreign postage and revenue stamps, paper money, and other obligations and securities, except films in connection with advertising.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 1077(c) of Pub. L. 98–369, set out as a note under section 718e of Title 16, Conservation.

§ 505. Seals of courts; signatures of judges or court officers

Whoever forges the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or forges or counterfeits the seal of any such court, or knowingly concurs in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or tenders in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 714; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 236 (Mar. 4, 1909, ch. 321, § 130, 35 Stat. 1112).

Mandatory punishment provision was rephrased in the alternative.

Minor changes of phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 506. Seals of departments or agencies

(a) Whoever—

(1) falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States, or any facsimile thereof;

(2) knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any description; or

(3) with fraudulent intent, possesses, sells, offers for sale, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or facsimile thereof, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered,

shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) Notwithstanding subsection (a) or any other provision of law, if a forged, counterfeited, mutilated, or altered seal of a department or agency of the United States, or any facsimile thereof, is—

(1) so forged, counterfeited, mutilated, or altered;

(2) used, affixed, or impressed to or upon any certificate, instrument, commission, document, or paper of any description; or

(3) with fraudulent intent, possessed, sold, offered for sale, furnished, offered to furnish, given away, offered to give away, transported, offered to transport, imported, or offered to import,

with the intent or effect of facilitating an alien's application for, or receipt of, a Federal benefit to which the alien is not entitled, the penalties which may be imposed for each offense under subsection (a) shall be two times the maximum fine, and 3 times the maximum term of imprisonment, or both, that would otherwise be imposed for an offense under subsection (a).

(c) For purposes of this section—

(1) the term ''Federal benefit'' means—

(A) the issuance of any grant, contract, loan, professional license, or commercial license provided by any agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19[1] U.S.C. 1396b(v))), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States; and

(2) each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense under this section.

(June 25, 1948, ch. 645, 62 Stat. 714; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title V, § 561, Sept. 30, 1996, 110 Stat. 3009–681.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 131 (June 15, 1917, ch. 30, title X, § 2, 40 Stat. 228).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary as such persons are made principals by section 2 of this title.

In view of definitions of department and agency in section 6 of this title, words ''department or agency'' in first paragraph were substituted for ''executive department, or any bureau, commission, or office''.

Provision for 10 years' imprisonment was reduced to 5 years to conform to punishment provision in section 505 of this title, covering an offense of like gravity.

Minor changes in phraseology were also made.

AMENDMENTS

1996—Pub. L. 104–208 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

[1] So in original. Probably should be ''42''.

''Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or

''Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or

''Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered—

''Shall be fined under this title or imprisoned not more than five years, or both.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 507. Ship's papers

Whoever falsely makes, forges, counterfeits, or alters any instrument in imitation of or purporting to be, an abstract or official copy or certificate of the documentation of any vessel, or a certificate of ownership, pass, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any officer of the customs by virtue of his office; or

Whoever utters, publishes, or passes, or attempts to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, pass, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud—

Shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 714; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–304, § 17(d)(2), Oct. 6, 2006, 120 Stat. 1707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 129 (Mar. 4, 1909, ch. 321, § 72, 35 Stat. 1101).

The words ''passport'' and ''sea letter'' were omitted as obsolete, in view of the Presidential proclamation of April 10, 1815, discontinuing the use of such passports and sea letters.

Mandatory punishment provisions were rephrased in the alternative.

Minor changes of phraseology were made.

AMENDMENTS

2006—Pub. L. 109–304 in first par. substituted ''documentation of any vessel'' for ''recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States'' and struck out ''collector or other'' after ''granted by any'' and in second par. struck out ''license,'' after ''certificate,''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 508. Transportation requests of Government

Whoever falsely makes, forges, or counterfeits in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof, or knowingly alters any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof; or

Whoever knowingly passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form or request—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 146 (Dec. 11, 1926, ch. 2, § 1, 44 Stat. 917).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Also, in first paragraph, word ''agency'' was substituted for ''branch'', in view of definitions of department and agency in section 6 of this title.

Words ''upon conviction'' in last paragraph were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes of phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 509. Possessing and making plates or stones for Government transportation requests

Whoever, except by lawful authority, controls, holds or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any form or request for Government transportation, or uses such plate, stone, or other thing, or knowingly permits or suffers the same to be used in making any such form or request or any part of such a form or request; or

Whoever makes or engraves any plate, stone, or thing, in the likeness of any plate, stone, or thing designated for the printing of the genuine issues of the form or request for Government transportation; or

Whoever prints, photographs, or in any other manner makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine form or request for Government transportation, or any part thereof; or

Whoever brings into the United States or any place subject to the jurisdiction thereof, any plate, stone, or other thing, or engraving, photograph, print, or other impression of the form or request for Government transportation—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 147 (Dec. 11, 1926, ch. 2, § 2, 44 Stat. 918).

References to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Words ''upon conviction'' in last paragraph were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 510. Forging endorsements on Treasury checks or bonds or securities of the United States

(a) Whoever, with intent to defraud—

(1) falsely makes or forges any endorsement or signature on a Treasury check or bond or security of the United States; or

(2) passes, utters, or publishes, or attempts to pass, utter, or publish, any Treasury check or bond or security of the United States bearing a falsely made or forged endorsement or signature;

shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever, with knowledge that such Treasury check or bond or security of the United States is stolen or bears a falsely made or forged endorsement or signature buys, sells, exchanges, receives, delivers, retains, or conceals any such Treasury check or bond or security of the United States shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the face value of the Treasury check or bond or security of the United States or the aggregate face value, if more than one Treasury check or bond or security of the United States, does not exceed $1,000, in any of the above-mentioned offenses, the penalty shall be a fine under this title or imprisonment for not more than one year, or both.

(Added Pub. L. 98–151, § 115(a), Nov. 14, 1983, 97 Stat. 976; amended Pub. L. 101–647, title XXXV, § 3514, Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, §§ 602(e), 606(b), Oct. 11, 1996, 110 Stat. 3503, 3511; Pub. L. 107–273, div. B, title IV, § 4002(a)(1), Nov. 2, 2002, 116 Stat. 1806.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 substituted ''fine under this title'' for ''fine of under this title''.

1996—Subsec. (b). Pub. L. 104–294, § 602(e), struck out ''that in fact is stolen or bears a forged or falsely made endorsement or signature'' after ''bond or security of the United States''.

Subsec. (c). Pub. L. 104–294, § 606(b), substituted ''$1,000'' for ''$500''.

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

Subsec. (c). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000''.

1990—Subsec. (a). Pub. L. 101–647 inserted semicolon after ''or signature'' in par. (2) and moved provisions beginning with ''shall be fined'' flush with left margin.

§ 511. Altering or removing motor vehicle identification numbers

(a) A person who—

(1) knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle or motor vehicle part; or

(2) with intent to further the theft of a motor vehicle, knowingly removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act,

shall be fined under this title, imprisoned not more than 5 years, or both.

(b)(1) Subsection (a) of this section does not apply to a removal, obliteration, tampering, or alteration by a person specified in paragraph (2) of this subsection (unless such person knows that the vehicle or part involved is stolen).

(2) The persons referred to in paragraph (1) of this subsection are—

(A) a motor vehicle scrap processor or a motor vehicle demolisher who complies with applicable State law with respect to such vehicle or part;

(B) a person who repairs such vehicle or part, if the removal, obliteration, tampering, or alteration is reasonably necessary for the repair;

(C) a person who restores or replaces an identification number for such vehicle or part in accordance with applicable State law; and

(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by—

(i) the owner or his authorized agent;

(ii) applicable State or local law; or

(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.

(c) As used in this section, the term—

(1) ''identification number'' means a number or symbol that is inscribed or affixed for purposes of identification under chapter 301 and part C of subtitle VI of title 49;

(2) ''motor vehicle'' has the meaning given that term in section 32101 of title 49;

(3) ''motor vehicle demolisher'' means a person, including any motor vehicle dismantler or motor vehicle recycler, who is engaged in the business of reducing motor vehicles or motor vehicle parts to metallic scrap that is unsuitable for use as either a motor vehicle or a motor vehicle part;

(4) ''motor vehicle scrap processor'' means a person—

(A) who is engaged in the business of purchasing motor vehicles or motor vehicle parts for reduction to metallic scrap for recycling;

(B) who, from a fixed location, uses machinery to process metallic scrap into prepared grades; and

(C) whose principal product is metallic scrap for recycling;

but such term does not include any activity of any such person relating to the recycling of a motor vehicle or a motor vehicle part as a used motor vehicle or a used motor vehicle part.

(d) For purposes of subsection (a) of this section, the term ''tampers with'' includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility.

(Added Pub. L. 98–547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768; amended Pub. L. 103–272, § 5(e)(3), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title XXII, § 220003(a)–(c), Sept. 13, 1994, 108 Stat. 2076, 2077; Pub. L. 104–294, title VI, § 604(b)(8), Oct. 11, 1996, 110 Stat. 3507.)

REFERENCES IN TEXT

The Motor Vehicle Theft Prevention Act, referred to in subsecs. (a)(2), (b)(2)(D), and (d), is title XXII of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 2074, which enacted section 511A of this title and section 14171 of Title 42, The Public Health and Welfare, amended this section, and enacted provisions set out as a note under section 13701 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of Title 42 and Tables.

CODIFICATION

Another section 511 was renumbered section 513 of this title.

AMENDMENTS

1996—Subsec. (b)(2)(D). Pub. L. 104–294 realigned margins.

1994—Subsec. (a). Pub. L. 103–322, § 220003(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whoever knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, shall be fined not more than $10,000 or imprisoned not more than five years, or both.''

Subsec. (b)(2)(D). Pub. L. 103–322, § 220003(b), added subpar. (D).

Subsec. (c)(1). Pub. L. 103–272, § 5(e)(3)(A), substituted ''chapter 301 and part C of subtitle VI of title 49'' for ''the National Traffic and Motor Vehicle Safety Act of 1966, or the Motor Vehicle Information and Cost Savings Act''.

Subsec. (c)(2). Pub. L. 103–272, § 5(e)(3)(B), substituted ''section 32101 of title 49'' for ''section 2 of the Motor Vehicle Information and Cost Savings Act''.

Subsec. (d). Pub. L. 103–322, § 220003(c), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 511A. Unauthorized application of theft prevention decal or device

(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed $1,000.

(b) For purposes of this section, the term ''theft prevention decal or device'' means a decal or other device designed in accordance with a uniform design for such devices developed pursuant to the Motor Vehicle Theft Prevention Act.

(Added Pub. L. 103–322, title XXII, § 220003(d)(1), Sept. 13, 1994, 108 Stat. 2077.)

REFERENCES IN TEXT

The Motor Vehicle Theft Prevention Act, referred to in text, is title XXII of Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 2074, which enacted this section and section 14171 of Title 42, The Public Health and Welfare, amended section 511 of this title, and enacted provisions set out as a note under section 13701 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of Title 42 and Tables.

§ 512. Forfeiture of certain motor vehicles and motor vehicle parts

(a) If an identification number for a motor vehicle or motor vehicle part is removed, obliterated, tampered with, or altered, such vehicle or part shall be subject to seizure and forfeiture to the United States unless—

(1) in the case of a motor vehicle part, such part is attached to a motor vehicle and the owner of such motor vehicle does not know that the identification number has been removed, obliterated, tampered with, or altered;

(2) such motor vehicle or part has a replacement identification number that—

(A) is authorized by the Secretary of Transportation under chapter 301 of title 49; or

(B) conforms to applicable State law;

(3) such removal, obliteration, tampering, or alteration is caused by collision or fire or is carried out as described in section 511(b) of this title; or

(4) such motor vehicle or part is in the possession or control of a motor vehicle scrap processor who does not know that such identification number was removed, obliterated, tampered with, or altered in any manner other than by collision or fire or as described in section 511(b) of this title.

(b) All provisions of law relating to—

(1) the seizure and condemnation of vessels, vehicles, merchandise, and baggage for violation of customs laws, and procedures for summary and judicial forfeiture applicable to such violations;

(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such disposition;

(3) the remission or mitigation of such forfeiture; and

(4) the compromise of claims and the award of compensation to informers with respect to such forfeiture;

shall apply to seizures and forfeitures under this section, to the extent that such provisions are not inconsistent with this section. The duties of the collector of customs or any other person with respect to seizure and forfeiture under such provisions shall be performed under this section by such persons as may be designated by the Attorney General.

(c) As used in this section, the terms ''identification number'', ''motor vehicle'', and ''motor vehicle scrap processor'' have the meanings given those terms in section 511 of this title.

(Added Pub. L. 98–547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2769; amended Pub. L. 103–272, § 5(e)(4), July 5, 1994, 108 Stat. 1373.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (b)(1), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–272 substituted ''chapter 301 title 49'' for ''the National Traffic and Motor Vehicle Safety Act of 1966''.

§ 513. Securities of the States and private entities

(a) Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined under this title[1] or imprisoned for not more than ten years, or both.

(b) Whoever makes, receives, possesses, sells or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine under this title or by imprisonment for not more than ten years, or both.

(c) For purposes of this section—

(1) the term ''counterfeited'' means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety;

(2) the term ''forged'' means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents;

(3) the term ''security'' means—

(A) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act, money order, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement, collateral-trust certificate, pre-reorganization certificate of subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible or intangible property;

(B) an instrument evidencing ownership of goods, wares, or merchandise;

(C) any other written instrument commonly known as a security;

(D) a certificate of interest in, certificate of participation in, certificate for, receipt for, or warrant or option or other right to subscribe to or purchase, any of the foregoing; or

(E) a blank form of any of the foregoing;

(4) the term ''organization'' means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, or any other association of persons which operates in or the activities of which affect interstate or foreign commerce; and

(5) the term ''State'' includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States.

(Added Pub. L. 98–473, title II, § 1105(a), Oct. 12, 1984, 98 Stat. 2144, § 511; renumbered § 513, Pub. L. 99–646, § 31(a), Nov. 10, 1986, 100 Stat. 3598; amended Pub. L. 101–647, title XXXV, § 3515, Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103–322, title XXXIII, §§ 330008(1), 330016(2)(C), Sept. 13, 1994, 108 Stat. 2142, 2148.)

REFERENCES IN TEXT

Section 916(c) of the Electronic Fund Transfer Act, referred to in par. (3)(A), is classified to section 1693n(c) of Title 15, Commerce and Trade.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 330016(2)(C), which directed the amendment of this section by substituting ''under this title'' for ''of not more than $250,000'', was executed by making the substitution for ''not more than $250,000'', to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $250,000''.

Subsec. (c)(4). Pub. L. 103–322, § 330008(1), substituted ''association of persons'' for ''association or persons''.

1990—Subsec. (c)(3)(A). Pub. L. 101–647 struck out ''(15 U.S.C. 1693(c))'' after ''Electronic Fund Transfer Act'' and inserted comma after ''profit-sharing agreement''.

§ 514. Fictitious obligations

(a) Whoever, with the intent to defraud—

(1) draws, prints, processes, produces, publishes, or otherwise makes, or attempts or causes the same, within the United States;

(2) passes, utters, presents, offers, brokers, issues, sells, or attempts or causes the same, or with like intent possesses, within the United States; or

(3) utilizes interstate or foreign commerce, including the use of the mails or wire, radio, or other electronic communication, to transmit, transport, ship, move, transfer, or attempts or causes the same, to, from, or through the United States,

any false or fictitious instrument, document, or other item appearing, representing, purporting, or contriving through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization, shall be guilty of a class B felony.

(b) For purposes of this section, any term used in this section that is defined in section 513(c) has the same meaning given such term in section 513(c).

(c) The United States Secret Service, in addition to any other agency having such authority, shall have authority to investigate offenses under this section.

[1] See 1994 Amendment note below.

(Added Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 648(b)(1)], title II, § 2603(b)(1), Sept. 30, 1996, 110 Stat. 3009–314, 3009–367, 3009–470.)

CODIFICATION

Sections 101(f) [title VI, § 648(b)(1)] and 2603(b)(1) of div. A of Pub. L. 104–208 added identical sections 514.

EFFECTIVE DATE

Section effective Sept. 30, 1996, and to remain in effect for each fiscal year following Sept. 30, 1996, see section 101(f) [title VI, § 648(c)] of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 474 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 26—CRIMINAL STREET GANGS

Sec.
521. Criminal street gangs.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(a)(2), Oct. 11, 1996, 110 Stat. 3506, added chapter analysis.

§ 521. Criminal street gangs

(a) DEFINITIONS.—

''conviction'' includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency involving a violent or controlled substances felony.

''criminal street gang'' means an ongoing group, club, organization, or association of 5 or more persons—

(A) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (c);

(B) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subsection (c); and

(C) the activities of which affect interstate or foreign commerce.

''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) PENALTY.—The sentence of a person convicted of an offense described in subsection (c) shall be increased by up to 10 years if the offense is committed under the circumstances described in subsection (d).

(c) OFFENSES.—The offenses described in this section are—

(1) a Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is not less than 5 years;

(2) a Federal felony crime of violence that has as an element the use or attempted use of physical force against the person of another; and

(3) a conspiracy to commit an offense described in paragraph (1) or (2).

(d) CIRCUMSTANCES.—The circumstances described in this section are that the offense described in subsection (c) was committed by a person who—

(1) participates in a criminal street gang with knowledge that its members engage in or have engaged in a continuing series of offenses described in subsection (c);

(2) intends to promote or further the felonious activities of the criminal street gang or maintain or increase his or her position in the gang; and

(3) has been convicted within the past 5 years for—

(A) an offense described in subsection (c);

(B) a State offense—

(i) involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is not less than 5 years' imprisonment; or

(ii) that is a felony crime of violence that has as an element the use or attempted use of physical force against the person of another;

(C) any Federal or State felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense; or

(D) a conspiracy to commit an offense described in subparagraph (A), (B), or (C).

(Added Pub. L. 103–322, title XV, § 150001(a), Sept. 13, 1994, 108 Stat. 2034; amended Pub. L. 104–294, title VI, § 607(q), Oct. 11, 1996, 110 Stat. 3513; Pub. L. 107–273, div. B, title IV, § 4002(b)(3), Nov. 2, 2002, 116 Stat. 1807.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 realigned margins of par. defining ''State''.

1996—Subsec. (a). Pub. L. 104–294 inserted par. defining ''State'' at end.

CHAPTER 27—CUSTOMS

Sec.
541. Entry of goods falsely classified.
542. Entry of goods by means of false statements.
543. Entry of goods for less than legal duty.
544. Relanding of goods.
545. Smuggling goods into the United States.
546. Smuggling goods into foreign countries.
547. Depositing goods in buildings on boundaries.
548. Removing or repacking goods in warehouses.
549. Removing goods from customs custody; breaking seals.
550. False claim for refund of duties.
551. Concealing or destroying invoices or other papers.
552. Officers aiding importation of obscene or treasonous books and articles.
553. Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft.
554.[1] Smuggling goods from the United States.
554.[1] Border tunnels and passages.

AMENDMENTS

2006—Pub. L. 109–295, title V, § 551(b), Oct. 4, 2006, 120 Stat. 1390, added item 554 ''Border tunnels and passages''.

[1] So in original. Two sections 554 have been enacted.

Pub. L. 109–177, title III, § 311(b), Mar. 9, 2006, 120 Stat. 242, added item 554 ''Smuggling goods from the United States''.

1984—Pub. L. 98–547, title III, § 301(b), Oct. 25, 1984, 98 Stat. 2771, added item 553.

§ 541. Entry of goods falsely classified

Whoever knowingly effects any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification as to quality or value, or by the payment of less than the amount of duty legally due, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 715; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 126 (Mar. 4, 1909, ch. 321, § 69, 35 Stat. 1101).

Reference to persons aiding, contained in words ''or aid in effecting,'' was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 542. Entry of goods by means of false statements

Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties; or

Whoever is guilty of any willful act or omission whereby the United States shall or may be deprived of any lawful duties accruing upon merchandise embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission—

Shall be fined for each offense under this title or imprisoned not more than two years, or both.

Nothing in this section shall be construed to relieve imported merchandise from forfeiture under other provisions of law.

The term ''commerce of the United States'', as used in this section, shall not include commerce with the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 715; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242; Pub. L. 103–322, title XXXIII, §§ 330004(18), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2142, 2147; Pub. L. 104–294, title VI, § 604(b)(23), Oct. 11, 1996, 110 Stat. 3508.)

HISTORICAL AND REVISION NOTES

Based on section 1591 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(a), 49 Stat. 527).

The reference in the first paragraph to persons aiding, contained in the phrase ''or aids,'' was omitted as unnecessary as such persons are made principals by section 2 of this title.

Words ''upon conviction'' before ''be fined'' were omitted as surplusage since punishment cannot be imposed until conviction is secured.

Enumeration of persons at beginning of section and provision preserving forfeitures where authorized by law were omitted as surplusage.

The fourth paragraph was added to the revised section to make clear the intent of Congress that forfeiture is an additional consequence independent of the criminal punishment.

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Changes in phraseology were also made.

AMENDMENTS

1996—Pub. L. 104–294 amended Pub. L. 103–322, § 330004(18). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in third par.

Pub. L. 103–322, § 330004(18), as amended by Pub. L. 104–294, § 604(b)(23), struck out ''Philippine Islands,'' before ''Virgin Islands'' in last par.

1955—Act June 30, 1955, inserted reference to Johnston Island in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see section 2(d) of act June 30, 1955, set out as a note under section 1401 of Title 19, Customs Duties.

§ 543. Entry of goods for less than legal duty

Whoever, being an officer of the revenue, knowingly admits to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due, shall be fined under this title or imprisoned not more than two years, or both, and removed from office.

(June 25, 1948, ch. 645, 62 Stat. 716; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 125 (Mar. 4, 1909, ch. 321, § 68, 35 Stat. 1101).

Reference to persons aiding, contained in words ''or aid in admitting,'' was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 544. Relanding of goods

If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry having been made, such merchandise shall be considered as having been imported into the United States contrary to law, and each person

concerned shall be fined under this title or imprisoned not more than two years, or both; and such merchandise shall be forfeited.

The term ''any place in the United States'', as used in this section, shall not include the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 716; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242; Pub. L. 103–322, title XXXIII, §§ 330004(18), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2142, 2147; Pub. L. 104–294, title VI, § 604(b)(23), Oct. 11, 1996, 110 Stat. 3508.)

HISTORICAL AND REVISION NOTES

Based on section 1589 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 589, 46 Stat. 750).

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 amended Pub. L. 103–322, § 330004(18). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

Pub. L. 103–322, § 330004(18), as amended by Pub. L. 104–294, § 604(b)(23), struck out ''Philippine Islands,'' before ''Virgin Islands'' in last par.

1955—Act June 30, 1955, inserted reference to Johnston Island in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see section 2(d) of act June 30, 1955, set out as a note under section 1401 of Title 19, Customs Duties.

§ 545. Smuggling goods into the United States

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined under this title or imprisoned not more than 20 years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term ''United States'', as used in this section, shall not include the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

(June 25, 1948, ch. 645, 62 Stat. 716; Aug. 24, 1954, ch. 890, § 1, 68 Stat. 782; Sept. 1, 1954, ch. 1213, title V, § 507, 68 Stat. 1141; June 30, 1955, ch. 258, § 2(c), 69 Stat. 242; Pub. L. 103–322, title XXXII, § 320903(c), title XXXIII, §§ 330004(18), 330016(1)(L), Sept. 13, 1994, 108 Stat. 2125, 2142, 2147; Pub. L. 104–294, title VI, § 604(b)(23), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 109–177, title III, § 310, Mar. 9, 2006, 120 Stat. 242.)

HISTORICAL AND REVISION NOTES

Based on section 1593 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751).

Reference in first paragraph to aiders, contained in words ''his, her, or their aiders and abettors'' was omitted as unnecessary since such persons are made principals by section 2 of this title. For the same reason words ''or assists in so doing'' in second paragraph were deleted.

Words ''shall be deemed guilty of a misdemeanor,'' in first paragraph were omitted in view of definition of misdemeanor in section 1 of this title.

Conviction provision in first paragraph reading ''and on conviction thereof'' was deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minimum punishment provision ''nor less than $50'' in second paragraph was deleted.

Forfeiture provision was rephrased to make it clear that forfeiture was not dependent upon conviction.

The final paragraph was added to conform with section 1709 of title 19, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

2006—Pub. L. 109–177, which directed amendment of third par. by substituting ''20 years'' for ''5 years'', was executed by making the substitution for ''five years'', to reflect the probable intent of Congress.

1996—Pub. L. 104–294 amended Pub. L. 103–322, § 330004(18). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' in third par.

Pub. L. 103–322, § 330004(18), as amended by Pub. L. 104–294, § 604(b)(23), struck out ''Philippine Islands,'' before ''Virgin Islands'' in last par.

Pub. L. 103–322, § 320903(c), inserted ''or attempts to smuggle or clandestinely introduce'' after ''clandestinely introduces'' in first par.

1955—Act June 30, 1955, inserted reference to Johnston Island.

1954—Act Sept. 1, 1954, permitted forfeiture of value of merchandise imported in violation of section.

Act Aug. 24, 1954, increased fine from $5,000 to $10,000 and imprisonment from two years to five years.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see section 2(d) of act June 30, 1955, set out as a note under section 1401 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 2 of act Aug. 24, 1954, provided that: ''The amendments made by the first section of this Act [amending this section] shall apply only with respect to

offenses committed on and after the date of the enactment of this Act [Aug. 24, 1954].''

§ 546. Smuggling goods into foreign countries

Any person owning in whole or in part any vessel of the United States who employs, or participates in, or allows the employment of, such vessel for the purpose of smuggling, or attempting to smuggle, or assisting in smuggling, any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, and any citizen of, or person domiciled in, or any corporation incorporated in, the United States, controlling or substantially participating in the control of any such vessel, directly or indirectly, whether through ownership of corporate shares or otherwise, and allowing the employment of said vessel for any such purpose, and any person found, or discovered to have been, on board of any such vessel so employed and participating or assisting in any such purpose, shall be fined under this title or imprisoned not more than two years, or both.

It shall constitute an offense under this section to hire out or charter a vessel if the lessor or charterer has knowledge or reasonable grounds for belief that the lessee or person chartering the vessel intends to employ such vessel for any of the purposes described in this section and if such vessel is, during the time such lease or charter is in effect, employed for any such purpose.

(June 25, 1948, ch. 645, 62 Stat. 717; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1702 of title 19, U.S.C., 1940 ed., Customs Duties (Aug. 5, 1935, ch. 438, title I, § 2, 49 Stat. 518).

Changes were made in phraseology.

REFERENCES IN TEXT

The laws of the United States respecting the customs revenue, referred to in text, are classified generally to Title 19, Customs Duties.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

§ 547. Depositing goods in buildings on boundaries

Whoever receives or deposits any merchandise in any building upon the boundary line between the United States and any foreign country, or carries any merchandise through the same, in violation of law, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 717; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1596 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 752).

Reference to persons aiding, contained in words ''or aids therein,'' was omitted as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 548. Removing or repacking goods in warehouses

Whoever fraudulently conceals, removes, or repacks merchandise in any bonded warehouse or fraudulently alters, defaces or obliterates any marks or numbers placed upon packages deposited in such warehouse, shall be fined under this title or imprisoned not more than two years, or both.

Merchandise so concealed, removed, or repacked, or packages upon which any marks or numbers have been so altered, defaced, or obliterated, shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 717; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1597 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 597, 46 Stat. 752).

This section was rewritten to place the criminal provisions ahead of the forfeiture provisions. This did not require any substantive changes except omission of reference to persons aiding. Such persons are made principals by section 2 of this title.

The punishment prescribed by section 545 of this title was inserted to make this section complete without reference to another section. In doing so it was necessary to rephrase the punishment provision of section 545 of this title, as originally enacted, without change of substance.

Forfeiture provision was rephrased to make it clear that forfeiture was not dependent upon conviction.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 549. Removing goods from customs custody; breaking seals

Whoever, without authority, affixes or attaches a customs seal, fastening, or mark, or any seal, fastening, or mark purporting to be a customs seal, fastening, or mark to any vessel, vehicle, warehouse, or package; or

Whoever, without authority, willfully removes, breaks, injures, or defaces any customs seal or other fastening or mark placed upon any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody; or

Whoever maliciously enters any bonded warehouse or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove therefrom any merchandise or baggage therein, or unlawfully removes any merchandise or baggage in such vessel, vehicle, or bonded warehouse or otherwise in customs custody or control; or

Whoever receives or transports any merchandise or baggage unlawfully removed from any such vessel, vehicle, or warehouse, knowing the same to have been unlawfully removed—

Shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 717; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–177, title III, § 311(e), Mar. 9, 2006, 120 Stat. 242.)

HISTORICAL AND REVISION NOTES

Based on section 1598 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 598, 46 Stat. 752; June 25, 1938, ch. 679, § 26, 52 Stat. 1089).

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

In view of definition of felony in section 1 of this title words ''guilty of a felony'' were omitted. (See reviser's note under section 550 of this title.)

The punishment prescribed by section 545 of this title was inserted to make this section complete without reference to another section. In doing so it was necessary to rephrase the punishment provision of section 545 of this title, as originally enacted, without change of substance.

Forfeiture provision was omitted to conform with current administrative practice.

Changes were made in phraseology.

AMENDMENTS

2006—Pub. L. 109–177 substituted ''10 years'' for ''two years'' in last par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 550. False claim for refund of duties

Whoever knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise, greater than that legally due thereon, shall be fined under this title or imprisoned not more than two years, or both, and such merchandise or the value thereof shall be forfeited.

(June 25, 1948, ch. 645, 62 Stat. 718; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1590 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750).

Reference to felony, contained in words ''such person shall be guilty of a felony'' was omitted as unnecessary in view of definition of felony in section 1 of this title. This, too, was the policy adopted by the codifiers of the 1909 Criminal Code. (See S. Rept. 10, pt. I, pp. 12, 13, and 14, 60th Cong., 1st sess.)

Words ''and upon conviction thereof'' before ''shall be punished'' were also omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 551. Concealing or destroying invoices or other papers

Whoever willfully conceals or destroys any invoice, book, or paper relating to any merchandise imported into the United States, after an inspection thereof has been demanded by the collector of any collection district; or

Whoever conceals or destroys at any time any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained—

Shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 718; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 120 (Mar. 4, 1909, ch. 321, § 64, 35 Stat. 1100).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 552. Officers aiding importation of obscene or treasonous books and articles

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 718; Pub. L. 91–662, § 2, Jan. 8, 1971, 84 Stat. 1973; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1305(b) of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title III, § 305(b), 46 Stat. 688).

In view of definition of misdemeanor in section 1 of this title words ''shall be deemed guilty of a misdemeanor, and'' were omitted.

Words ''at hard labor'' after ''imprisonment'' were omitted. (See reviser's note under section 1 of this title.)

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1971—Pub. L. 91–662 struck out ''preventing conception or'' before ''procuring abortion''.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 7 of Pub. L. 91–662 provided that: ''The amendments made by this Act (other than by section 6) [amending this section, sections 1461 and 1462 of this title, and section 1305 of Title 19, Customs Duties] shall take effect on the day after the date of the enactment of this Act [Jan. 8, 1971].''

§ 553. Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft

(a) Whoever knowingly imports, exports, or attempts to import or export—

(1) any motor vehicle, off-highway mobile equipment, vessel, aircraft, or part of any motor vehicle, off-highway mobile equipment, vessel, or aircraft, knowing the same to have been stolen; or

(2) any motor vehicle or off-highway mobile equipment or part of any motor vehicle or off-highway mobile equipment, knowing that the identification number of such motor vehicle, equipment, or part has been removed, obliterated, tampered with, or altered;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Subsection (a)(2) shall not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2)(A) in the case of a motor vehicle, is not a violation of section 511 of this title (relating to altering or removing motor vehicle identification numbers); or

(B) in the case of off-highway mobile equipment, would not be a violation of section 511 of this title if such equipment were a motor vehicle.

(c) As used in this section, the term—

(1) ''motor vehicle'' has the meaning given that term in section 32101 of title 49;

(2) ''off-highway mobile equipment'' means any self-propelled agricultural equipment, self-propelled construction equipment, and self-propelled special use equipment, used or designed for running on land but not on rail or highway;

(3) ''vessel'' has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401);

(4) ''aircraft'' has the meaning given that term in section 40102(a) of title 49; and

(5) ''identification number''—

(A) in the case of a motor vehicle, has the meaning given that term in section 511 of this title; and

(B) in the case of any other vehicle or equipment covered by this section, means a number or symbol assigned to the vehicle or equipment, or part thereof, by the manufacturer primarily for the purpose of identifying such vehicle, equipment, or part.

(Added Pub. L. 98–547, title III, § 301(a), Oct. 25, 1984, 98 Stat. 2771; amended Pub. L. 100–690, title VII, § 7021, Nov. 18, 1988, 102 Stat. 4396; Pub. L. 102–519, title I, § 102, Oct. 25, 1992, 106 Stat. 3385; Pub. L. 103–272, § 5(e)(5), July 5, 1994, 108 Stat. 1374.)

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–272, § 5(e)(5)(A), substituted ''section 32101 of title 49'' for ''section 2 of the Motor Vehicle Information and Cost Savings Act''.

Subsec. (c)(4). Pub. L. 103–272, § 5(e)(5)(B), substituted ''section 40102(a) of title 49'' for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)''.

1992—Subsec. (a). Pub. L. 102–519 substituted ''fined under this title or imprisoned not more than 10 years'' for ''fined not more than $15,000 or imprisoned not more than five years'' in concluding provisions.

1988—Subsec. (b)(2). Pub. L. 100–690 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is not a violation of section 511 of this title.''

§ 554.[1] Smuggling goods from the United States

(a) IN GENERAL.—Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) DEFINITION.—In this section, the term ''United States'' has the meaning given that term in section 545.

(Added Pub. L. 109–177, title III, § 311(a), Mar. 9, 2006, 120 Stat. 242.)

§ 554.[1] Border tunnels and passages

(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by Immigration and Customs Enforcement, shall be fined under this title and imprisoned for not more than 20 years.

(b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be fined under this title and imprisoned for not more than 10 years.

(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 2339B(g)(6)) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.

(Added Pub. L. 109–295, title V, § 551(a), Oct. 4, 2006, 120 Stat. 1389.)

[1] Another section 554 is set out after this section.

[1] Another section 554 is set out preceding this section.

CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

Sec.
[591. Repealed.]
592. Troops at polls.
593. Interference by armed forces.
594. Intimidation of voters.
595. Interference by administrative employees of Federal, State, or Territorial Governments.
596. Polling armed forces.
597. Expenditures to influence voting.
598. Coercion by means of relief appropriations.
599. Promise of appointment by candidate.
600. Promise of employment or other benefit for political activity.
601. Deprivation of employment or other benefit for political contribution.
602. Solicitation of political contributions.
603. Making political contributions.
604. Solicitation from persons on relief.
605. Disclosure of names of persons on relief.
606. Intimidation to secure political contributions.
607. Place of solicitation.
608. Absent uniformed services voters and overseas voters.
609. Use of military authority to influence vote of member of Armed Forces.
610. Coercion of political activity.
611. Voting by aliens.
[612 to 617. Repealed.]

SENATE REVISION AMENDMENT

By Senate amendment, item 610 was changed to read, ''610. Contributions or expenditures by national banks, corporations, or labor organizations''. See Senate Report No. 1620, amendment Nos. 4 and 5, 80th Cong.

AMENDMENTS

1996—Pub. L. 104–208, div. C, title II, § 216(b), Sept. 30, 1996, 110 Stat. 3009–573, added item 611.

1993—Pub. L. 103–94, § 4(c)(2), Oct. 6, 1993, 107 Stat. 1005, added item 610.

1990—Pub. L. 101–647, title XXXV, § 3516, Nov. 29, 1990, 104 Stat. 4923, substituted ''Making political contributions'' for ''Place of solicitation'' in item 603 and ''Place of solicitation'' for ''Making political contributions'' in item 607.

1986—Pub. L. 99–410, title II, § 202(b), Aug. 28, 1986, 100 Stat. 929, added items 608 and 609.

1980—Pub. L. 96–187, title II, § 201(a)(2), Jan. 8, 1980, 93 Stat. 1367, struck out item 591 ''Definitions''.

1976—Pub. L. 94–453, § 2, Oct. 2, 1976, 90 Stat. 1517, substituted ''political contribution'' for ''political activity'' in item 601.

Pub. L. 94–283 title II, § 201(b), May 11, 1976, 90 Stat. 496, struck out items ''608. Limitations on contributions and expenditures'', ''610. Contributions or expenditures by national banks, corporations or labor organizations'', ''611. Contributions by Government contractors'', ''612. Publication or distribution of political statements'', ''613. Contributions by foreign nationals'', ''614. Prohibition of contributions in name of another'', ''615. Limitation on contributions of currency'', ''616. Acceptance of excessive honorariums'', and ''617. Fraudulent misrepresentation of campaign authority''.

1974—Pub. L. 93–443, title I, § 101(d)(4)(B), (f)(3), Oct. 15, 1974, 88 Stat. 1267, 1268, substituted ''Contributions by foreign nationals'' for ''Contributions by agents of foreign principals'' in item 613, and added items 614 to 617.

1972—Pub. L. 92–225, title II, § 207, Feb. 7, 1972, 86 Stat. 11, substituted ''contributions and expenditures'' for ''political contributions and purchases'' in item 608, ''Repealed'' for ''Maximum contributions and expenditures'' in item 609, and ''Government contractors'' for ''firms or individuals contracting with the United States'' in item 611.

1966—Pub. L. 89–486, § 8(c)(1), July 4, 1966, 80 Stat. 249, added item 613.

STATE LAWS AFFECTED; DEFINITIONS

Section 104 of Pub. L. 93–443 provided that:

''(a) The provisions of chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

''(b) For purposes of this section, the terms 'election', 'Federal office', and 'State' have the meanings given them by section 591 of title 18, United States Code.''

[§ 591. Repealed. Pub. L. 96–187, title II, § 201(a)(1), Jan. 8, 1980, 93 Stat. 1367]

Section, acts June 25, 1948, ch. 645, 62 Stat. 719; May 24, 1949, ch. 139, § 9, 63 Stat. 90; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(d)(4), 84 Stat. 853; Feb. 7, 1972, Pub. L. 92–225, title II, § 201, 86 Stat. 8; Oct. 15, 1974, Pub. L. 93–443, title I, §§ 101(f)(2), 102, 88 Stat. 1268, 1269; May 11, 1976, Pub. L. 94–283, title I, § 115(g), title II, § 202, 90 Stat. 496, 497, defined terms applicable to prohibitions respecting elections and political activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

(June 25, 1948, ch. 645, 62 Stat. 719; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 55 and 59 (Mar. 4, 1909, ch. 321, §§ 22, 26, 35 Stat. 1092, 1093).

This section consolidates sections 55 and 59 of title 18, U.S.C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

In second paragraph, words ''or member of the Armed Forces of the United States'' were substituted for ''soldier, sailor, or marine'' so as to cover those auxiliaries which are now component parts of the Army and Navy.

Changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

(June 25, 1948, ch. 645, 62 Stat. 719; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 56–59 (Mar. 4, 1909, ch. 321, §§ 23–26, 35 Stat. 1092, 1093).

Four sections were consolidated with only such changes of phraseology as were necessary to effect the consolidation.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in sixth par.

§ 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 91–405, title II, § 204(d)(5), Sept. 22, 1970, 84 Stat. 853; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61, 61g (Aug. 2, 1939, 11:50 a.m. E.S.T., ch. 410, §§ 1, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61 and 61g of title 18, U.S.C., 1940 ed., with changes in phraseology only.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1970—Pub. L. 91–405 substituted ''Delegate from the District of Columbia, or Resident Commissioner'' for ''Delegates or Commissioners from the Territories and possessions''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 91–405, title II, § 204(d)(6), Sept. 22, 1970, 84 Stat. 853; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61a, 61g, 61n, 61s, 61u (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 2, 8, 53 Stat. 1147, 1148; July 19, 1940, ch. 640, § 1, 54 Stat. 767; Aug. 2, 1939, ch. 410, §§ 14, 19, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767; Aug. 2, 1939, ch. 410, § 21, as added Oct. 24, 1942, ch. 620, 56 Stat. 986).

This section consolidates sections 61s, 61n, and 61g with 61a, all of title 18, U.S.C., 1940 ed., in first paragraph, and incorporates section 61u as second paragraph.

Words ''or agency thereof'' and words ''or any department or agency thereof'' were inserted to remove any possible ambiguity as to scope of section. (See definitions of department and agency in section 6 of this title.)

Words ''or by the District of Columbia or any agency or instrumentality thereof'' were inserted upon authority of section 61n of title 18, U.S.C., 1940 ed., which provided that for the purposes of this section, ''persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States.''

After ''State'' the words ''Territory, or Possession of the United States'' were inserted in two places upon

authority of section 61s of title 18, U.S.C., 1940 ed., which defined ''State,'' as used in this section, as ''any State, Territory, or possession of the United States.''

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, made this punishment applicable to this section.

The second paragraph was derived from section 61u of title 18, U.S.C., 1940 ed., which made its provisions applicable to this section by reference.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(L), which directed the amendment of this section by substituting ''under this title'' for ''not more than $10,000'', could not be executed because the phrase ''not more than $10,000'' does not appear in text.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

1970—Pub. L. 91–405 substituted reference to Delegate from District of Columbia or Resident Commissioner for Delegate or Resident Commissioner from any Territory or Possession.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 596. Polling armed forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined under this title or imprisoned for not more than one year, or both.

The word ''poll'' means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 344 of title 50, U.S.C., 1940 ed., War and National Defense (Sept. 16, 1942, ch. 561, title III, § 314, as added Apr. 1, 1944, ch. 150, 58 Stat. 146).

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—

Shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(a)(12), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on sections 250, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 311, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 250 and 252 of title 2, U.S.C., 1940 ed., The Congress.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

The punishment provisions of section 252 of title 2, U.S.C., 1940 ed., The Congress, were incorporated at end of section upon authority of reference in such section making them applicable to this section.

Words ''or both'' were added to conform to the almost universal formula of the punishment provisions of this title.

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''shall be fined under this title'' for ''shall be fined not more than $10,000'' in last par.

1994—Pub. L. 103–322 substituted ''shall be fined under this title'' for ''shall be fined not more than $1,000'' in last par.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61f, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410. §§ 7, 8, 53 Stat. 1148).

This section consolidates sections 61f and 61g of title 18, U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation.

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, was made applicable to this section.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the ap-

pointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 249, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 310, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 249 and 252 of title 2, U.S.C., 1940 ed., The Congress, with changes in arrangement and phraseology necessary to effect consolidation.

Words ''or both'' were added to conform to the almost universal formula of the punishment provisions of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' after ''candidacy shall be'' and for ''fined not more than $10,000'' after ''willful, shall be''.

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 92–225, title II, § 202, Feb. 7, 1972, 86 Stat. 9; Pub. L. 94–453, § 3, Oct. 2, 1976, 90 Stat. 1517; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61b, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 3, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61b and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1976—Pub. L. 94–453 substituted $10,000 for $1,000 maximum allowable fine.

1972—Pub. L. 92–225 struck out ''work,'' after ''position,'', inserted ''contract, appointment,'' after ''compensation,'' and ''or any special consideration in obtaining any such benefit,'' after ''Act of Congress,'', and substituted ''in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office'' for ''in any election''.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–225 effective Dec. 31, 1971, or sixty days after date of enactment [Feb. 7, 1972], whichever is later, see section 408 of Pub. L. 92–225, set out as an Effective Date note under section 431 of Title 2, The Congress.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term ''candidate'' means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term ''election'' means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 94–453, § 1, Oct. 2, 1976, 90 Stat. 1516; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61c, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 4, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61c and 61g of title 18, U.S.C., 1940 ed.

The words ''except as required by law'' were used as sufficient to cover the reference to the exception made to the provisions of subsection (b), section 61h of title 18, U.S.C., 1940 ed., which expressly prescribes the circumstances under which a person may be lawfully deprived of his employment and compensation therefor.

Changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in concluding provisions.

1976—Pub. L. 94–453 struck out provisions relating to deprivations based upon race, creed, and color which are now set out in section 246 of this title, replaced term ''political activity'' with more precise terms and definitions, and raised the amount of maximum fine from $1,000 to $10,000.

§ 602. Solicitation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 96–187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4(a), Oct. 6, 1993, 107 Stat. 1004; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 208, 212 (Mar. 4, 1909, ch. 321, §§ 118, 122, 35 Stat. 1110; Feb. 28, 1925, ch. 368, § 312, 43 Stat. 1073).

This section consolidates sections 208 and 212 of title 18, U.S.C., 1940 ed.

This section, like section 201 of this title, was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words ''or any department or agency thereof.'' (See definitive section 6 of this title.)

The punishment provision was taken from section 212 of title 18, U.S.C., 1940 ed., which, by reference, made the punishment applicable to the crime described in this section.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a)(4), is classified to section 431(8) of Title 2, The Congress.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''under this title'' for ''not more than $5,000'', could not be executed because the phrase ''not more than $5,000'' does not appear in text. See 1993 Amendment note below.

1993—Pub. L. 103–94 designated existing provisions as subsec. (a), substituted ''; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both'' for ''to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both'' in par. (4), and added subsec. (b).

1980—Pub. L. 96–187 amended section generally to conform its terms to revision of the Federal Election Campaign Act of 1971 by title I of Pub. L. 96–187.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

§ 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

(June 25, 1948, ch. 645, 62 Stat. 722; Oct. 31, 1951, ch. 655, § 20(b), 65 Stat. 718; Pub. L. 96–187, title II, § 201(a)(4), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4(b), Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 209, 212 (Mar. 4, 1909, ch. 321, §§ 119, 122, 35 Stat. 1110).

This section consolidates sections 209 and 212 of title 18, U.S.C., 1940 ed., without change of substance.

To eliminate ambiguity resulting from use of identical words in reference ''officer or employee of the United States mentioned in section 208 of this title'' as those appearing in section 208 of title 18, U.S.C., 1940 ed., now section 602 of this title, words ''person mentioned in section 602 of this title'' were inserted.

Words ''from any such person'' were inserted after ''purpose'', so as to make it clear that the section does not embrace State employees in its provisions. Some Federal agencies are located in State buildings occupied by State employees.

The punishment provision was derived from section 212 of title 18, U.S.C., 1940 ed. (See reviser's note under section 602 of this title.)

Minor changes were made in phraseology.

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a), is classified to section 431(8) of Title 2, The Congress.

Section 302(e)(1) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 432(e)(1) of Title 2.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1993—Subsec. (c). Pub. L. 103–94 added subsec. (c).

1980—Pub. L. 96–187 substituted provisions relating to the making of political contributions for provisions relating to the place of solicitation. See section 607 of this title.

1951—Act Oct. 31, 1951, struck out ''from any such person'' after ''purpose''.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amended by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61d, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 5, 8, 53 Stat. 1148).

This section consolidates sections 61d and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61e, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 6, 8, 53 Stat. 1148).

This section consolidates sections 61e and 61g of title 18, U.S.C., 1940 ed.

Reference to persons aiding or assisting, contained in words ''or to aid or assist in furnishing or disclosing'' was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under

this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 210, 212 (Mar. 4, 1909, ch. 321, §§ 120, 122, 35 Stat. 1110).

This section consolidates sections 210 and 212 of title 18, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 607. Place of solicitation

(a) PROHIBITION.—

(1) IN GENERAL.—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

(2) PENALTY.—A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress or Executive Office of the President, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 96–187, title II, § 201(a)(5), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–155, title III, § 302, Mar. 27, 2002, 116 Stat. 96.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 211, 212 (Mar. 4, 1909, ch. 321, §§ 121, 122, 35 Stat. 1110).

This section consolidates sections 211 and 212 of title 18, U.S.C., 1940 ed.

This section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words ''or any department or agency thereof.'' (See definitive section 6, and reviser's note under section 201 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

Section 302(e) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 432(e) of Title 2.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–155, § 302(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.''

Subsec. (b). Pub. L. 107–155, § 302(2), inserted ''or Executive Office of the President'' after ''Congress''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1980—Pub. L. 96–187 substituted provisions relating to the place of solicitation for provisions relating to the making of political contributions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–155 effective Nov. 6, 2002, see section 402 of Pub. L. 107–155, set out as an Effective Date of 2002 Amendment; Regulations note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

§ 608. Absent uniformed services voters and overseas voters

(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering or voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in text, is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 608, acts June 25, 1948, ch. 645, 62 Stat. 723; Feb. 7, 1972, Pub. L. 92–225, title II, § 203, 86 Stat. 9; Oct. 15, 1974, Pub. L. 93–443, title I, § 101(a), (b), 88 Stat. 1263, 1266, set limitations on campaign contributions and expenditures, prior to repeal by Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496. See section 441a of Title 2, The Congress.

EFFECTIVE DATE

Section applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L.

99–410, set out as a note under section 1973ff of Title 42, The Public Health and Welfare.

§ 609. Use of military authority to influence vote of member of Armed Forces

Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

(Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.)

PRIOR PROVISIONS

A prior section 609, act June 25, 1948, ch. 645, 62 Stat. 723, prescribed maximum contributions and expenditures limitation of $3,000,000 for any calendar year, prior to repeal by Pub. L. 92–225, title II, § 204, Feb. 7, 1972, 86 Stat. 10, effective sixty days after Feb. 7, 1972.

EFFECTIVE DATE

Section applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as a note under section 1973ff of Title 42, The Public Health and Welfare.

§ 610. Coercion of political activity

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(Added Pub. L. 103–94, § 4(c)(1), Oct. 6, 1993, 107 Stat. 1005; amended Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

PRIOR PROVISIONS

A prior section 610, acts June 25, 1948, ch. 645, 62 Stat. 723; May 24, 1949, ch. 139, § 10, 63 Stat. 90; Oct. 31, 1951, ch. 655, § 20(c), 65 Stat. 718; Feb. 7, 1972, Pub. L. 92–225, title II, § 205, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93–443, title I, § 101(e)(1), 88 Stat. 1267, prohibited campaign contributions or expenditures by national banks, corporations, and labor organizations, prior to repeal by Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496. See section 441b of Title 2, The Congress.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $5,000''.

EFFECTIVE DATE; SAVINGS PROVISION

Section effective 120 days after Oct. 6, 1993, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as a note under section 7321 of Title 5, Government Organization and Employees.

§ 611. Voting by aliens

(a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless—

(1) the election is held partly for some other purpose;

(2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and

(3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

(b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both.

(c) Subsection (a) does not apply to an alien if—

(1) each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization);

(2) the alien permanently resided in the United States prior to attaining the age of 16; and

(3) the alien reasonably believed at the time of voting in violation of such subsection that he or she was a citizen of the United States.

(Added Pub. L. 104–208, div. C, title II, § 216(a), Sept. 30, 1996, 110 Stat. 3009–572; amended Pub. L. 106–395, title II, § 201(d)(1), Oct. 30, 2000, 114 Stat. 1635.)

PRIOR PROVISIONS

A prior section 611, acts June 25, 1948, ch. 645, 62 Stat. 724; Feb. 7, 1972, Pub. L. 92–225, title II, § 206, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93–443, title I, §§ 101(e)(2), 103, 88 Stat. 1267, 1272, prohibited campaign contributions by government contractors, prior to repeal by Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496. See section 441c of Title 2, The Congress.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–395 added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–395, title II, § 201(d)(3), Oct. 30, 2000, 114 Stat. 1636, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 216 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–572). The amendment made by paragraph (2) [amending section 1015 of this title] shall be effective as if included in the enactment of section 215 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–572). The amendments made by paragraphs (1) and (2) shall apply to an alien prosecuted on or after September 30, 1996, except in the case of an alien whose criminal proceeding (including judicial review thereof) has been finally concluded before the date of the enactment of this Act [Oct. 30, 2000].''

[§§612 to 617. Repealed. Pub. L. 94–283, title II, §201(a), May 11, 1976, 90 Stat. 496]

Section 612, acts June 25, 1948, ch. 645, 62 Stat. 724; Aug. 25, 1950, ch. 784, §2, 64 Stat. 475; Aug. 12, 1970, Pub. L. 91–375, §6(j)(7), 84 Stat. 777, regulated publication and distribution of political statements. See section 441d of Title 2, The Congress.

Section 613, added Pub. L. 89–486, §8(a), July 4, 1966, 80 Stat. 248; amended Pub. L. 93–443, title I, §101(d)(1)–(3), (4)(A), (e)(3), Oct. 15, 1974, 88 Stat. 1267, prohibited campaign contributions by foreign nationals. See section 441e of Title 2, The Congress.

Section 614, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited making of campaign contributions in the name of another. See section 441f of Title 2, The Congress.

Section 615, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, placed limitations on contributions of currency. See section 441g of Title 2, The Congress.

Section 616, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited acceptance of excessive honorariums. See section 441i of Title 2, The Congress.

Section 617, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited fraudulent misrepresentation of campaign authority. See section 441h of Title 2, The Congress.

SAVINGS PROVISION

Repeal by Pub. L. 94–283 not to release or extinguish any penalty, forfeiture, or liability incurred under such sections, with each section to be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, see section 114 of Pub. L. 94–283, set out as a note under section 441 of Title 2, The Congress.

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.
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[1] So in original. Does not conform to section catchline.

AMENDMENTS

1996—Pub. L. 104–294, title VI, §601(f)(7), Oct. 11, 1996, 110 Stat. 3500, inserted comma after ''embezzlement'' in item 656.

Pub. L. 104–191, title II, §243(b), Aug. 21, 1996, 110 Stat. 2017, added item 669.

1994—Pub. L. 103–322, title XXXII, §320902(d)(1), Sept. 13, 1994, 108 Stat. 2124, added item 668.

1984—Pub. L. 98–473, title II, §§1104(b), 1112, Oct. 12, 1984, 98 Stat. 2144, 2149, added items 666 and 667.

1978—Pub. L. 95–524, §3(b), Oct. 27, 1978, 92 Stat. 2018, substituted ''employment and training funds'' for ''manpower funds'' and inserted ''; obstruction of investigations'' after ''improper inducement'' in item 665.

1973—Pub. L. 93–203, title VII, §711(b), formerly title VI, §611(b), Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, added item 665.

1966—Pub. L. 89–654, §1(e), Oct. 14, 1966, 80 Stat. 904, substituted ''shipments by carrier'' for ''baggage, express or freight'' in item 659.

1962—Pub. L. 87–420, §17(b), Mar. 20, 1962, 76 Stat. 42, added item 664.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Application of general penal statutes relating to larceny, embezzlement, or conversion of public moneys or property of the United States, to moneys and property of Saint Lawrence Seaway Development Corporation, see section 990 of Title 33, Navigation and Navigable Waters.

§641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word ''value'' means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(June 25, 1948, ch. 645, 62 Stat. 725; Pub. L. 103–322, title XXXIII, §330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 108–275, §4, July 15, 2004, 118 Stat. 833.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§82, 87, 100, 101 (Mar. 4, 1909, ch. 321, §§35, 36, 47, 48, 35 Stat. 1095,

1096–1098; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197; Nov. 22, 1943, ch. 302, 57 Stat. 591.)

Section consolidates sections 82, 87, 100, and 101 of title 18, U.S.C., 1940 ed. Changes necessary to effect the consolidation were made. Words ''or shall willfully injure or commit any depredation against'' were taken from said section 82 so as to confine it to embezzlement or theft.

The quoted language, rephrased in the present tense, appears in section 1361 of this title.

Words ''in a jail'' which followed ''imprisonment'' and preceded ''for not more than one year'' in said section 82, were omitted. (See reviser's note under section 1 of this title.)

Language relating to receiving stolen property is from said section 101.

Words ''or aid in concealing'' were omitted as unnecessary in view of definitive section 2 of this title. Procedural language at end of said section 101 ''and such person may be tried either before or after the conviction of the principal offender'' was transferred to and rephrased in section 3435 of this title.

Words ''or any corporation in which the United States of America is a stockholder'' in said section 82 were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

The provisions for fine of not more than $1,000 or imprisonment of not more than 1 year for an offense involving $100 or less and for fine of not more than $10,000 or imprisonment of not more than 10 years, or both, for an offense involving a greater amount were written into this section as more in conformity with the later congressional policy expressed in sections 82 and 87 of title 18, U.S.C., 1940 ed., than the nongraduated penalties of sections 100 and 101 of said title 18.

Since the purchasing power of the dollar is less than it was when $50 was the figure which determined whether larceny was petit larceny or grand larceny, the sum $100 was substituted as more consistent with modern values.

The meaning of ''value'' in the last paragraph of the revised section is written to conform with that provided in section 2311 of this title by inserting the words ''face, par, or''.

This section incorporates the recommendation of Paul W. Hyatt, president, board of commissioners of the Idaho State Bar Association, that sections 82 and 100 of title 18, U.S.C., 1940 ed., be combined and simplified.

Also, with respect to section 101 of title 18, U.S.C., 1940 ed., this section meets the suggestion of P. F. Herrick, United States attorney for Puerto Rico, that the punishment provision of said section be amended to make the offense a misdemeanor where the amount involved is $50 or less.

Changes were made in phraseology.

AMENDMENTS

2004—Pub. L. 108–275, in third par., inserted ''in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case,'' after ''value of such property''.

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in third par.

1994—Pub. L. 103–322, in third par., substituted ''fined under this title'' for ''fined not more than $10,000'' after ''Shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–473, title II, chapter XI, part I (§§ 1110–1115), § 1110, Oct. 12, 1984, 98 Stat. 2148, provided that: ''This Part [enacting section 667 of this title and amending sections 2316 and 2317 of this title] may be cited as the 'Livestock Fraud Protection Act'.''

§ 642. Tools and materials for counterfeiting purposes

Whoever, without authority from the United States, secretes within, or embezzles, or takes and carries away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or

Whoever, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or

Whoever, without such authority, so secretes, embezzles, or takes and carries away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of such papers, instruments, or obligations, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 725; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 269 (Mar. 4, 1909, ch. 321, § 155, 35 Stat. 1117).

Words ''bed piece, bed-plate, roll, plate, die, seal, type, or other'' were omitted as covered by ''tool, implement, or thing.''

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 643. Accounting generally for public money

Whoever, being an officer, employee or agent of the United States or of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement, and shall be fined under this title or in a sum equal to the amount of the money embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 726; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 176 (Mar. 4, 1909, ch. 321, § 90, 35 Stat. 1105).

Word ''employee'' was inserted to avoid ambiguity as to scope of section.

Words ''or of any department or agency thereof'' were added after the words ''United States''. (See definitions of the terms ''department'' and ''agency'' in section 6 of this title.)

Mandatory punishment provisions phrased in alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''and shall be fined under this title or in a sum equal to the amount of the money embezzled, whichever is greater, or imprisoned'' for ''and shall be fined in a sum equal to the amount of the money embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 644. Banker receiving unauthorized deposit of public money

Whoever, not being an authorized depositary of public moneys, knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law is guilty of embezzlement and shall be fined under this title or not more than the amount so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 726; Pub. L. 103–322, title XXXIII, § 330016(2)(G), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 182 (Mar. 4, 1909, ch. 321, § 96, 35 Stat. 1106).

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''does not exceed $1,000'' for ''does not exceed $100''.

1994—Pub. L. 103–322 substituted ''shall be fined under this title or not more than the amount so embezzled, whichever is greater, or imprisoned'' for ''shall be fined not more than the amount so embezzled or imprisoned''.

§ 645. Court officers generally

Whoever, being a United States marshal, clerk, receiver, referee, trustee, or other officer of a United States court, or any deputy, assistant, or employee of any such officer, retains or converts to his own use or to the use of another or after demand by the party entitled thereto, unlawfully retains any money coming into his hands by virtue of his official relation, position or employment, is guilty of embezzlement and shall, where the offense is not otherwise punishable by enactment of Congress, be fined under this title or not more than double the value of the money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

It shall not be a defense that the accused person had any interest in such moneys or fund.

(June 25, 1948, ch. 645, 62 Stat. 726; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 186 (May 29, 1920, ch. 212, 41 Stat. 630).

The smaller punishment for an offense involving $100 or less was inserted to conform to section 641 of this title which represents a later expression of congressional intent.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''be fined under this title or not more than double the value of the money so embezzled, whichever is greater, or imprisoned'' for ''be fined not more than double the value of the money so embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 646. Court officers depositing registry moneys

Whoever, being a clerk or other officer of a court of the United States, fails to deposit promptly any money belonging in the registry of the court, or paid into court or received by the officers thereof, with the Treasurer or a designated depositary of the United States, in the name and to the credit of such court, or retains or converts to his own use or to the use of another any such money, is guilty of embezzlement and shall be fined under this title or not more than the amount embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

(June 25, 1948, ch. 645, 62 Stat. 726; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(H), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 185 (Mar. 4, 1909, ch. 321, § 99, 35 Stat. 1106; May 29, 1920, ch. 214, § 1, 41 Stat. 654).

The smaller punishment for an offense involving $100 or less was inserted for the reasons outlined in reviser's notes to sections 641 and 645 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(H), substituted ''shall be fined under this title or not more than the amount

embezzled, whichever is greater, or imprisoned'' for ''shall be fined not more than the amount embezzled, or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of Department of the Treasury.

§ 647. Receiving loan from court officer

Whoever knowingly receives, from a clerk or other officer of a court of the United States, as a deposit, loan, or otherwise, any money belonging in the registry of such court, is guilty of embezzlement, and shall be fined under this title or not more than the amount embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 187 (Mar. 4, 1909, ch. 321, § 100, 35 Stat. 1107).

The punishment provision of section 185 of title 18, U.S.C., 1940 ed., now section 646 of this title, was substituted for the words ''punished as prescribed in section 185 of this title'' and the smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641 and 645 of this title.)

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''shall be fined under this title or not more than the amount embezzled, whichever is greater, or imprisoned'' for ''shall be fined not more than the amount embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 648. Custodians, generally, misusing public funds

Whoever, being an officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, loans, uses, or converts to his own use, or deposits in any bank, including any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or exchanges for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, is guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined under this title or in a sum equal to the amount of money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 101–647, title XXV, § 2597(d), Nov. 29, 1990, 104 Stat. 4909; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 175 (Mar. 4, 1909, ch. 321, § 89, 35 Stat. 1105).

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes in phraseology were made.

REFERENCES IN TEXT

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12, Banks and Banking.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''shall be fined under this title or in a sum equal to the amount of money so embezzled, whichever is greater, or imprisoned'' for ''shall be fined in a sum equal to the amount of money so embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

1990—Pub. L. 101–647 inserted '', including any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978),'' after ''or deposits in any bank''.

§ 649. Custodians failing to deposit moneys; persons affected

(a) Whoever, having money of the United States in his possession or under his control, fails to deposit it with the Treasurer or some public depositary of the United States, when required so to do by the Secretary of the Treasury or the head of any other proper department or agency or by the Government Accountability Office, is guilty of embezzlement, and shall be fined under this title or in a sum equal to the amount of money embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled is $1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

(b) This section and sections 643, 648, 650 and 653 of this title shall apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be charged as receivers or depositaries of the same.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§177, 178 (Mar. 4, 1909, ch. 321, §§91, 92, 35 Stat. 1105; May 29, 1920, ch. 214, §1, 41 Stat. 654; June 10, 1921, ch. 18, §304, 42 Stat. 24).

Sections were consolidated.

Words ''or agency'' were inserted after ''department''. See definition of ''agency'' in section 6 of this title.

Mandatory punishment provisions made in alternative.

The smaller punishment for an offense involving $100 or less was inserted. (See reviser's notes under sections 641, 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (a). Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Subsec. (a). Pub. L. 103–322, §330016(2)(G), substituted ''shall be fined under this title or in a sum equal to the amount of money embezzled, whichever is greater, or imprisoned'' for ''shall be fined in a sum equal to the amount of money embezzled or imprisoned''.

Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of Department of the Treasury.

§ 650. Depositaries failing to safeguard deposits

If the Treasurer of the United States or any public depositary fails to keep safely all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he is guilty of embezzlement, and shall be fined under this title or in a sum equal to the amount of money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 103–322, title XXXIII, §330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §174, (Mar. 4, 1909, ch. 321, §88, 35 Stat. 1105; May 29, 1920, ch. 214, §1, 41 Stat. 654.)

Mandatory punishment provisions stated in alternative.

The smaller punishment for offenses involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, §330016(2)(G), substituted ''shall be fined under this title or in a sum equal to the amount of money so embezzled, whichever is greater, or imprisoned'' for ''shall be fined in a sum equal to the amount of money so embezzled or imprisoned''.

Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of Department of the Treasury.

§ 651. Disbursing officer falsely certifying full payment

Whoever, being an officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the Government Accountability Office to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid the full amount specified therein to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, shall be fined under this title or in double the amount so withheld, whichever is greater, or imprisoned not more than two years, or both; but if the amount withheld does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 103–322, title XXXIII, §330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §181 (Mar. 4, 1909, ch. 321, §95, 35 Stat. 1106; June 10, 1921, ch. 18, §304, 42 Stat. 24).

The penalty provided by section 652 of this title, a similar section, was incorporated in this section.

(For explanation of the smaller penalty for an offense involving $100 or less, see reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, §330016(2)(G), substituted ''shall be fined under this title or in double the amount so withheld, whichever is greater, or imprisoned'' for ''shall be fined in double the amount so withheld or imprisoned''.

Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 652. Disbursing officer paying lesser in lieu of lawful amount

Whoever, being an officer, clerk, agent, employee, or other person charged with the pay-

ment of any appropriation made by Congress, pays to any clerk or other employee of the United States, or of any department or agency thereof, a sum less than that provided by law, and requires such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined under this title or in double the amount so withheld, whichever is greater, or imprisoned not more than two years, or both; but if the amount embezzled is $1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 727; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 172 (Mar. 4, 1909, ch. 321, § 86, 35 Stat. 1105).

Words ''or of any department or agency thereof,'' were inserted after ''United States'' so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Mandatory punishment provision made in alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''shall be fined under this title or in double the amount so withheld, whichever is greater, or imprisoned'' for ''shall be fined in double the amount so withheld or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 653. Disbursing officer misusing public funds

Whoever, being a disbursing officer of the United States, or any department or agency thereof, or a person acting as such, in any manner converts to his own use, or loans with or without interest, or deposits in any place or in any manner, except as authorized by law, any public money intrusted to him; or, for any purpose not prescribed by law, withdraws from the Treasury or any authorized depositary, or transfers, or applies, any portion of the public money intrusted to him, is guilty of embezzlement of the money so converted, loaned, deposited, withdrawn, transferred, or applied, and shall be fined under this title or not more than the amount embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled is $1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 728; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 173 (Mar. 4, 1909, ch. 321, § 87, 35 Stat. 1105; May 29, 1920, ch. 214, § 1, 41 Stat. 654).

Words ''or any department or agency thereof,'' were inserted after ''United States'' so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's note under sections 641, 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(G), substituted ''shall be fined under this title or not more than the amount embezzled, whichever is greater, or imprisoned'' for ''shall be fined not more than the amount embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 654. Officer or employee of United States converting property of another

Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined under this title or not more than the value of the money and property thus embezzled or converted, whichever is greater, or imprisoned not more than ten years, or both; but if the sum embezzled is $1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 728; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(H), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 183 (Mar. 4, 1909, ch. 321, § 97, 35 Stat. 1106).

The phrase ''Whoever being an officer or agent of the United States or of any department or agency thereof,'' was substituted for the words ''Any officer connected with, or employed in the Internal Revenue Service of the United States * * * And any officer of the United States, or any assistant of such officer,'' in order to clarify scope of section. (See definitive section 6 and reviser's note thereunder.)

The embezzlement of Government money or property is adequately covered by section 641 of this title.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(2)(H), substituted ''shall be fined under this title or not more than the value of the money and property thus embezzled or converted, whichever is greater, or imprisoned'' for ''shall be fined not more than the value of the money and property thus embezzled or converted, or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

§ 655. Theft by bank examiner

Whoever, being a bank examiner or assistant examiner, steals, or unlawfully takes, or unlawfully conceals any money, note, draft, bond, or

security or any other property of value in the possession of any bank or banking institution which is a member of the Federal Reserve System, which is insured by the Federal Deposit Insurance Corporation, which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, or from any safe deposit box in or adjacent to the premises of such bank, branch, agency, or organization, shall be fined under this title or imprisoned not more than five years, or both; but if the amount taken or concealed does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both; and shall be disqualified from holding office as a national bank examiner or Federal Deposit Insurance Corporation examiner.

This section shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System, banks the deposits of which are insured by the Federal Deposit Insurance Corporation, branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organizations operating under section 25 or section 25(a)[1] of the Federal Reserve Act, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

(June 25, 1948, ch. 645, 62 Stat. 728; Pub. L. 101–647, title XXV, § 2597(e), Nov. 29, 1990, 104 Stat. 4909; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on section 593 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, 38 Stat. 272; Sept. 26, 1918, ch. 177, § 5, 40 Stat. 970; Feb. 25, 1927, ch. 191, § 15, 44 Stat. 1232; Aug. 23, 1935, ch. 614, § 326(a), 49 Stat. 715).

Other provisions of section 593 of title 12, U.S.C. 1940 ed., Banks and Banking, are incorporated in sections 217 and 218 of this title.

The words ''and shall upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The phrase ''bank or banking institution which is a member of the Federal Reserve System or which is insured by the Federal Deposit Insurance Corporation'' was substituted for ''member bank or insured bank'' to avoid the use of a definitive section based on sections 221a, 264(e)(8), and 588a of title 12, U.S.C., 1940 ed., Banks and Banking. Words ''banks the deposits of which are insured by the Federal Deposit Insurance Corporation'' were substituted for ''insured banks'' in second paragraph, for the same reason.

Punishment provision harmonized with that of section 656 of this title. (See also, reviser's notes under sections 641 and 645 of this title.)

Changes in phraseology were also made.

REFERENCES IN TEXT

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in first par.

1994—Pub. L. 103–322, in first par., substituted ''fined under this title'' for ''fined not more than $5,000'' after ''organization, shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

1990—Pub. L. 101–647, in first par., substituted ''System, which is insured'' for ''System or which is insured'', inserted ''which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' after ''Federal Deposit Insurance Corporation,'' and ''branch, agency, or organization,'' after ''premises of such bank,'' and in second par. substituted ''System, banks the deposits of which'' for ''System or banks the deposits of which'', and inserted ''branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organizations operating under section 25 or section 25(a) of the Federal Reserve Act,'' after ''Federal Deposit Insurance Corporation,''.

§ 656. Theft, embezzlement, or misapplication by bank officer or employee

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

As used in this section, the term ''national bank'' is synonymous with ''national banking association''; ''member bank'' means and includes any national bank, state bank, or bank

[1] See References in Text note below.

[1] See References in Text note below.

and trust company which has become a member of one of the Federal Reserve banks; ''insured bank'' includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation; and the term ''branch or agency of a foreign bank'' means a branch or agency described in section 20(9) of this title. For purposes of this section, the term ''depository institution holding company'' has the meaning given such term in section 3 of the Federal Deposit Insurance Act.

(June 25, 1948, ch. 645, 62 Stat. 729; Pub. L. 101–73, title IX, § 961(b), Aug. 9, 1989, 103 Stat. 499; Pub. L. 101–647, title XXV, §§ 2504(b), 2595(a)(1), 2597(f), Nov. 29, 1990, 104 Stat. 4861, 4906, 4909; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, §§ 601(f)(1), 606(a), Oct. 11, 1996, 110 Stat. 3499, 3511.)

HISTORICAL AND REVISION NOTES

Based on sections 592, 597 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. 5209; Dec. 23, 1913, ch. 6, § 22(i), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

Section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, was separated into three sections the first of which, embracing provisions relating to embezzlement, abstracting, purloining, or willfully misapplying moneys, funds, or credits, constitutes part of the basis for this section. Of the other two sections, one section, 334 of this title, relates only to the issuance and circulation of Federal Reserve notes and the other, section 1005 of this title, to false entries or the wrongful issue of bank obligations.

The original section, containing more than 500 words, was verbose, diffuse, redundant, and complicated. The enumeration of banks affected is repeated eight times. The revised section without changing in any way the meaning or substance of existing law, clarifies, condenses, and combines related provisions largely rewritten in matters of style.

The words ''national bank'' were substituted for ''national banking association,'' the terms being synonymous by definition of section 221 of title 12, U.S.C., 1940 ed., Banks and Banking, written into the last paragraph of this section. This change made possible the use of the term ''such bank'' in substitution for the words ''such Federal Reserve bank, member bank, or such national banking association, or insured bank,'' in each of seven instances.

The special and separate provisions of the original section relating to embezzlement by national bank receivers or Federal Reserve agents are readily combined in the revised section by including these officers in the initial enumeration of persons at whom the act is directed and by inserting the word ''purloins'' after ''embezzles, abstracts,'' and the phrase ''or any moneys, funds, assets, or securities intrusted to the custody or care,'' following the words ''of such bank''.

The last paragraph of the revised section includes the definitions of sections 221 and 264(c) of title 12, U.S.C., 1940 ed., Banks and Banking, made applicable by express provision of the original section. These were written in, with only such changes of phraseology as were necessary, in order to make the revised section complete and self-contained. For meaning of ''bank,'' as used in bank robbery statute, see section 2113 of this title.

Section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, likewise was separated into two parts, one of which was combined with the embezzlement provisions of said section 592 to form this section. The other part was combined with the related provisions of said section 592 to form section 1005 of this title.

It will be noted that section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, was limited to ''Whoever, being connected in any capacity with a Federal Reserve bank''; that it enumerated ''note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree''; and that it stipulated punishment by fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

In combining these provisions, the words ''or connected in any capacity'' were written into the new section after the words ''employee of,'' thus making them applicable not only to Federal Reserve banks but to the other banks as well. The phrase of section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, ''or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree,'' was modified to include the enumeration of like obligations in section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, and to read as follows: ''whoever without such authority makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation or mortgage, judgment, or decree''. (See section 1005 of this title.)

As thus changed the new section is clear, simple, and unambiguous. The very slight changes of substance that have been noted, were unavoidable if the two sections were to be combined. Without combination any constructive revision of these duplicitous and redundant provisions was impossible. It is believed that the revised sections adequately and correctly represent the intent of Congress as the same can be gathered from the overlapping and confusing enactments. At any rate, the severest criticism of the revised sections is that a person connected with a Federal Reserve bank who violates these sections can at most be punished by a fine of $5,000 or imprisonment of 5 years, or both, whereas under section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, he might have been fined $10,000 or imprisoned 5 years, or both. Obviously an embezzler will rarely be financially able to pay even a $5,000 fine even where such fine is imposed. Certainly if it is an adequate fine for a national bank president it is not too disproportionate for a person ''connected in any capacity with a Federal Reserve bank''.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641, 645 of this title.)

The words ''shall be deemed guilty of a misdemeanor'' were omitted as unnecessary in view of definitive section 1 of this title.

The words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed without conviction.

Words ''In any district court of the United States'' were omitted as unnecessary since section 3231 of this title gives the district courts jurisdiction of criminal prosecution.

SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 6, 80th Cong.

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 3 of the Federal Deposit Insurance Act, referred to in text, is classified to section 1813 of Title 12.

AMENDMENTS

1996—Pub. L. 104–294, in first par., substituted ''Federal Reserve Act,'' for ''Federal Reserve Act,,'' and ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, in first par., substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

1990—Pub. L. 101–647, § 2597(f)(1), in first par., directed substitution of ''national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' for ''national bank, or insured bank'' which was executed by making the substitution for ''national bank or insured bank'' to reflect the probable intent of Congress, and inserted ''insured bank, branch, agency, or organization'' after ''receiver of a national bank,'', '', branch, agency, or organization'' after ''misapplies any of the moneys, funds or credits of such bank'', and ''branch, agency, or organization'' after ''custody or care of such bank,''.

Pub. L. 101–647, § 2595(a)(1)(A), (B), in first par., inserted ''depository institution holding company,'' after ''Federal Reserve Bank, member bank,'' and ''or holding company'' after ''such bank'' in two places.

Pub. L. 101–647, § 2504(b), in first par., substituted ''30 years'' for ''20 years''.

Pub. L. 101–647, § 2597(f)(2), in second par., struck out ''and'' after ''one of the Federal Reserve Banks;'' and directed insertion of ''; and the term 'branch or agency of a foreign bank' means a branch or agency described in section 20(9) of this title'' before the period which was executed by making the insertion before the period at end of first sentence to reflect the probable intent of Congress.

Pub. L. 101–647, § 2595(a)(1)(C), in second par., inserted at end ''For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3 of the Federal Deposit Insurance Act.''

1989—Pub. L. 101–73, in first par., substituted ''$1,000,000'' for ''$5,000'' and ''20 years'' for ''five years''.

§ 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance Board, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 11, 63 Stat. 90; July 28, 1956, ch. 773, § 1, 70 Stat. 714; Pub. L. 85–699, title VII, § 703, Aug. 21, 1958, 72 Stat. 698; Pub. L. 87–353, § 3(q), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90–19, § 24(a), May 25, 1967, 81 Stat. 27; Pub. L. 91–468, § 4, Oct. 19, 1970, 84 Stat. 1016; Pub. L. 101–73, title IX, §§ 961(c), 962(a)(7), (8)(A), Aug. 9, 1989, 103 Stat. 499, 502; Pub. L. 101–624, title XXIII, § 2303(e), Nov. 28, 1990, 104 Stat. 3981; Pub. L. 101–647, title XVI, § 1603, title XXV, §§ 2504(c), 2595(a)(2), Nov. 29, 1990, 104 Stat. 4843, 4861, 4907; Pub. L. 103–322, title XXXIII, §§ 330004(6), 330016(1)(H), Sept. 13, 1994, 108 Stat. 2141, 2147; Pub. L. 103–325, title I, § 119(c), Sept. 23, 1994, 108 Stat. 2188; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 106–78, title VII, § 767, Oct. 22, 1999, 113 Stat. 1174.)

Historical and Revision Notes

1948 Act

Based on sections 1026(b) and 1514(c) of title 7, U.S.C., 1940 ed., Agriculture, and sections 264(u), 984, 1121, 1138d(c), 1311, 1441(c), 1467(c), and 1731(c) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 12B(u), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 31, fourth paragraph, 39 Stat. 382; July 17, 1916, ch. 245, § 211(a), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1459; Mar. 4, 1923, ch. 252, title II, § 216(a), 42 Stat. 1471; Jan. 22, 1932, ch. 8, § 16(c), 47 Stat. 11; July 22, 1932, ch. 522, § 21(c), 47 Stat. 738; Mar. 27, 1933, Ex. Ord. No. 6084; June 13, 1933, ch. 64, § 8(c), 48 Stat. 135; June 16, 1933, ch. 98, § 64(c), 48 Stat. 268; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 27, 1934, ch. 847, § 512(c), 48 Stat. 1265; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 701; July 22, 1937, ch. 517, title IV, § 52(b), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, § 514(c), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

Each of the eleven sections from which this section was derived contained similar provisions relating to embezzlement, false entries, and fraudulent issuance or assignment of obligations with respect to one or more named agencies or corporations.

These were separated and the embezzlement and misapplication provisions of all form the basis of this section, and with one exception the remaining provisions of each section forming the basis for section 1006 of this title. The sole exception was that portion of said section 616(c) of title 15 as to the disclosure of information which now forms section 1904 of this title.

The revised section condenses and simplifies the constituent provisions without change of substance except as in this note indicated.

The punishment in each section was the same except that in section 1026(b) of title 7, U.S.C., 1940 ed., Agriculture, and sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, the maximum fine was $5,000. The revised section adopts the $5,000 maximum. (For same penalty covering similar offense, see section 656 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes to sections 641–645 of this title.)

The enumeration of ''moneys, funds, credits, securities, or other things of value'' does not occur in any one of the original sections but is an adequate, composite enumeration of the instruments mentioned in each.

References to persons aiding and abetting contained in sections 984, 1121, 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, were omitted as unnecessary, such persons being made principals by section 2 of this title.

The term ''receiver'' is used in sections 1121 and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, with

reference to Federal intermediate banks and agricultural credit corporations, and is undoubtedly embraced in the term ''connected in any capacity with,'' but the phrase ''and whoever, being a receiver of any such institution'' was inserted in this section to obviate all doubt as to its comprehensive scope.

The suggestion has been made that ''private examiners'' should be included. These undoubtedly are covered by the words ''connected in any capacity with.'' (See also section 655 of this title.)

The term ''or any department or agency of the United States'' was inserted in each revised section in order to clarify the sweeping provisions against fraudulent acts and to obviate any possibility of ambiguity by reason of the omission of specific agencies named in the constituent sections. (See section 6 of this title defining ''department and agency.'' For other verbal changes and deletions see reviser's note under section 656 of this title.)

SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 7, 80th Cong.

1949 ACT

[Section 11] conforms section 657 of title 18, U.S.C., to administrative practice which in turn was modified to comply with congressional policy ''not to use the Farmers Home Corporation to carry out the functions and duties provided for in H.R. 5991 [Farmers Home Administration Act of 1946] but to vest the authority in the Secretary of Agriculture to be administered through the Farmers Home Administration as an agency of the Department of Agriculture'' (H. Rept. No. 2683, to accompany H.R. 5991, 79th Cong., 2d sess.).

REFERENCES IN TEXT

The Riegle Community Development and Regulatory Improvement Act of 1994, referred to in text, is Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2160. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1999—Pub. L. 106–78 inserted ''or successor agency'' after ''Farmers Home Administration'' and after ''Rural Development Administration''.

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–325 inserted ''or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994,'' after ''small business investment company,''.

Pub. L. 103–322 struck out ''Reconstruction Finance Corporation,'' before ''Federal Deposit Insurance Corporation'' and ''Farmers' Home Corporation,'' before ''the Secretary of Agriculture'', and substituted ''under this title'' for ''not more than $1,000'' before ''or imprisoned not more than one year, or both''.

1990—Pub. L. 101–647, § 2595(a)(2), substituted ''Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance Board,'' for ''Home Owners' Loan Corporation,'', and directed substitution of ''institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation'' for ''institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation'' which was executed by making the substitution for ''institution the accounts of which are insured by the Federal Deposit Insurance Corporation'' to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–647, § 1603, see below.

Pub. L. 101–647, § 2504(c), substituted ''30'' for ''20'' before ''years''.

Pub. L. 101–647, § 1603, substituted ''the Federal Deposit Insurance Corporation'' for ''the Federal Savings and Loan Insurance Corporation''.

Pub. L. 101–624 substituted ''Farmers Home Administration, the Rural Development Administration'' for ''Farmers' Home Administration''.

1989—Pub. L. 101–73, § 962(a)(8)(A), substituted ''the Farm Credit System Insurance Corporation, a Farm Credit Bank, a'' for ''any land bank, intermediate credit bank,''.

Pub. L. 101–73, § 962(a)(7), substituted ''National Credit Union Administration Board'' for ''Administrator of the National Credit Union Administration''.

Pub. L. 101–73, § 961(c), substituted ''$1,000,000'' for ''$5,000'' and ''20 years'' for ''five years''.

1970—Pub. L. 91–468 inserted reference to National Credit Union Administration and its Administrator.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration''.

1961—Pub. L. 87–353 struck out reference to Federal Farm Mortgage Corporation.

1958—Pub. L. 85–699 inserted reference to any small business investment company.

1956—Act July 28, 1956, inserted reference to any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

1949—Act May 24, 1949, inserted reference to Secretary of Agriculture acting through the Farmers' Home Administration.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of corporations of Department of Agriculture; boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL CREDIT UNION ADMINISTRATION

Establishment as independent agency, membership etc., see section 1752 et seq. of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, functions, etc., see Ex. Ord. No. 6084 set out preceding section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

§ 658. Property mortgaged or pledged to farm credit agencies

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any production credit association organized under sections 1131–1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined under this title or imprisoned not more than five years, or both; but if the value of such property does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 12, 63 Stat. 91; Oct. 31, 1951, ch. 655, § 21,

65 Stat. 718; July 26, 1956, ch. 741, title I, § 109, 70 Stat. 667; Pub. L. 87–353, § 3(r), Oct. 4, 1961, 75 Stat. 774; Pub. L. 101–624, title XXIII, § 2303(e), Nov. 28, 1990, 104 Stat. 3981; Pub. L. 103–322, title XXXIII, §§ 330004(7), 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2141, 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 106–78, title VII, § 767, Oct. 22, 1999, 113 Stat. 1174.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(c) and 1514(d) of title 7, U.S.C., 1940 ed., Agriculture, and section 1138d(d) of title 12, U.S.C., 1940 ed., Banks and Banking (June 16, 1933, ch. 98, § 64, 48 Stat. 269; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; July 22, 1937, ch. 517, title IV, § 52(c), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, § 514(d), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

To avoid reference to another section the words ''the Farm Credit Administration, any Federal intermediate credit bank, the Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, or any production credit corporation or corporation in which a production credit corporation holds stock, any regional agricultural credit corporation, or any bank for cooperatives'' were substituted for the words ''or any corporation referred to in subsection (a) of this section.''

The punishment provision was completely rewritten. The $2,000 fine of section 1026(c) of title 7, U.S.C., 1940 ed., and the 2-year penalty of that section, section 1514(d) of title 7, U.S.C., 1940 ed., and section 1138(d) of title 12, U.S.C., 1940 ed., were incongruous in juxtaposition with other sections of this chapter and were therefore increased to $5,000 and 5 years. (See sections 656 and 657 of this title.)

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes were made in phraseology.

1949 ACT

[Section 12] conforms section 658 of title 18 U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Legislative History note under section 657 of title 18]).

REFERENCES IN TEXT

Section 1131 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

Sections 1131a, 1131c to 1131g, 1131g–2 to 1131i, 1134 to 1134m of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131a–1 and 1131j of Title 12, included within the reference to sections 1131 to 1134m of Title 12, are omitted from the Code. Section 1131a–1 of Title 12, was from the Department of Agriculture and Farm Credit Administration Appropriation Act, 1957, and was not repeated in subsequent appropriation acts. Section 1131j was covered by former section 1131g–2 of Title 12, prior to its repeal by Pub. L. 92–181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

Sections 1131b and 1131g–1 of Title 12, included within the reference to sections 1131 to 1134m of Title 12, were repealed by act July 26, 1956, ch. 741, title 1, § 105(c), (q), 70 Stat. 665, 666.

AMENDMENTS

1999—Pub. L. 106–78 inserted ''or successor agency'' after ''Farmers Home Administration'' and after ''Rural Development Administration''.

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322, § 330016(1)(H), (K), substituted ''fined under this title'' for ''fined not more than $5,000'' after ''cooperatives, shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

Pub. L. 103–322, § 330004(7), struck out ''Farmers' Home Corporation,'' after ''Crop Insurance Corporation,''.

1990—Pub. L. 101–624 substituted ''Farmers Home Administration, the Rural Development Administration'' for ''Farmers' Home Administration''.

1961—Pub. L. 87–353 struck out reference to the Federal Farm Mortgage Corporation.

1956—Act July 26, 1956, struck out property of any production credit association in which a Production Credit Corporation holds stock.

1951—Act Oct. 31, 1951, covered all production credit associations instead of only those in which a Production Credit Corporation holds stock.

1949—Act May 24, 1949, made section applicable to the Secretary of Agriculture acting through the Farmers' Home Administration.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective January 1, 1957, see section 202(a) of act July 26, 1956.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture; boards of directors and officers of such corporations; Advisory Board of Commodity Credit Corporation; and Farm Credit Administration or any agency, officer, or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, functions, etc., see Ex. Ord. No. 6084 set out preceding section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

§ 659. Interstate or foreign shipments by carrier; State prosecutions

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, trailer, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air cargo container, air terminal, airport, aircraft terminal or air navigation facility, or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility, with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains with intent to convert to his own use any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels, or whoever buys, receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen—

Shall be fined under this title or imprisoned not more than 10 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than $1,000, shall be fined under this title or imprisoned for not more than 3 years, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise. The removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, § 13, 63 Stat. 91; Pub. L. 89–654, § 1(a)–(d), Oct. 14, 1966, 80 Stat. 904; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 109–177, title III, § 307(a), Mar. 9, 2006, 120 Stat. 240.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 409, 410, 411 (Feb. 13, 1913, ch. 50, §§ 1, 2, 37 Stat. 670; Feb. 13, 1913, ch. 50, § 3, as added Jan. 28, 1925, ch. 102, 43 Stat. 794; Jan. 28, 1925, ch. 102, 43 Stat. 793, 794; Jan. 21, 1933, ch. 16, 47 Stat. 773, 774; July 24, 1946, ch. 606, 60 Stat. 656.)

This section consolidates sections 409, 410, and 411 of title 18, U.S.C., 1940 ed. First clause of said section 409 was incorporated in section 2117 of this title.

In the paragraph immediately preceding the last paragraph the words ''and to which'' were added to obviate an inadvertent and incongruous omission in the enactment of act July 24, 1946, ch. 606, § 3, 60 Stat. 657. This is in harmony with corrective legislation pending before the Eightieth Congress.

The definitions of ''station house'', ''depot'', ''wagon'', ''automobile'', ''truck'', or ''other vehicle'', contained in said section 409 of title 18, are omitted as unnecessary.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.) This improvement was suggested by United States Attorney P. F. Herrick, of Puerto Rico. (See reviser's note under section 641 of this title.)

Minor changes were made in phraseology.

1949 ACT

This section [section 13] inserts the word, ''embezzled'' preceding ''or stolen'' near the ends of the second and fourth paragraphs of section 659 of title 18, U.S.C., to restore the language of the original law from which such section was derived. Also, for clarity, substitutes, ''whoever'' for ''who'' preceding ''buys'' in said fourth paragraph of section 659.

SENATE REVISION AMENDMENT

The ''corrective legislation'', referred to in this paragraph, became Act April 16, 1947, ch. 39, 61 Stat. 52, and, as it amended section 411 of title 18, U.S.C., such act was an additional source of this section.

AMENDMENTS

2006—Pub. L. 109–177, in first par., inserted ''trailer,'' after ''motortruck,'', ''air cargo container,'' after ''aircraft,'', and '', or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility,'' after ''air navigation facility'', in fifth par., substituted ''be fined under this title or imprisoned not more than 10 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than $1,000, shall be fined under this title or imprisoned for not more than 3 years, or both'' for ''in each case be fined under this title or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both'', and, in eighth par., inserted ''For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise.'' after first sentence.

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in fifth par.

1994—Pub. L. 103–322, in fifth par., substituted ''fined under this title'' for ''fined not more than $5,000'' after ''Shall in each case be'' and for ''fined not more than $1,000'' after ''he shall be''.

1966—Pub. L. 89–654 substituted ''shipments by carrier'' for ''baggage, express, or freight'' in section catchline, inserted ''pipeline system'' and ''tank or storage facility'' and substituted ''freight, express, or other property'' for ''freight or express'' in first par., provided in eighth par. that the removal of property

from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property, and, in ninth par., prohibited any construction which indicated an intent on the part of Congress to occupy the field to the exclusion of State laws or to invalidate inconsistent State provisions.

1949—Act May 24, 1949, inserted ''embezzled or'' before ''stolen'' in second par., and substituted ''whoever'' for ''who'' before ''buys'' in fourth par.

ANNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES

Pub. L. 109–177, title III, § 307(d), Mar. 9, 2006, 120 Stat. 240, provided that: ''The Attorney General shall annually submit to Congress a report, which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of title 18, United States Code, as amended by this title.''

§ 660. Carrier's funds derived from commerce; State prosecutions

Whoever, being a president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, or whoever, being an employee of such common carrier riding in or upon any railroad car, motortruck, steamboat, vessel, aircraft or other vehicle of such carrier moving in interstate commerce, embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be fined under this title or imprisoned not more than ten years, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred but also in any district in which the defendant may have taken or had possession of such moneys, funds, credits, securities, property or assets.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

(June 25, 1948, ch. 645, 62 Stat. 730; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 409, 412 (Feb. 13, 1913, ch. 50, § 1, 37 Stat. 670; Oct. 15, 1914, ch. 323, § 9, 38 Stat. 733; Jan. 28, 1925, ch. 102, 43 Stat. 793; Jan. 21, 1933, ch. 16, 47 Stat. 773; July 24, 1946, ch. 606, 60 Stat. 656).

Section consolidates a portion of section 409 with section 412, both of title 18, U.S.C., 1940 ed. Other provisions of said section 409 are incorporated in sections 659 and 2117 of this title.

Definitive language in section 412 of title 18, U.S.C., 1940 ed., as to offense being a felony was deleted to conform with section 1 of this title. (See reviser's note under section 550 of this title.)

Words ''imprisoned'' was substituted for ''confined in the penitentiary'' in section 412 of title 18, U.S.C., 1940 ed., in view of power of Attorney General under section 4082 of this title.

Minimum punishment provision ''less than one year nor'' in section 412 of title 18, U.S.C., 1940 ed., was omitted for reasons in reviser's note under section 203 of this title.

Maximum fine of $5,000 was substituted for minimum fine of $500 in section 412 of title 18, U.S.C., 1940 ed., as being more consonant with the scheme of penalties and offenses provided by Congress for most sections in this chapter.

Sentence in section 412 of title 18, U.S.C., 1940 ed., ''Nothing in this section shall be held to take away or impair the jurisdiction of the several courts under the laws thereof;'', was omitted in view of section 3231 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

§ 661. Within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a value exceeding $1,000, or is taken from the person of another, by a fine under this title, or imprisonment for not more than five years, or both; in all other cases, by a fine under this title or by imprisonment not more than one year, or both.

If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be the value of the property stolen.

(June 25, 1948, ch. 645, 62 Stat. 731; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, §§ 601(a)(3), 606(a), Oct. 11, 1996, 110 Stat. 3498, 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 466 (Mar. 4, 1909, ch. 321, § 287, 35 Stat. 1144).

Words ''within the special maritime and territorial jurisdiction of the United States'' were inserted to conform with section 7 of this title. (See reviser's note under that section.)

The maximum fine and imprisonment provisions were modified and ''five years'' and ''$5,000'' substituted for ''ten years'' and ''$10,000'' and the sum of $100 was substituted for $50 as more in accord with other sections of this chapter. (See section 641 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294, in second par., substituted ''$1,000'' for ''$100'' and substituted ''fine under this title'' for ''fine of under this title'' in two places.

1994—Pub. L. 103–322, in second par., substituted ''under this title'' for ''not more than $5,000'' after ''another, by a fine of'' and for ''not more than $1,000'' after ''cases, by a fine of''.

§ 662. Receiving stolen property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, buys, receives, or conceals any money, goods, bank notes, or other thing which may be the subject

of larceny, which has been feloniously taken, stolen, or embezzled, from any other person, knowing the same to have been so taken, stolen, or embezzled, shall be fined under this title or imprisoned not more than three years, or both; but if the amount or value of thing so taken, stolen or embezzled does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 731; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 467 (Mar. 4, 1909, ch. 321, § 288, 35 Stat. 1145).

Same language was inserted as in section 661 of this title for the same reason.

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

This accords with the recommendation of United States Attorney P. F. Herrick of Puerto Rico.

Language as to order of trial was omitted and incorporated in section 3435 of this title.

AMENDMENTS

1996—Pub. L. 104–294 substituted "$1,000" for "$100".

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000" in two places.

§ 663. Solicitation or use of gifts

Whoever solicits any gift of money or other property, and represents that such gift is being solicited for the use of the United States, with the intention of embezzling, stealing, or purloining such gift, or converting the same to any other use or purpose, or whoever, having come into possession of any money or property which has been donated by the owner thereof for the use of the United States, embezzles, steals or purloins such money or property, or converts the same to any other use or purpose, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 731; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 641e of title 50, App. U.S.C., 1940 ed., War and National Defense (Mar. 27, 1942, 3 p. m., E. W. T., c. 199, Title XI, § 1106, 56 Stat. 184).

This section was taken from the Second War Powers Act of 1942, which was temporary legislation. However, the subject matter was so independent of the war effort as to warrant its inclusion in this title as a permanent provision.

Words "shall be guilty of a felony" were omitted. See Reviser's Note under section 550 of this title.

Words "and upon conviction thereof" were omitted as unnecessary since punishment cannot be imposed until a conviction is secured.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

§ 664. Theft or embezzlement from employee benefit plan

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith, shall be fined under this title, or imprisoned not more than five years, or both.

As used in this section, the term "any employee welfare benefit plan or employee pension benefit plan" means any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 87–420, § 17(a), Mar. 20, 1962, 76 Stat. 41; amended Pub. L. 93–406, title I, § 111(a)(2)(A), Sept. 2, 1974, 88 Stat. 851; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $10,000".

1974—Pub. L. 93–406 substituted "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974" for "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031(b)(1) of Title 29.

EFFECTIVE DATE

Section 19 of Pub. L. 87–420 provided that: "The amendments made by this Act [see Short Title note below] shall take effect ninety days after the enactment of this Act [Mar. 20, 1962], except that section 13 of the Welfare and Pension Plans Disclosure Act [section 308d of Title 29, Labor] shall take effect one hundred eighty days after such date of enactment."

SHORT TITLE

Section 1 of Pub. L. 87–420 provided: "That this Act [enacting this section, sections 1027 and 1954 of this title, and sections 308a to 308f of Title 29, Labor, amending sections 302 to 308 and 309 of Title 29, and renumbering sections 10 to 12 of Pub. L. 85–536, classified to section 309 of Title 29 and as notes under section 301 of Title 29], may be cited as the 'Welfare and Pension Plans Disclosure Act Amendments of 1962'."

§ 665. Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations

(a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any agency or organization receiving financial assistance or any funds under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 knowingly enrolls an ineligible participant, embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a financial assistance agreement or

contract pursuant to such Act shall be fined under this title or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $1,000, such person shall be fined under this title or imprisoned not more than 1 year, or both.

(b) Whoever, by threat or procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a financial assistance agreement or contract under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 induces any person to give up any money or thing of any value to any person (including such organization or agency receiving funds) shall be fined under this title, or imprisoned not more than 1 year, or both.

(c) Whoever willfully obstructs or impedes or willfully endeavors to obstruct or impede, an investigation or inquiry under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998, or the regulations thereunder, shall be punished by a fine under this title, or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(Added Pub. L. 93–203, title VII, § 711(a), formerly title VI, § 611(a), Dec. 28, 1973, 87 Stat. 881; renumbered title VII, § 711(a), Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845; amended Pub. L. 95–524, § 3(a), Oct. 27, 1978, 92 Stat. 2017; Pub. L. 97–300, title I, § 182, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 101–647, title XXXV, § 3517, Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(13)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(B), Nov. 2, 2002, 116 Stat. 1809.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in text, is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in text, is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section 711(a) of Pub. L. 93–203, cited as a credit to this section, was omitted in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 substituted ''a fine under this title'' for ''a fine of not more than $5,000''.

1998—Subsecs. (a) to (c). Pub. L. 105–277 substituted ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''the Comprehensive Employment and Training Act or the Job Training Partnership Act''.

1996—Subsec. (a). Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' after ''such Act shall be'' and for ''fined not more than $1,000'' after ''person shall be''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000''.

1990—Pub. L. 101–647 substituted semicolons for colons in section catchline and ''Whoever'' for ''Any person whoever'' in subsec. (c).

1982—Subsec. (a). Pub. L. 97–300 inserted ''or organization'' after ''any agency'', ''or any funds'' after ''financial assistance'', ''or Job Training Partnership Act'' after ''Comprehensive Employment and Training Act'', substituted ''participant'' for ''individual or individuals'', and ''financial assistance agreement or contract'' for ''grant or contract of assistance''.

Subsec. (b). Pub. L. 97–300 substituted ''financial assistance agreement or contract'' for ''grant or contract of assistance'', inserted ''or the Job Training Partnership Act'' after ''Comprehensive Employment and Training Act'', substituted ''any person'' for ''any persons'' after ''induces'', and substituted ''organization or agency receiving funds'' for ''grantee agency''.

Subsec. (c). Pub. L. 97–300 inserted ''willfully'' before ''endeavors to obstruct'', and ''or the Job Training Partnership Act'' after ''Comprehensive Employment and Training Act''.

1978—Pub. L. 95–524 substituted ''employment and training funds:'' for ''manpower funds;'' and inserted '': obstruction of investigations'' after ''improper inducement'' in section catchline.

Subsec. (a). Pub. L. 95–524 substituted ''Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals,'' for ''Comprehensive Employment and Training Act of 1973''.

Subsec. (b). Pub. L. 95–524 substituted ''Comprehensive Employment and Training Act'' for ''Comprehensive Employment and Training Act of 1973''.

Subsec. (c). Pub. L. 95–524 added subsec. (c).

§ 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section—

(1) the term ''agent'' means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term ''government agency'' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term ''local'' means of or pertaining to a political subdivision within a State;

(4) the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term ''in any one-year period'' means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

(Added Pub. L. 98–473, title II, § 1104(a), Oct. 12, 1984, 98 Stat. 2143; amended Pub. L. 99–646, § 59(a), Nov. 10, 1986, 100 Stat. 3612; Pub. L. 101–647, title XII, §§ 1205(d), 1209, Nov. 29, 1990, 104 Stat. 4831, 4832; Pub. L. 103–322, title XXXIII, § 330003(c), Sept. 13, 1994, 108 Stat. 2140.)

AMENDMENTS

1994—Subsec. (d)(3) to (5). Pub. L. 103–322 struck out ''and'' at end of par. (3), substituted ''; and'' for the period at end of par. (4), and redesignated second par. (4) defining ''in any one-year period'' as (5).

1990—Subsec. (d)(4). Pub. L. 101–647, § 1209, added par. (4) defining ''in any one-year period''.

Pub. L. 101–647, § 1205(d), added par. (4) defining ''State''.

1986—Pub. L. 99–646, in amending section generally, made specific reference to applicability of section to agent of Indian tribal government or agency thereof, inserted provision that section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in usual course of business, struck out definition of term ''organization'', and otherwise revised structure of section.

§ 667. Theft of livestock

Whoever obtains or uses the property of another which has a value of $10,000 or more in connection with the marketing of livestock in interstate or foreign commerce with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to his own use or the use of another shall be fined under this title or imprisoned not more than five years, or both. The term ''livestock'' has the meaning set forth in section 2311 of this title.

(Added Pub. L. 98–473, title II, § 1111, Oct. 12, 1984, 98 Stat. 2149; amended Pub. L. 103–322, title XXXIII, §§ 330009(b), 330016(1)(L), Sept. 13, 1994, 108 Stat. 2143, 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' and inserted at end ''The term 'livestock' has the meaning set forth in section 2311 of this title.''

§ 668. Theft of major artwork

(a) DEFINITIONS.—In this section—

(1) ''museum'' means an organized and permanent institution, the activities of which affect interstate or foreign commerce, that—

(A) is situated in the United States;

(B) is established for an essentially educational or aesthetic purpose;

(C) has a professional staff; and

(D) owns, utilizes, and cares for tangible objects that are exhibited to the public on a regular schedule.

(2) ''object of cultural heritage'' means an object that is—

(A) over 100 years old and worth in excess of $5,000; or

(B) worth at least $100,000.

(b) OFFENSES.—A person who—

(1) steals or obtains by fraud from the care, custody, or control of a museum any object of cultural heritage; or

(2) knowing that an object of cultural heritage has been stolen or obtained by fraud, if in fact the object was stolen or obtained from the care, custody, or control of a museum (whether or not that fact is known to the person), receives, conceals, exhibits, or disposes of the object,

shall be fined under this title, imprisoned not more than 10 years, or both.

(Added Pub. L. 103–322, title XXXII, § 320902(a), Sept. 13, 1994, 108 Stat. 2123; amended Pub. L. 104–294, title VI, § 604(b)(18), Oct. 11, 1996, 110 Stat. 3507.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 designated first and second pars. beginning with quotation mark as pars. (1) and (2), respectively, and made technical amendment to provisions appearing in original.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 669. Theft or embezzlement in connection with health care

(a) Whoever knowingly and willfully embezzles, steals, or otherwise without authority con-

verts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, shall be fined under this title or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100 the defendant shall be fined under this title or imprisoned not more than one year, or both.

(b) As used in this section, the term ''health care benefit program'' has the meaning given such term in section 24(b) of this title.

(Added Pub. L. 104–191, title II, § 243(a), Aug. 21, 1996, 110 Stat. 2017.)

CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES

Sec.
700. Desecration of the flag of the United States; penalties.
701. Official badges, identification cards, other insignia.
702. Uniform of armed forces and Public Health Service.
703. Uniform of friendly nation.
704. Military medals or decorations.
705. Badge or medal of veterans' organizations.
706. Red Cross.
706a. Geneva distinctive emblems.
707. 4–H Club emblem fraudulently used.[1]
708. Swiss Confederation coat of arms.
709. False advertising or misuse of names to indicate Federal agency.
710. Cremation urns for military use.
711. ''Smokey Bear'' character or name.
711a. ''Woodsy Owl'' character, name, or slogan.
712. Misuse of names, words, emblems, or insignia.
713. Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress.
[714. Repealed.]
715. ''The Golden Eagle Insignia''.
716. Public employee insignia and uniform.

AMENDMENTS

2007—Pub. L. 109–481, § 2(b), Jan. 12, 2007, 120 Stat. 3674, added item 706a.

2006—Pub. L. 109–162, title XI, § 1191(b), Jan. 5, 2006, 119 Stat. 3129, substituted ''Public employee insignia and uniform'' for ''Police badges'' in item 716.

2000—Pub. L. 106–547, § 3(b), Dec. 19, 2000, 114 Stat. 2740, added item 716.

1997—Pub. L. 105–55, title III, § 308(e), Oct. 7, 1997, 111 Stat. 1198, substituted ''Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress'' for ''Use of likenesses of the great seal of the United States, the seals of the President and Vice President, and the seal of the United States Senate'' in item 713.

1991—Pub. L. 102–229, title II, § 210(e), Dec. 12, 1991, 105 Stat. 1717, substituted ''Use of likenesses of the great seal of the United States, the seals of the President and Vice President, and the seal of the United States Senate.'' for ''Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President.'' in item 713.

1990—Pub. L. 101–647, title XXXV, § 3518, Nov. 29, 1990, 104 Stat. 4923, inserted a comma after ''INSIGNIA'' in chapter heading.

1982—Pub. L. 97–258, § 2(d)(1)(A), Sept. 13, 1982, 96 Stat. 1058, struck out item 714 relating to ''Johnny Horizon'' character or name.

1974—Pub. L. 93–318, § 8, June 22, 1974, 88 Stat. 245, added item 711a.

1973—Pub. L. 93–147, § 1(b), Nov. 3, 1973, 87 Stat. 555, substituted ''Misuse of names, words, emblems, or insignia'' for ''Misuse of names by collecting agencies to indicate Federal agency'' in item 712.

1972—Pub. L. 92–347, § 3(c), July 11, 1972, 86 Stat. 462, added item 715.

1971—Pub. L. 91–651, § 2, Jan. 5, 1971, 84 Stat. 1941, inserted '', and of the seals of the President and Vice President'' after ''United States'' in item 713.

1970—Pub. L. 91–419, § 4, Sept. 25, 1970, 84 Stat. 871, added item 714.

1968—Pub. L. 90–381, § 2, July 5, 1968, 82 Stat. 291, added item 700.

1966—Pub. L. 89–807, § 1(b), Nov. 11, 1966, 80 Stat. 1525, added item 713.

1959—Pub. L. 86–291, § 3, Sept. 21, 1959, 73 Stat. 570, added item 712.

1952—Act May 23, 1952, ch. 327, § 2, 66 Stat. 92, added item 711.

1950—Act Sept. 28, 1950, ch. 1092, § 1(a), 64 Stat. 1077, added item 710.

1949—Act May 24, 1949, ch. 139, § 14, 63 Stat. 91, inserted ''Uniform of armed forces and Public Health Service'' in lieu of enumerating the specific branches in item 702.

§ 700. Desecration of the flag of the United States; penalties

(a)(1) Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both.

(2) This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.

(b) As used in this section, the term ''flag of the United States'' means any flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

(c) Nothing in this section shall be construed as indicating an intent on the part of Congress to deprive any State, territory, possession, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

(d)(1) An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by a United States district court ruling upon the constitutionality of subsection (a).

(2) The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal and advance on the docket and expedite to the greatest extent possible.

(Added Pub. L. 90–381, § 1, July 5, 1968, 82 Stat. 291; amended Pub. L. 101–131, §§ 2, 3, Oct. 28, 1989, 103 Stat. 777.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–131, § 2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than $1,000 or imprisoned for not more than one year, or both.''

Subsec. (b). Pub. L. 101–131, § 2(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

[1] So in original. Does not conform to section catchline.

lows: ''The term 'flag of the United States' as used in this section, shall include any flag, standard colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, color, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America.''

Subsec. (d). Pub. L. 101–131, § 3, added subsec. (d).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–547, § 1, Dec. 19, 2000, 114 Stat. 2738, provided that: ''This Act [enacting sections 716 and 1036 of this title] may be cited as the 'Enhanced Federal Security Act of 2000'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–131 provided that: ''This Act [amending this section] may be cited as the 'Flag Protection Act of 1989'.''

§ 701. Official badges, identification cards, other insignia

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 731; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 76a, 76b (June 29, 1932, ch. 306, §§ 1, 2, 47 Stat. 342; May 22, 1939, ch. 141, 53 Stat. 752).

Sections were consolidated.

The term ''department or agency'' was substituted for ''department or independent office'' in two places to embrace all properly constituted agencies as defined in section 6 of this title and to eliminate any possible ambiguity as to scope of section.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

§ 702. Uniform of armed forces and Public Health Service

Whoever, in any place within the jurisdiction of the United States or in the Canal Zone, without authority, wears the uniform or a distinctive part thereof or anything similar to a distinctive part of the uniform of any of the armed forces of the United States, Public Health Service or any auxiliary of such, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 15(a), 63 Stat. 91; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 1393 of title 10, U.S.C., 1940 ed., Army and Air Force, and section 228 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (June 3, 1916, ch. 134, § 125, 39 Stat. 216 (2d paragraph); July 1, 1944, ch. 373, § 510, 58 Stat. 711).

''Auxiliary of such'' was inserted to extend protection to the uniforms of any auxiliary corps that may be established.

Fine of ''$250'' was substituted for ''$300'' as being more consonant with the penalties provided for similar offenses in this chapter.

Minor changes of phraseology also were made.

1949 ACT

This section [section 15] inserts ''armed forces'' in the catch line and text of section 702 of title 18, U.S.C., and thereby includes the Air Force which was formerly part of the Army. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]). Also, it incorporates in such section the provisions of act of April 15, 1948 (ch. 188, 62 Stat. 172), which relates to this section as well as to section 1393 of title 10, U.S.C. (one of the sources of such sec. 701), as it existed at the time of the enactment of the revision of title 18 and which was not incorporated in title 18 when the revision was enacted. In this connection specific reference to the Canal Zone, Guam, American Samoa, and the Virgin Islands, as contained in such act of April 15, 1948, were omitted as covered by the phrase, ''in any place within the jurisdiction of the United States,'' as used in this amendment of such section 702 of title 18, U.S.C.

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

1949—Act May 24, 1949, inserted ''armed forces'' in lieu of enumerating specific branches in section catchline and text, and inserted ''in any place within the jurisdiction of the United States or in the Canal Zone''.

TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5, Government Organization and Employees.

§ 703. Uniform of friendly nation

Whoever, within the jurisdiction of the United States, with intent to deceive or mislead, wears any naval, military, police, or other official uniform, decoration, or regalia of any foreign state, nation, or government with which the United States is at peace, or anything so nearly resembling the same as to be calculated to deceive, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on section 246 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (July 8, 1918, ch. 138, 40 Stat. 821).

Words ''upon conviction'' were deleted as surplusage, since punishment cannot be imposed until a conviction is secured.

Reference to territories or places subject to jurisdiction of the United States was omitted in view of section 5 of this title defining the term ''United States.''

Fine of ''$250'' was substituted for ''$300'' as being more consonant with the penalties provided for similar offenses in this chapter.

Words ''unless such wearing thereof be authorized by such state, nation, or government'' were deleted as unnecessary and undesirable since it is unthinkable that a friendly power would authorize such deceit.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

§ 704. Military medals or decorations

(a) IN GENERAL.—Whoever knowingly wears, purchases, attempts to purchase, solicits for purchase, mails, ships, imports, exports, produces blank certificates of receipt for, manufactures, sells, attempts to sell, advertises for sale, trades, barters, or exchanges for anything of value any decoration or medal authorized by Congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration or medal, or any colorable imitation thereof, except when authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

(b) FALSE CLAIMS ABOUT RECEIPT OF MILITARY DECORATIONS OR MEDALS.—Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.

(c) ENHANCED PENALTY FOR OFFENSES INVOLVING CONGRESSIONAL MEDAL OF HONOR.—

(1) IN GENERAL.—If a decoration or medal involved in an offense under subsection (a) or (b) is a Congressional Medal of Honor, in lieu of the punishment provided in that subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(2) CONGRESSIONAL MEDAL OF HONOR DEFINED.—In this subsection, the term ''Congressional Medal of Honor'' means—

(A) a medal of honor awarded under section 3741, 6241, or 8741 of title 10 or section 491 of title 14;

(B) a duplicate medal of honor issued under section 3754, 6256, or 8754 of title 10 or section 504 of title 14; or

(C) a replacement of a medal of honor provided under section 3747, 6253, or 8747 of title 10 or section 501 of title 14.

(d) ENHANCED PENALTY FOR OFFENSES INVOLVING CERTAIN OTHER MEDALS.—If a decoration or medal involved in an offense described in subsection (a) or (b) is a distinguished-service cross awarded under section 3742 of title 10, a Navy cross awarded under section 6242 of title 10, an Air Force cross awarded under section 8742 of section 10, a silver star awarded under section 3746, 6244, or 8746 of title 10, a Purple Heart awarded under section 1129 of title 10, or any replacement or duplicate medal for such medal as authorized by law, in lieu of the punishment provided in the applicable subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 16, 63 Stat. 92; Pub. L. 103–322, title XXXII, § 320109, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2113, 2146; Pub. L. 103–442, Nov. 2, 1994, 108 Stat. 4630; Pub. L. 104–294, title VI, § 604(b)(16), Oct. 11, 1996, 110 Stat. 3507; Pub. L. 107–107, div. A, title V, § 553(e), Dec. 28, 2001, 115 Stat. 1117; Pub. L. 109–437, § 3, Dec. 20, 2006, 120 Stat. 3266.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 1425 of title 10, U.S.C., 1940 ed., Army and Air Force (Feb. 24, 1923, ch. 110, 42 Stat. 1286; Apr. 21, 1928, ch. 392, 45 Stat. 437).

Section was made to cover the decorations and medals of the Navy Department as well as the War Department.

Minor changes were made in phraseology.

1949 ACT

This section [section 16] clarifies the wording of section 704 of title 18, U.S.C., to embrace all service decorations awarded to members of the armed forces whether by the Army, Navy, Air Force, or other branch of such forces. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–437, § 3(a), substituted ''purchases, attempts to purchase, solicits for purchase, mails, ships, imports, exports, produces blank certificates of receipt for, manufactures, sells, attempts to sell, advertises for sale, trades, barters, or exchanges for anything of value'' for ''manufactures, or sells''.

Subsec. (b). Pub. L. 109–437, § 3(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 109–437, § 3(b)(1), (d)(1), redesignated subsec. (b) as (c) and inserted ''Enhanced Penalty for Offenses Involving'' before ''Congressional Medal of Honor'' in heading.

Subsec. (c)(1). Pub. L. 109–437, § 3(b)(3), inserted ''or (b)'' after ''subsection (a)''.

Subsec. (c)(2). Pub. L. 109–437, § 3(d)(2), added par. (2) and struck out former par. (2) which defined ''sells'' and ''Congressional Medal of Honor''.

Subsec. (d). Pub. L. 109–437, § 3(c), added subsec. (d).

2001—Subsec. (b)(2)(B). Pub. L. 107–107 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''As used in this subsection, 'Congressional Medal of Honor' means a medal awarded under section 3741, 6241, or 8741 of title 10.''

1996—Subsec. (a). Pub. L. 104–294 amended Pub. L. 103–322, § 320109(1). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–322, §§ 320109(2), 330016(1)(E), amended subsec. (a) identically, substituting ''fined under this title'' for ''fined not more than $250''.

Pub. L. 103–322, § 320109(1), as amended by Pub. L. 104–294, § 604(b)(16), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 103–322, § 320109(3), added subsec. (b).

Subsec. (b)(2)(B). Pub. L. 103–442 inserted ‘‘, 6241, or 8741’’ after ‘‘3741’’.

1949—Act May 24, 1949, covered all service decorations awarded members of the armed forces by any of the armed services.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

FINDINGS

Pub. L. 109–437, § 2, Dec. 20, 2006, 120 Stat. 3266, provided that: ‘‘Congress makes the following findings:

‘‘(1) Fraudulent claims surrounding the receipt of the Medal of Honor, the distinguished-service cross, the Navy cross, the Air Force cross, the Purple Heart, and other decorations and medals awarded by the President or the Armed Forces of the United States damage the reputation and meaning of such decorations and medals.

‘‘(2) Federal law enforcement officers have limited ability to prosecute fraudulent claims of receipt of military decorations and medals.

‘‘(3) Legislative action is necessary to permit law enforcement officers to protect the reputation and meaning of military decorations and medals.’’

§ 705. Badge or medal of veterans' organizations

Whoever knowingly manufactures, reproduces, sells or purchases for resale, either separately or on or appended to, any article of merchandise manufactured or sold, any badge, medal, emblem, or other insignia or any colorable imitation thereof, of any veterans' organization incorporated by enactment of Congress, or of any organization formally recognized by any such veterans' organization as an auxiliary of such veterans' organization, or knowingly prints, lithographs, engraves or otherwise reproduces on any poster, circular, periodical, magazine, newspaper, or other publication, or circulates or distributes any such printed matter bearing a reproduction of such badge, medal, emblem, or other insignia or any colorable imitation thereof, except when authorized under rules and regulations prescribed by any such organization, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 732; Aug. 4, 1950, ch. 578, 64 Stat. 413; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 76e (June 25, 1940, ch. 426, 54 Stat. 571).

Words beginning the section are from the punishment provision of last sentence which was itself rewritten without surplusage.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ‘‘fined under this title’’ for ‘‘fined not more than $250’’.

1950—Act Aug. 4, 1950, brought within the protection of this section emblems, badges, or insignia of auxiliary organizations of veteran's organizations incorporated by an act of Congress.

§ 706. Red Cross

Whoever wears or displays the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross; or

Whoever, whether a corporation, association or person, other than the American National Red Cross and its duly authorized employees and agents and the sanitary and hospital authorities of the armed forces of the United States, uses the emblem of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof or the words ‘‘Red Cross’’ or ‘‘Geneva Cross’’ or any combination of these words—

Shall be fined under this title or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such emblem, sign, insignia or words which was lawful on the date of enactment of this title.

(June 25, 1948, ch. 645, 62 Stat. 732; May 24, 1949, ch. 139, § 17, 63 Stat. 92; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 4 of title 36, Patriotic Societies and Observances (Jan. 5, 1905, ch. 23, § 4, 33 Stat. 600; June 23, 1910, ch. 372, § 1, 36 Stat. 604).

False personation provision in first part of section was omitted here and incorporated in section 917 of this title.

Words of punishment ‘‘$250’’ and ‘‘six months’’ were substituted for ‘‘$500’’ and ‘‘one year’’ respectively as more consonant with penalties provided for similar offenses in this chapter. (See sections 701, 704, 705 of this title.)

Punishment provisions were also changed to omit reference to ‘‘misdemeanor’’ in view of definitive section 1 of this title.

Words ‘‘upon conviction thereof’’ were omitted as surplusage, because punishment can only be imposed after conviction.

Changes were made in phraseology.

1949 ACT

This section [section 17] clarifies the wording of section 706 of title 18, U.S.C., to embrace all service sanitary units whether belonging to the Army, Navy, Air Force, or other branches of the Armed services. (See note to sec. 5 [of 1949 Act, set out in Legislative History note under section 244 of title 18]).

REFERENCES IN TEXT

The date of enactment of this title, referred to in text, means June 25, 1948.

AMENDMENTS

1994—Pub. L. 103–322 substituted ‘‘fined under this title’’ for ‘‘fined not more than $250’’ in third par.

1949—Act May 24, 1949, included all service sanitary units.

§ 706a. Geneva distinctive emblems

(a) Whoever wears or displays the sign of the Red Crescent or the Third Protocol Emblem (the Red Crystal), or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for an authorized national society using the Red Crescent or the Third Protocol Emblem, the International Committee of the Red Cross, or the International Federation of Red Cross and

Red Crescent Societies shall be fined under this title or imprisoned not more than 6 months, or both.

(b) Except as set forth in section[1] (c) and (d), whoever, whether a corporation, association, or person, uses the emblem of the Red Crescent or the Third Protocol Emblem on a white ground or any sign or insignia made or colored in imitation thereof or the designations ''Red Crescent'' or ''Third Protocol Emblem'' shall be fined under this title or imprisoned not more than 6 months, or both.

(c) The following may use such emblems and designations consistent with the Geneva Conventions of August 12, 1949, and, if applicable, the Additional Protocols:

(1) Authorized national societies that are members of the International Federation of Red Cross and Red Crescent Societies and their duly authorized employees and agents.

(2) The International Committee of the Red Cross and its duly authorized employees and agents.

(3) The International Federation of Red Cross and Red Crescent Societies and its duly authorized employees and agents.

(4) The sanitary and hospital authorities of the armed forces of State Parties to the Geneva Conventions of August 12, 1949.

(d) This section does not make unlawful the use of any such emblem, sign, insignia, or words which was lawful on or before December 8, 2005, if such use would not appear in time of armed conflict to confer the protections of the Geneva Conventions of August 12, 1949, and, if applicable, the Additional Protocols.

(e) A violation of this section or section 706 may be enjoined at the civil suit of the Attorney General.

(Added Pub. L. 109–481, § 2(a), Jan. 12, 2007, 120 Stat. 3673.)

§ 707. 4–H club emblem fraudulently used

Whoever, with intent to defraud, wears or displays the sign or emblem of the 4–H clubs, consisting of a green four-leaf clover with stem, and the letter H in white or gold on each leaflet, or any insignia in colorable imitation thereof, for the purpose of inducing the belief that he is a member of, associated with, or an agent or representative for the 4–H clubs; or

Whoever, whether an individual, partnership, corporation or association, other than the 4–H clubs and those duly authorized by them, the representatives of the United States Department of Agriculture, the land grant colleges, and persons authorized by the Secretary of Agriculture, uses, within the United States, such emblem or any sign, insignia, or symbol in colorable imitation thereof, or the words ''4–H Club'' or ''4–H Clubs'' or any combination of these or other words or characters in colorable imitation thereof—

Shall be fined under this title or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such emblem, sign, insignia or words which was lawful on the date of enactment of this title.

(June 25, 1948, ch. 645, 62 Stat. 733; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 76c and 76d (June 5, 1939, ch. 184, §§ 1, 2, 53 Stat. 809).

The first provision of section 76c of title 18, U.S.C., 1940 ed., relating to fraudulently pretending to be a member of a 4–H Club was incorporated in section 916 of this title.

The language describing the emblem was transposed.

Unnecessary words were omitted from punishment provision, and ''$250'' was substituted for ''$300'' to make the punishment consonant with the penalties provided for similar offenses. (See sections 701, 704, 705 of this title for similar offenses.)

The language of section 76d of title 18, U.S.C., 1940 ed., was rephrased and inserted after ''whoever,'' in the second paragraph.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The date of enactment of this title, referred to in text, means June 25, 1948.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250'' in third par.

§ 708. Swiss Confederation coat of arms

Whoever, whether a corporation, partnership, unincorporated company, association, or person within the United States, willfully uses as a trade mark, commercial label, or portion thereof, or as an advertisement or insignia for any business or organization or for any trade or commercial purpose, the coat of arms of the Swiss Confederation, consisting of an upright white cross with equal arms and lines on a red ground, or any simulation thereof, shall be fined under this title or imprisoned not more than six months, or both.

This section shall not make unlawful the use of any such design or insignia which was lawful on August 31, 1948.

(June 25, 1948, ch. 645, 62 Stat. 733; Oct. 31, 1951, ch. 655, § 21a, 65 Stat. 719; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on section 248 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 20, 1936, ch. 635, §§ 1, 2, 49 Stat. 1557).

Reference to ''jurisdiction'' of the United States was omitted as unnecessary in view of definition of ''United States'' in section 5 of this title.

Words of punishment ''$250'' and ''six months'' were substituted for ''$500'' and ''one year'' respectively, as more consonant with penalties for similar offenses in this chapter. (See sections 701, 704, 705 of this title.)

Punishment provision was also changed to omit reference to ''misdemeanor'' in view of definitive section 1 of this title.

Words ''upon conviction'' were omitted as surplusage, because punishment can only be imposed after conviction.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250'' in first par.

1951—Act Oct. 31, 1951, added second par.

[1] So in original. Probably should be ''subsections''.

§ 709. False advertising or misuse of names to indicate Federal agency

Whoever, except as permitted by the laws of the United States, uses the words ''national'', ''Federal'', ''United States'', ''reserve'', or ''Deposit Insurance'' as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings or trust business; or

Whoever falsely advertises or represents, or publishes or displays any sign, symbol or advertisement reasonably calculated to convey the impression that a nonmember bank, banking association, firm or partnership is a member of the Federal reserve system; or

Whoever, except as expressly authorized by Federal law, uses the words ''Federal Deposit'', ''Federal Deposit Insurance'', or ''Federal Deposit Insurance Corporation'' or a combination of any three of these words, as the name or a part thereof under which he or it does business, or advertises or otherwise represents falsely by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured or guaranteed by the Federal Deposit Insurance Corporation, or by the United States or by any instrumentality thereof, or whoever advertises that his or its deposits, shares, or accounts are federally insured, or falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which the deposit liabilities of an insured bank or banks are insured by the Federal Deposit Insurance Corporation; or

Whoever, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, uses as a firm or business name or transacts business using the words ''National Credit Union'', ''National Credit Union Administration'', ''National Credit Union Board'', ''National Credit Union Share Insurance Fund'', ''Share Insurance'', or ''Central Liquidity Facility'', or the letters ''NCUA'', ''NCUSIF'', or ''CLF'', or any other combination or variation of those words or letters alone or with other words or letters, or any device or symbol or other means, reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the National Credit Union Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof, or falsely advertises or otherwise represents by any device whatsoever that his or its deposit liabilities, obligations, certificates, shares, or accounts are insured under the Federal Credit Union Act or by the United States or any instrumentality thereof, or being an insured credit union as defined in that Act falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which share holdings in such credit union are insured under such Act; or

Whoever, not being organized under chapter 7 of Title 12, advertises or represents that it makes Federal Farm loans or advertises or offers for sale as Federal Farm loan bonds any bond not issued under chapter 7 of Title 12, or uses the word ''Federal'' or the words ''United States'' or any other words implying Government ownership, obligation or supervision in advertising or offering for sale any bond, note, mortgage or other security not issued by the Government of the United States under the provisions of said chapter 7 or some other Act of Congress; or

Whoever uses the words ''Federal Home Loan Bank'' or any combination or variation of these words alone or with other words as a business name or part of a business name, or falsely publishes, advertises or represents by any device or symbol or other means reasonably calculated to convey the impression that he or it is a Federal Home Loan Bank or member of or subscriber for the stock of a Federal Home Loan Bank; or

Whoever uses the words ''Federal intermediate credit bank'' as part of the business or firm name for any person, corporation, partnership, business trust, association or other business entity not organized as an intermediate credit bank under the laws of the United States; or

Whoever uses as a firm or business name the words ''Department of Housing and Urban Development'', ''Housing and Home Finance Agency'', ''Federal Housing Administration'', ''Government National Mortgage Association'', ''United States Housing Authority'', or ''Public Housing Administration'' or the letters ''HUD'', ''FHA'', ''PHA'', or ''USHA'', or any combination or variation of those words or the letters ''HUD'', ''FHA'', ''PHA'', or ''USHA'' alone or with other words or letters reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely claims that any repair, improvement, or alteration of any existing structure is required or recommended by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, for the purpose of inducing any person to enter into a contract for the making of such repairs, alterations, or improvements, or falsely advertises or falsely represents by any device whatsoever that any housing unit, project, business, or product has been in any way endorsed, authorized, inspected, appraised, or approved by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Au-

thority, the Public Housing Administration, the Government of the United States, or any agency thereof; or

Whoever, except with the written permission of the Director of the Federal Bureau of Investigation, knowingly uses the words ''Federal Bureau of Investigation'' or the initials ''F.B.I.'', or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the Federal Bureau of Investigation; or

Whoever, except with written permission of the Director of the United States Secret Service, knowingly uses the words ''Secret Service'', ''Secret Service Uniformed Division'', the initials ''U.S.S.S.'', ''U.D.'', or any colorable imitation of such words or initials, in connection with, or as a part of any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, other production, product, or item, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, product, or item, is approved, endorsed, or authorized by or associated in any manner with, the United States Secret Service, or the United States Secret Service Uniformed Division; or

Whoever, except with the written permission of the Director of the United States Mint, knowingly uses the words ''United States Mint'' or ''U.S. Mint'' or any colorable imitation of such words, in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by or associated in any manner with, the United States Mint; or

Whoever uses the words ''Overseas Private Investment'', ''Overseas Private Investment Corporation'', or ''OPIC'', as part of the business or firm name of a person, corporation, partnership, business trust, association, or business entity; or

Whoever, except with the written permission of the Administrator of the Drug Enforcement Administration, knowingly uses the words ''Drug Enforcement Administration'' or the initials ''DEA'' or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by the Drug Enforcement Administration; or

Whoever, except with the written permission of the Director of the United States Marshals Service, knowingly uses the words ''United States Marshals Service'', ''U.S. Marshals Service'', ''United States Marshal'', ''U.S. Marshal'', ''U.S.M.S.'', or any colorable imitation of any such words, or the likeness of a United States Marshals Service badge, logo, or insignia on any item of apparel, in connection with any advertisement, circular, book, pamphlet, software, or other publication, or any play, motion picture, broadcast, telecast, or other production, in a manner that is reasonably calculated to convey the impression that the wearer of the item of apparel is acting pursuant to the legal authority of the United States Marshals Service, or to convey the impression that such advertisement, circular, book, pamphlet, software, or other publication, or such play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the United States Marshals Service;

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine under this title; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine under this title or imprisonment for not more than one year, or both.

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

This section shall not make unlawful the use of the word ''national'' as part of the name of any business or firm engaged in the insurance or indemnity business, whether such firm was engaged in the insurance or indemnity business prior or subsequent to the date of enactment of this paragraph.

A violation of this section may be enjoined at the suit of the United States Attorney, upon complaint by any duly authorized representative of any department or agency of the United States.

(June 25, 1948, ch. 645, 62 Stat. 733; Sept. 21, 1950, ch. 967, § 3(a), 64 Stat. 894; Oct. 31, 1951, ch. 655, § 22, 65 Stat. 719; July 3, 1952, ch. 547, 66 Stat. 321; Aug. 2, 1954, ch. 649, title I, § 131, 68 Stat. 609; Aug. 27, 1954, ch. 1008, 68 Stat. 867; Pub. L. 90–19, § 24(b), May 25, 1967, 81 Stat. 27; Pub. L. 90–448, title VIII, § 807(i), Aug. 1, 1968, 82 Stat. 545; Pub. L. 91–468, § 5, Oct. 19, 1970, 84 Stat. 1016; Pub. L. 95–630, title XVIII, § 1804, Nov. 10, 1978, 92 Stat. 3723; Pub. L. 99–204, § 16, Dec. 23, 1985, 99 Stat. 1676; Pub. L. 100–690, title VII, § 7079(a), Nov. 18, 1988, 102 Stat. 4406; Pub. L. 102–390, title II, § 223, Oct. 6, 1992, 106 Stat. 1629; Pub. L. 103–322, title XXXII, § 320911(a), title XXXIII, §§ 330004(3), 330016(2)(C), Sept. 13, 1994, 108 Stat. 2127, 2141, 2148; Pub. L. 104–294, title VI, §§ 602(a), 604(b)(19), (41), Oct. 11, 1996, 110 Stat. 3503, 3507, 3509; Pub. L. 105–184, § 7, June 23, 1998, 112 Stat. 522; Pub. L. 107–273, div. B, title IV, § 4002(a)(10), Nov. 2, 2002, 116 Stat. 1807.)

HISTORICAL AND REVISION NOTES

Based on sections 264(v)(1), 583, 584, 585, 586, 587, 1128, 1318, 1441(d), 1731(d) of title 12, U.S.C., 1940 ed., Banks and Banking, section 616(d) of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 1426 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (R.S. § 5243; Dec. 23, 1913, ch. 6, § 12B(v), as added June 16, 1933,

ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 211h, as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1461; Mar. 4, 1923, ch. 252, title II, § 216, 42 Stat. 1471; May 24, 1926, ch. 377, §§ 1–4, 44 Stat. 628; Jan. 22, 1932, ch. 8, § 16(d), 47 Stat. 12; July 22, 1932, ch. 522, § 21, 47 Stat. 738; June 27, 1934, ch. 847, § 512, 48 Stat. 1265; Aug. 23, 1935, ch. 614, §§ 101, 203a, 318, 332, 49 Stat. 684, 704, 712, 719; Apr. 21, 1936, ch. 244, 49 Stat. 1237; Sept. 1, 1937, ch. 896, § 26, 50 Stat. 899; Feb. 3, 1938, ch. 13, §§ 9, 10, 52 Stat. 24, 25; June 28, 1941, ch. 261, § 10, 55 Stat. 365).

Numerous sections were consolidated with changes both of phraseology and substance necessary to effect consolidation.

The proviso of section 585 of said title 12 was omitted, since the consolidated section obviously cannot be construed as forbidding Federal agencies, boards, and corporations from using their legal names. The right to continue the use of a name, lawful on the effective date of this section, is preserved.

Last paragraph is based upon section 587 of said title 12. Words ''At the suit of'' were substituted for ''at the instance of''. United States Attorneys are the chief law officers of the districts. *United States* v. *Smith*, 1895, 15 S. Ct. 846, 158 U.S. 346, 39 L. Ed. 1011; *McKay* v. *Rogers*, C. C. A. Okl. 1936, 82 F. 2d 795. Federal courts will not recognize suits on behalf of the United States unless the Government is represented by a United States Attorney. Confiscation cases, La. 1868, 7 Wall. 454, 19 L. Ed. 196.

The words ''any duly authorized representative of any department or agency of the United States'' were substituted for the enumeration of agencies which may make complaint thus making the provision more flexible and less cumbersome.

This consolidated section reconciles the disparities and inconsistencies of 12 sections; thus providing a harmonious scheme for the punishment of similar offenses.

The punishment provision was drawn from section 587 of title 12, U.S.C., 1940 ed., Banks and Banking, but is in substance and effect the same as in sections 264v(1), 1441(d) and 1731(d) of said title 12, but the civil penalty of $50 per day which was in sections 583, 1128, and 1318 of said title 12, was omitted as inconsistent with later acts dealing with similar offenses. Too often actions to recover civil penalties result in judgments which cannot be collected, and yet as long as they remain uncollected they clog the administration of justice.

It was necessary to substitute a fine in place of a $50 per diem penalty for business entities embraced in sections 583, 1128, and 1318 of said title 12, and fine and imprisonment for individuals responsible for such violations. Similarly the penalty of $1,000 fine in section 1426 of title 42, The Public Health and Welfare, was changed to permit alternative fine or imprisonment for individuals responsible for violation.

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in text, is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Chapter 7 of Title 12, referred to in text, which contained the Federal Farm Loan Act (act July 17, 1916, ch. 245, 39 Stat. 360) as amended, was classified principally to section 641 et seq. of Title 12. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby ''shall be deemed to refer to comparable provisions of this Act''. For further details, see notes under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables.

The date of enactment of this title, referred to in fifteenth par., means June 25, 1948.

The date of enactment of this paragraph, referred to in penultimate par., means July 3, 1952.

AMENDMENTS

2002—Pub. L. 107–273, in thirteenth par., substituted ''Whoever'' for ''A person who'' and inserted ''or'' at end.

1998—Pub. L. 105–184 inserted fourteenth par. that extended prohibitions of section to unauthorized use of term ''United States Marshals Service'' or any colorable imitation, or likeness of a United States Marshals Service badge, logo, or insignia on any item of apparel.

1996—Pub. L. 104–294, § 604(b)(41), amended directory language of Pub. L. 103–322, § 330004(3). See 1994 Amendment note below.

Pub. L. 104–294, § 604(b)(19), amended directory language of Pub. L. 103–322, § 320911(a). See 1994 Amendment notes below.

Pub. L. 104–294, § 602(a), which directed amendment of this section by striking out ''Whoever uses as a firm or business name the words 'Reconstruction Finance Corporation' or any combination or variation of these words—'', could not be executed because that language did not appear in text subsequent to amendment by Pub. L. 103–322, § 330004(3), as amended. See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $1,000'' in two places in par. relating to punishment.

Pub. L. 103–322, § 330004(3), struck out seventh par. which read as follows: ''Whoever uses the words 'National Agricultural Credit Corporation' as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity not organized under the laws of the United States as a National Agricultural Credit Corporation; or''.

Pub. L. 103–322, § 330004(3), as amended by Pub. L. 104–294, § 604(b)(41), struck out fourteenth par. which read as follows: ''Whoever uses as a firm or business name the words 'Reconstruction Finance Corporation' or any combination or variation of these words—''.

Pub. L. 103–322, § 320911(a)(2), as amended by Pub. L. 104–294, § 604(b)(19), which directed the insertion of a new par. relating to use of the words ''Drug Enforcement Administration'' or the initials ''DEA'' after the fourteenth unnumbered par. was executed by inserting such par. after the twelfth par. relating to the Overseas Private Investment Corporation, to reflect the probable intent of Congress and amendments by Pub. L. 103–322, § 330004(3). See above.

Pub. L. 103–322, § 320911(a)(1), as amended by Pub. L. 104–294, § 604(b)(19), which directed the substitution of ''words; or'' for ''words—'' in the fourteenth unnumbered par., could not be executed because that par. was struck out by Pub. L. 103–322, § 330004(3). See above.

1992—Pub. L. 102–390 inserted par. prohibiting unauthorized use of the terms ''United States Mint'' or ''U.S. Mint''.

1988—Pub. L. 100–690 inserted provision prohibiting unauthorized use of words ''Secret Service'' or ''Secret Service Uniformed Division'', the initials ''U.S.S.S.'' or ''U.D.'', or other colorable imitation of such words or initials.

1985—Pub. L. 99–204 extended prohibitions of this section to use of ''Overseas Private Investment'', ''Overseas Private Investment Corporation'' and ''OPIC''.

1978—Pub. L. 95–630 in fourth par., inserted provisions expanding the scope of the prohibition to include anyone, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, who misuses a firm or business name or transacts business using ''National Credit Union'', ''National Credit Union Administration'', ''National Credit Union Board'', ''National Credit Union Share Insurance Fund'', ''Share Insurance'', or ''Central Liquidity Facility'', or ''NCUA'', ''NCUSIF'', or ''CLF'', or any other combination or variation of those words or letters reasonably calculated to convey the false impression that such name or business has some connection with or authorization from the National Credit Union Administration, the Government of

the United States, or any agency thereof or represents by any device whatsoever that his business, product, or service is in any way endorsed, authorized, or approved or that he is in any way insured by the National Credit Union Administration, the Government of the United States, or any agency thereof.

1970—Pub. L. 91–468 extended prohibition of this section to include practices which would falsely represent that assets are insured by the Federal Credit Union Act.

1968—Pub. L. 90–448, in ninth par., substituted ''Government National Mortgage Association'' for ''Federal National Mortgage Association'' wherever appearing.

1967—Pub. L. 90–19 extended prohibition of ninth par. to misuse of names ''Department of Housing and Urban Development'' and ''United States Housing Authority'' and symbols ''HUD'', ''PHA'', and ''USHA''.

1954—Act Aug. 27, 1954, brought the use of the name or initials of the Federal Bureau of Investigation within the ban of the section.

Act Aug. 2, 1954, in ninth par., inserted references to the Housing and Home Finance Agency, the Federal National Mortgage Association, and FHA, and inserted provisions relating to false claims made with respect to repairs, alterations, or improvements.

1952—Act July 3, 1952, permitted use of ''national'' as a part of the name of an insurance or indemnity company in penultimate par.

1951—Act Oct. 31, 1951, in ninth par., inserted ''Public Housing Administration'' in lieu of ''United States Housing Authority'', and inserted ''Public Housing Administration,'' after ''Federal Housing Administration''.

1950—Act Sept. 21, 1950, in third par., made subject to provisions of this section whoever advertises that his or its deposit liabilities, obligations, certificates, or shares are federally insured.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(19), (41) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 320911(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date that is 90 days after the date of enactment of this Act [Sept. 13, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7079(b) of Pub. L. 100–690 provided that: ''This section [amending this section] shall take effect 90 days after the date of enactment of this Act [Nov. 18, 1988].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Oct. 1, 1979, see section 1806 of Pub. L. 95–630, set out as an Effective Date note under section 1795 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–448 effective from and after a date, no more than 120 days following Aug. 1, 1968, as established by the Secretary of Housing and Urban Development, see section 808 of Pub. L. 90–448, set out as an Effective Date note under section 1716b of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(b) of act Sept. 21, 1950, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall become effective on January 1, 1951.''

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions, powers, and duties of Housing and Home Finance Agency, Federal Housing Administration, and Public Housing Authority transferred to Secretary of Housing and Urban Development who was authorized to delegate such functions, powers, and duties to such officers and employees of Department of Housing and Urban Development as the Secretary may designate, see sections 3534 and 3535 of Title 42, The Public Health and Welfare.

United States Housing Authority consolidated with other agencies into Housing and Home Finance Agency and name of Authority changed to Public Housing Administration by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

For creation, succession, and principal office, see section 1717 of Title 12, Banks and Banking.

§ 710. Cremation urns for military use

Whoever knowingly uses, manufactures, or sells any cremation urn of a design approved by the Secretary of Defense for use to retain the cremated remains of deceased members of the armed forces or an urn which is a colorable imitation of the approved design, except when authorized under regulation made pursuant to law, shall be fined under this title or imprisoned for not more than six months, or both.

(Added Sept. 28, 1950, ch. 1092, § 1(b), 64 Stat. 1077; amended Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

§ 711. "Smokey Bear" character or name

Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly and for profit manufactures, reproduces, or uses the character ''Smokey Bear'', originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name ''Smokey Bear'' shall be fined under this title or imprisoned not more than six months, or both.

(Added May 23, 1952, ch. 327, § 1, 66 Stat. 92; amended Pub. L. 93–318, § 5, June 22, 1974, 88 Stat. 245; Pub. L. 103–322, title XXXIII, §§ 330004(4), 330016(1)(E), Sept. 13, 1994, 108 Stat. 2141, 2146.)

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(E), substituted ''fined under this title'' for ''fined not more than $250''.

Pub. L. 103–322, § 330004(4), struck out last par. which read as follows: ''The Secretary of Agriculture may specially authorize the manufacture, reproduction, or use of the character 'Smokey Bear' for a period not to exceed one hundred and eighty days, expiring no later

than one year after the enactment hereof, by any person who, because of plans or commitments made prior to the enactment of this Act, would suffer substantial loss if denied such authorization.''

1974—Pub. L. 93–318 inserted ''and for profit'' after ''knowingly'' and struck out ''as a trade name or in such manner as suggests the character 'Smokey Bear' '' after ''facsimile thereof, or the name 'Smokey Bear' ''.

DEPOSIT OF FEES; AVAILABILITY

Deposit of fees collected under regulations governing ''Smokey Bear'' and availability for use, see section 580p–2 of Title 16, Conservation.

§ 711a. "Woodsy Owl" character, name, or slogan

Whoever, except as authorized under rules and regulations issued by the Secretary, knowingly and for profit manufactures, reproduces, or uses the character ''Woodsy Owl'', the name ''Woodsy Owl'', or the associated slogan, ''Give a Hoot, Don't Pollute'' shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 93–318, § 6, June 22, 1974, 88 Stat. 245; amended Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

DESCRIPTION OF ''WOODSY OWL'' CHARACTER

For description of character of ''Woodsy Owl'' as referred to in this section, see section 580p of Title 16, Conservation.

§ 712. Misuse of names, words, emblems, or insignia

Whoever, in the course of collecting or aiding in the collection of private debts or obligations, or being engaged in furnishing private police, investigation, or other private detective services, uses or employs in any communication, correspondence, notice, advertisement, or circular the words ''national'', ''Federal'', or ''United States'', the initials ''U.S.'', or any emblem, insignia, or name, for the purpose of conveying and in a manner reasonably calculated to convey the false impression that such communication is from a department, agency, bureau, or instrumentality of the United States or in any manner represents the United States, shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 86–291, § 1, Sept. 21, 1959, 73 Stat. 570; amended Pub. L. 93–147, § 1(a), Nov. 3, 1973, 87 Stat. 554; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1973—Pub. L. 93–147 substituted ''Misuse of names, words, emblems, or insignia'' for ''Misuse of names by collecting agencies or private detective agencies to indicate Federal agency'' in section catchline and substituted ''in the course'' and ''such communication is from a department'' for ''being engaged in the business'' and ''such business is a department'' respectively, and struck out ''as part of the firm name of such business,'' after ''detective services, uses''.

EFFECTIVE DATE

Section 2 of Pub. L. 86–291 provided that: ''The provisions of this section [enacting this section] shall become effective sixty days from the enactment thereof [Sept. 21, 1959].''

§ 713. Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress

(a) Whoever knowingly displays any printed or other likeness of the great seal of the United States, or of the seals of the President or the Vice President of the United States, or the seal of the United States Senate, or the seal of the United States House of Representatives, or the seal of the United States Congress, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined under this title or imprisoned not more than six months, or both.

(b) Whoever, except as authorized under regulations promulgated by the President and published in the Federal Register, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seals of the President or Vice President, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.

(c) Whoever, except as directed by the United States Senate, or the Secretary of the Senate on its behalf, knowingly uses, manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seal of the United States Senate, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.

(d) Whoever, except as directed by the United States House of Representatives, or the Clerk of the House of Representatives on its behalf, knowingly uses, manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seal of the United States House of Representatives, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.

(e) Whoever, except as directed by the United States Congress, or the Secretary of the Senate and the Clerk of the House of Representatives, acting jointly on its behalf, knowingly uses, manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the

seal of the United States Congress, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.

(f) A violation of the provisions of this section may be enjoined at the suit of the Attorney General,

(1) in the case of the great seal of the United States and the seals of the President and Vice President, upon complaint by any authorized representative of any department or agency of the United States;

(2) in the case of the seal of the United States Senate, upon complaint by the Secretary of the Senate;

(3) in the case of the seal of the United States House of Representatives, upon complaint by the Clerk of the House of Representatives; and

(4) in the case of the seal of the United States Congress, upon complaint by the Secretary of the Senate and the Clerk of the House of Representatives, acting jointly.

(Added Pub. L. 89–807, § 1(a), Nov. 11, 1966, 80 Stat. 1525; amended Pub. L. 91–651, § 1, Jan. 5, 1971, 84 Stat. 1940; Pub. L. 102–229, title II, § 210(a)–(d), Dec. 12, 1991, 105 Stat. 1717; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146; Pub. L. 105–55, title III, § 308(a)–(d), Oct. 7, 1997, 111 Stat. 1198.)

AMENDMENTS

1997—Pub. L. 105–55, § 308(d), substituted ''the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress'' for ''and the seal of the United States Senate'' in section catchline.

Subsec. (a). Pub. L. 105–55, § 308(a), inserted ''or the seal of the United States House of Representatives, or the seal of the United States Congress,'' after ''Senate,''.

Subsecs. (d), (e). Pub. L. 105–55, § 308(b), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 105–55, § 308(b)(1), redesignated subsec. (d) as (f).

Subsec. (f)(3), (4). Pub. L. 105–55, § 308(c), added pars. (3) and (4).

1994—Subsecs. (a) to (c). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

1991—Pub. L. 102–229, § 210(a), substituted ''the seals of the President and Vice President, and the seal of the United States Senate'' for ''and of the seals of the President and Vice President'' in section catchline.

Subsec. (a). Pub. L. 102–229, § 210(b), inserted ''or the seal of the United States Senate,'' after ''Vice President of the United States,''.

Subsecs. (c), (d). Pub. L. 102–229, § 210(c), (d), added subsec. (c), amended former subsec. (c) generally, and redesignated former subsec. (c) as (d). Prior to amendment and redesignation, former subsec. (c) read as follows: ''A violation of subsection (a) or (b) of this section may be enjoined at the suit of the Attorney General upon complaint by any authorized representative of any department or agency of the United States.''

1971—Pub. L. 91–651 substituted ''Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President'' for ''Use of the great seal of the United States'' in section catchline.

Subsec. (a). Pub. L. 91–651 redesignated existing provisions as subsec. (a), expanded prohibition to include likenesses of the seals of the President and Vice President, and added to the enumerated list of prohibited uses for likenesses of the great seal of the United States and for the seals of the President and Vice President, use in posters, public meetings, or on any building, monument, or stationery.

Subsecs. (b), (c). Pub. L. 91–651 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91–651 provided that: The amendments made by this Act [amending this section] shall not make unlawful any preexisting use of the design of the great seal of the United States or of the seals of the President or Vice President of the United States that was lawful on the date of enactment of this Act [Jan. 5, 1971], until one year after the date of such enactment.''

EX. ORD. NO. 11649. REGULATIONS GOVERNING SEALS OF PRESIDENT AND VICE PRESIDENT OF UNITED STATES

Ex. Ord. No. 11649, Feb. 16, 1972, 37 F.R. 3625, as amended by Ex. Ord. No. 11916, May 28, 1976, 41 F.R. 22031, provided:

By virtue to the authority vested in me by section 713(b) of title 18, United States Code, I hereby prescribe the following regulations governing the use of the Seals of the President and the Vice President of the United States:

SECTION 1. Except as otherwise provided by law, the knowing manufacture, reproduction, sale, or purchase for resale of the Seals or Coats of Arms of the President or the Vice President of the United States, or any likeness or substantial part thereof, shall be permitted only for the following uses:

(a) Use by the President or Vice President of the United States;

(b) Use in encyclopedias, dictionaries, books, journals, pamphlets, periodicals, or magazines incident to a description or history of seals, coats of arms, heraldry, or the Presidency or Vice Presidency;

(c) Use in libraries, museums, or educational facilities incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or the Presidency or Vice Presidency;

(d) Use as an architectural embellishment in libraries, museums, or archives established to house the papers or effects of former Presidents or Vice Presidents;

(e) Use on a monument to a former President or Vice President;

(f) Use by way of photographic or electronic visual reproduction in pictures, moving pictures, or telecasts of bona fide news content;

(g) Such other uses for exceptional historical, educational, or newsworthy purposes as may be authorized in writing by the Counsel to the President.

SEC. 2. The manufacture, reproduction, sale, or purchase for resale, either separately or appended to any article manufactured or sold, of the Seals of the President or Vice President, or any likeness or substantial part thereof, except as provided in this Order or as otherwise provided by law, is prohibited.

RICHARD NIXON.

[§ 714. Repealed. Pub. L. 97–258, § 2(d)(1)(B), Sept. 13, 1982, 96 Stat. 1058]

Section, added Pub. L. 91–419, § 3, Sept. 25, 1970, 84 Stat. 870, defined ''Johnny Horizon'' for purposes of Pub. L. 91–419.

§ 715. "The Golden Eagle Insignia"

As used in this section, ''The Golden Eagle Insignia'' means the words ''The Golden Eagle'' and the representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border) which was originated by the Department of the Interior as the official symbol for Federal recreation fee areas.

Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses ''The Golden Eagle Insignia'', or any facsimile thereof, in such a manner as is likely to cause confusion, or to cause mistake, or to deceive, shall be fined under this title or imprisoned not more than six months, or both.

The use of any such emblem, sign, insignia, or words which was lawful on the date of enactment of this Act shall not be a violation of this section.

A violation of this section may be enjoined at the suit of the Attorney General, upon complaint by the Secretary of the Interior.

(Added Pub. L. 92–347, § 3(b), July 11, 1972, 86 Stat. 461; amended Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in text, means the date of enactment of Pub. L. 92–347, which was approved July 11, 1972.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250'' in second par.

§ 716. Public employee insignia and uniform

(a) Whoever—

(1) knowingly transfers, transports, or receives, in interstate or foreign commerce, a counterfeit official insignia or uniform;

(2) knowingly transfers, in interstate or foreign commerce, a genuine official insignia or uniform to an individual, knowing that such individual is not authorized to possess it under the law of the place in which the badge is the official official[1] insignia or uniform;

(3) knowingly receives a genuine official insignia or uniform in a transfer prohibited by paragraph (2); or

(4) being a person not authorized to possess a genuine official insignia or uniform under the law of the place in which the badge is the official official[1] insignia or uniform, knowingly transports that badge in interstate or foreign commerce,

shall be fined under this title or imprisoned not more than 6 months, or both.

(b) It is a defense to a prosecution under this section that the insignia or uniform is other than a counterfeit insignia or uniform and is not used to mislead or deceive, or is used or is intended to be used exclusively—

(1) as a memento, or in a collection or exhibit;

(2) for decorative purposes;

(3) for a dramatic presentation, such as a theatrical, film, or television production; or

(4) for any other recreational purpose.

(c) As used in this section—

(1) the term ''genuine police badge'' means an official badge issued by public authority to identify an individual as a law enforcement officer having police powers;

(2) the term ''counterfeit police badge'' means an item that so resembles a police badge that it would deceive an ordinary individual into believing it was a genuine police badge; and[2]

(3) the term ''official insignia or uniform'' means an article of distinctive clothing or insignia, including a badge, emblem or identification card, that is an indicium of the authority of a public employee;

(4) the term ''public employee'' means any officer or employee of the Federal Government or of a State or local government; and

(5) the term ''uniform'' means distinctive clothing or other items of dress, whether real or counterfeit, worn during the performance of official duties and which identifies the wearer as a public agency employee.

(d) It is a defense to a prosecution under this section that the official insignia or uniform is not used or intended to be used to mislead or deceive, or is a counterfeit insignia or uniform and is used or is intended to be used exclusively—

(1) for a dramatic presentation, such as a theatrical, film, or television production; or

(2) for legitimate law enforcement purposes.

(Added Pub. L. 106–547, § 3(a), Dec. 19, 2000, 114 Stat. 2739; amended Pub. L. 109–162, title XI, § 1191(a), Jan. 5, 2006, 119 Stat. 3128.)

AMENDMENTS

2006—Pub. L. 109–162, § 1191(a)(6), substituted ''Public employee insignia and uniform'' for ''Police badges'' in section catchline.

Subsec. (a)(1). Pub. L. 109–162, § 1191(a)(1), substituted ''official insignia or uniform'' for ''police badge''.

Subsec. (a)(2). Pub. L. 109–162, § 1191(a)(1), (2), substituted ''official insignia or uniform to'' for ''police badge to'' and ''official insignia or uniform;'' for ''badge of the police;''.

Subsec. (a)(3). Pub. L. 109–162, § 1191(a)(1), substituted ''official insignia or uniform'' for ''police badge''.

Subsec. (a)(4). Pub. L. 109–162, § 1191(a)(1), (2), substituted ''official insignia or uniform under'' for ''police badge under'' and ''official insignia or uniform,'' for ''badge of the police,''.

Subsec. (b). Pub. L. 109–162, § 1191(a)(3)(C), which directed the insertion of ''is not used to mislead or deceive, or'' before ''is used or intended'' was executed by making the insertion before ''is used or is intended'', to reflect the probable intent of Congress.

Pub. L. 109–162, § 1191(a)(3)(A), (B), substituted ''the insignia or uniform'' for ''the badge'' and inserted ''is other than a counterfeit insignia or uniform and'' before ''is used or is intended to be used''.

Pub. L. 109–162, § 1191(a)(1), which directed substitution of ''official insignia or uniform'' for ''police badge'' could not be executed because the term ''police badge'' did not appear.

Subsec. (c)(3) to (5). Pub. L. 109–162, § 1191(a)(4), added pars. (3) to (5).

Subsec. (d). Pub. L. 109–162, § 1191(a)(5), added subsec. (d).

CHAPTER 35—ESCAPE AND RESCUE

Sec.
751. Prisoners in custody of institution or officer.
752. Instigating or assisting escape.
753. Rescue to prevent execution.
[754. Repealed.]
755. Officer permitting escape.
756. Internee of belligerent nation.
757. Prisoners of war or enemy aliens.
758. High speed flight from immigration checkpoint.

[1] So in original.

[2] So in original. The word ''and'' probably should not appear.

Sec.

AMENDMENTS

1996—Pub. L. 104–208, div. C, title I, § 108(b)(2), Sept. 30, 1996, 110 Stat. 3009–558, added item 758.

1994—Pub. L. 103–322, title XXXIII, § 330004(5), Sept. 13, 1994, 108 Stat. 2141, struck out item 754 ''Rescue of body of executed offender''.

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

(June 25, 1948, ch. 645, 62 Stat. 734; Pub. L. 88–251, § 1, Dec. 30, 1963, 77 Stat. 834; Pub. L. 89–176, § 3, Sept. 10, 1965, 79 Stat. 675; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 100–690, title VII, § 7055, Nov. 18, 1988, 102 Stat. 4402; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753h, 909 (May 14, 1930, ch. 274, § 9, 46 Stat. 327; May 27, 1930, ch. 339, § 9, 46 Stat. 390; Aug. 3, 1935, ch. 432, 49 Stat. 513).

Sections 753h and 909 of title 18, U.S.C., 1940 ed., were consolidated. Section 753h is later and more comprehensive. The substance of its provisions was adopted.

References to offenses as felonies or misdemeanors were omitted in view of definitive section 1 of this title. (See also reviser's notes under section 550 of this title.)

Mandatory provision as to separate sentences and order of service was omitted in order to permit court to exercise discretion as to whether sentences should be concurrent or consecutive and to obviate administration problems in enforcement of section.

Words ''or employee'' were inserted to remove ambiguity as to scope of section.

Reference to ''custody or confinement is for extradition'' was inserted to avoid possible ambiguity.

Changes were made in phraseology and arrangement.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' after ''any offense, be'' and for ''fined not more than $1,000'' after ''conviction, be'' in subsec. (a) and substituted ''fined under this title'' for ''fined not more than $1,000'' in subsec. (b).

1988—Subsec. (a). Pub. L. 100–690 inserted '', or for exclusion or expulsion proceedings under the immigration laws,'' after ''extradition''.

1965—Pub. L. 89–176 inserted ''or facility'' after ''institution''.

1963—Pub. L. 88–251 designated existing provisions as subsec. (a) and added subsec. (b).

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in subsecs. (a) and (b) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrate'' substituted for ''commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

§ 752. Instigating or assisting escape

(a) Whoever rescues or attempts to rescue or instigates, aids or assists the escape, or attempt to escape, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution or facility by his direction, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempted escape of any person in the custody of the Attorney General or his authorized representative, or of any person arrested upon a warrant or other process issued under any law of the United States or from any institution or facility in which he is confined by direction of the Attorney General, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; May 28, 1956, ch. 331, 70 Stat. 216; Pub. L. 88–251, § 2, Dec. 30, 1963, 77 Stat. 834; Pub. L. 89–176, § 3, Sept. 10, 1965, 79 Stat. 675; Pub. L. 100–690, title VII, § 7055, Nov. 18, 1988, 102 Stat. 4402; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(D), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 246, 247, 252, 661, 662c, 753i, 910 (R.S. § 5277; Mar. 4, 1909, ch. 321, §§ 141, 143, 35 Stat. 1114; May 14, 1930, ch. 274, § 10, 46 Stat. 327; May 27, 1930, ch. 339, § 10, 46 Stat. 390; Mar. 22, 1934, ch. 73, § 2, 48 Stat. 455; May 18, 1934, ch. 303, § 1, 48 Stat. 782).

Section consolidated escape and rescue provisions of sections 246, 247, 252, 661, 662c, 753i, and 910 of title 18, U.S.C., 1940 ed. Remaining provisions of those sections are in sections 1071, 1072, 1502, 1792, 3183, and 3195 of this title.

No two sections provided the same punishment. Every section except said section 252 made the offense a misdemeanor by providing for fines varying from $500 to $1,000 and terms of imprisonment varying from 6 months to 1 year. Said section 252, representing the latest expression by Congress, provided for 10 years' imprisonment.

The punishment provision was adopted from section 751 of this title, which makes it unlawful for a prisoner to escape from his place of confinement. Thus the same punishment would apply to the person aiding in an escape as to the person escaping.

The language of this section reconciles the conflict by adopting a penalty which is a compromise between the varying provisions.

Reference to ''extradition'' was inserted to avoid ambiguity and to harmonize section with section 751 of this title.

References to ''force'' were omitted as well as those to ''officer'' or ''custody.'' See definition of ''Rescue,'' Black's Law Dictionary, citing 4 Bl. Comm. 131.

Changes were made in phraseology.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 substituted ''or conviction of any offense, be fined under this title'' for ''or conviction of any offense, be fined not more than $5,000''.

1994—Subsecs. (a), (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1988—Subsec. (a). Pub. L. 100–690 inserted '', or for exclusion or expulsion proceedings under the immigration laws,'' after ''extradition''.

1965—Pub. L. 89–176 inserted ''or facility'' after ''institution''.

1963—Pub. L. 88–251 designated existing provisions as subsec. (a) and added subsec. (b).

1956—Act May 28, 1956, inserted '', or attempt to escape,'' after ''escape''.

§ 753. Rescue to prevent execution

Whoever, by force, sets at liberty or rescues any person found guilty in any court of the United States of any capital crime, while going to execution or during execution, shall be fined under this title or imprisoned not more than twenty-five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 103–322, title XXXIII, § 330016(1)(O), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 248 (Mar. 4, 1909, ch. 321, § 142, 35 Stat. 1114).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $25,000''.

[§ 754. Repealed. Pub. L. 103–322, title XXXIII, § 330004(5), Sept. 13, 1994, 108 Stat. 2141]

Section, acts June 25, 1948, ch. 645, 62 Stat. 735; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(B), 108 Stat. 2146, related to rescue of bodies of executed offenders.

§ 755. Officer permitting escape

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or magistrate judge, voluntarily suffers such prisoner to escape, shall be fined under this title or imprisoned not more than 5 years, or both; or if he negligently suffers such person to escape, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 705(a)(2), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 244, 662e, 665 (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698; Mar. 4, 1909, ch. 321, §§ 138, 139, 35 Stat. 1113; Mar. 22, 1934, ch. 73, § 4, 48 Stat. 456).

Sections 244, 662e and 665 of title 18, U.S.C., 1940 ed., were consolidated. The two latter sections merely extended application of the former. This section has been greatly condensed by changes in phraseology which do not affect the substance.

Enumeration of ''marshal, deputy marshal, ministerial officer, or other person,'' was omitted as surplusage.

Provision making section applicable to cases of prisoners in custody pending extradition or removal proceedings as well as prisoners convicted of offenses against the United States was likewise omitted as unnecessary.

Changes in phraseology were made.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment in view of the act of June 21, 1947, ch. 111, 61 Stat. 134, which, by amending section 244 of Title 18, U.S.C., became an additional source of this section. The amendment constitutes the last clause of this section. See Senate Report No. 1620, amendment No. 8, 80th Cong.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''5 years'' for ''two years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' after ''escape, shall be'' and for ''fined not more than $500'' after ''he shall be''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrate'' substituted for ''commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

§ 756. Internee of belligerent nation

Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 705(a)(3), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 37 (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223).

Section was divided. Remaining provisions relating to arrest appear in section 3058 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''five years'' for ''one year''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 757. Prisoners of war or enemy aliens

Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined under this title or imprisoned not more than ten years, or both.

The provisions of this section shall be in addition to and not in substitution for any other provision of law.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 97b (Apr. 30, 1945, ch. 103, 59 Stat. 101).

The second sentence of section 97b of title 18, U.S.C., 1940 ed., was made a separate paragraph.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in first par.

§ 758. High speed flight from immigration checkpoint

Whoever flees or evades a checkpoint operated by the Immigration and Naturalization Service, or any other Federal law enforcement agency, in a motor vehicle and flees Federal, State, or local law enforcement agents in excess of the legal speed limit shall be fined under this title, imprisoned not more than five years, or both.

(Added Pub. L. 104–208, div. C, title I, § 108(b)(1), Sept. 30, 1996, 110 Stat. 3009–557.)

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

CONGRESSIONAL FINDINGS

Section 108(a) of div. C of Pub. L. 104–208 provided that: ''The Congress finds as follows:

''(1) Immigration checkpoints are an important component of the national strategy to prevent illegal immigration.

''(2) Individuals fleeing immigration checkpoints and leading law enforcement officials on high speed vehicle chases endanger law enforcement officers, innocent bystanders, and the fleeing individuals themselves.

''(3) The pursuit of suspects fleeing immigration checkpoints is complicated by overlapping jurisdiction among Federal, State, and local law enforcement officers.''

CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.
[791. Repealed.]
792. Harboring or concealing persons.
793. Gathering, transmitting or losing defense information.
794. Gathering or delivering defense information to aid foreign government.
795. Photographing and sketching defense installations.
796. Use of aircraft for photographing defense installations.
797. Publication and sale of photographs of defense installations.
798. Disclosure of classified information.
798A. Temporary extension of section 794.
799. Violation of regulations of National Aeronautics and Space Administration.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3519(b), Nov. 29, 1990, 104 Stat. 4923, redesignated item 798, ''Temporary extension of section 794'', as 798A.

1961—Pub. L. 87–369, § 2, Oct. 4, 1961, 75 Stat. 795, struck out item 791 ''Scope of chapter''.

1958—Pub. L. 85–568, title III, § 304(c)(2), July 29, 1958, 72 Stat. 434, added item 799.

1953—Act June 30, 1953, ch. 175, § 3, 67 Stat. 133, added second item 798.

1951—Act Oct. 31, 1951, ch. 655, § 23, 65 Stat. 719, added item 798.

[§ 791. Repealed. Pub. L. 87–369, § 1, Oct. 4, 1961, 75 Stat. 795]

Section, act June 25, 1948, ch. 645, 62 Stat. 736, related to application of this chapter within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States.

§ 792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 736; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 35 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, § 5, 40 Stat. 219; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79).

Similar harboring and concealing language was added to section 2388 of this title.

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

INDICTMENT FOR VIOLATING THIS SECTION AND SECTIONS 793, 794; LIMITATION PERIOD

Act Sept. 23, 1950, ch. 1024, § 19, 64 Stat. 1005, provided that an indictment for any violation of this section and sections 793 and 794 of this title, other than a violation constituting a capital offense, may be found at any time within ten years next after such violation shall have been committed, but that such section 19 shall not authorize prosecution, trial, or punishment for any offense ''now'' barred by the provisions of existing law.

§ 793. Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined under this title or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any

property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation. For the purposes of this subsection, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(June 25, 1948, ch. 645, 62 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 18, 64 Stat. 1003; Pub. L. 99–399, title XIII, § 1306(a), Aug. 27, 1986, 100 Stat. 898; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–359, title VIII, § 804(b)(1), Oct. 14, 1994, 108 Stat. 3440; Pub. L. 104–294, title VI, § 607(b), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, ch. 72, § 1, 54 Stat. 79).

Section consolidated sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense.

Words ''departments or agencies'' were inserted twice in conformity with definitive section 6 of this title to eliminate any possible ambiguity as to scope of section.

The words ''or induces or aids another'' were omitted wherever occurring as unnecessary in view of definition of ''principal'' in section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (h)(1). Pub. L. 104–294 inserted at end ''For the purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in undesignated par. after subsec. (f).

Subsec. (h)(3). Pub. L. 103–359 substituted ''(p)'' for ''(*o*)'' in two places.

1986—Subsec. (h). Pub. L. 99–399 added subsec. (h).

1950—Act Sept. 23, 1950, divided section into subdivisions, inserted laboratories and stations, and places where material or instruments for use in time of war are the subject of research or development to the list of facilities and places to which subsection (a) applies, made subsection (d) applicable only in cases in which possession, access, or control is lawful, added subsection (e) to take care of cases in which possession, access, or control, is unlawful, made subsection (f) applicable to instruments and appliances, as well as to documents, records, etc., and provided by subsection (g) a separate penalty for conspiracy to violate any provisions of this section.

INDICTMENT FOR VIOLATING THIS SECTION; LIMITATION PERIOD

Limitation period in connection with indictments for violating this section, see note set out under section 792 of this title.

§ 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy,

each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

For the purposes of this subsection, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(June 25, 1948, ch. 645, 62 Stat. 737; Sept. 3, 1954, ch. 1261, title II, § 201, 68 Stat. 1219; Pub. L. 99–399, title XIII, § 1306(b), Aug. 27, 1986, 100 Stat. 898; Pub. L. 100–690, title VII, § 7064, Nov. 18, 1988, 102 Stat. 4404; Pub. L. 103–322, title VI, § 60003(a)(2), Sept. 13, 1994, 108 Stat. 1968; Pub. L. 103–359, title VIII, § 804(b)(2), Oct. 14, 1994, 108 Stat. 3440; Pub. L. 104–294, title VI, §§ 604(b)(2), 607(b), Oct. 11, 1996, 110 Stat. 3506, 3511.)

HISTORICAL AND REVISION NOTES

Based on sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 2, 4, 40 Stat. 218, 219).

Section consolidates sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense.

The words ''or induces or aids another'' were omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

The conspiracy provision of said section 34 was also incorporated in section 2388 of this title.

Minor changes were made in phraseology.

REFERENCES IN TEXT

Section 101(a) of the Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is classified to section 1801(a) of Title 50, War and National Defense.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294, § 604(b)(2), amended directory language of Pub. L. 103–322, § 60003(a)(2). See 1994 Amendment note below.

Subsec. (d)(1). Pub. L. 104–294, § 607(b), inserted at end ''For the purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''

1994—Subsec. (a). Pub. L. 103–322, as amended by Pub. L. 104–294, § 604(b)(2), substituted for period at end '', except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.''

Subsec. (d)(3). Pub. L. 103–359 substituted ''(p)'' for ''(*o*)'' in two places.

1988—Subsec. (d)(4). Pub. L. 100–690 substituted ''amounts'' for ''amount''.

1986—Subsec. (d). Pub. L. 99–399 added subsec. (d).

1954—Act Sept. 3, 1954, increased the penalty for peacetime espionage and corrected a deficiency on the sentencing authority by increasing penalty to death or imprisonment for any term of years.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(2) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 798 of this title.

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 133, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which had provided that this section should continue in force until six months after the termination of the National emergency proclaimed by 1950 Proc. No. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, ch. 437, 66 Stat. 137, and Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

INDICTMENT FOR VIOLATING THIS SECTION; LIMITATION PERIOD

Limitation period in connection with indictments for violating this section, see note set out under section 792 of this title.

§ 795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding offi-

cer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 737; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§1, 4, 52 Stat. 3, 4).

Section consolidated sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

EX. ORD. NO. 10104. DEFINITIONS OF VITAL MILITARY AND NAVAL INSTALLATIONS AND EQUIPMENT

Ex. Ord. No. 10104, Feb. 1, 1950, 15 F.R. 597, provided:

Now, therefore, by virtue of the authority vested in me by the foregoing statutory provisions, and in the interests of national defense, I hereby define the following as vital military and naval installations or equipment requiring protection against the general dissemination of information relative thereto:

1. All military, naval, or air-force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as ''top secret'', ''secret'', ''confidential'', or ''restricted'', and all military, naval, or air-force installations and equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President, and located within:

(a) Any military, naval, or air-force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.

(b) Any defensive sea area heretofore established by Executive order and not subsequently discontinued by Executive order, and any defensive sea area hereafter established under authority of section 2152 of title 18 of the United States Code.

(c) Any airspace reservation heretofore or hereafter established under authority of section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174) except the airspace reservation established by Executive Order No. 10092 of December 17, 1949.

(d) Any naval harbor closed to foreign vessels.

(e) Any area required for fleet purposes.

(f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the United States Army, Navy, or Air Force.

2. All military, naval, or air-force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as ''top secret'', ''secret'', ''confidential'', or ''restricted'', and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.

3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as ''top secret'', ''secret'', ''confidential'', or ''restricted'', and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled ''Defining Certain Vital Military and Naval Installations and Equipment.''

§ 796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 738; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 45, 45a, and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§1, 2, 4, 52 Stat. 3, 4).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Punishment provided by section 795 of this title is repeated, and is from said section 45 of title 50, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 738; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 45 and 45b, of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§1, 3, 52 Stat. 3).

Punishment provision of section 45 of title 50, U.S.C., 1940 ed., War and National Defense, is repeated. Words ''upon conviction'' were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined under this title or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term ''classified information'' means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms ''code,'' ''cipher,'' and ''cryptographic system'' include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term ''foreign government'' includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term ''communication intelligence'' means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term ''unauthorized person'' means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)), shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) As used in this subsection, the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Oct. 31, 1951, ch. 655, § 24(a), 65 Stat. 719; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–359, title VIII, § 804(a), Oct. 14, 1994, 108 Stat. 3439; Pub. L. 104–294, title VI, § 602(c), Oct. 11, 1996, 110 Stat. 3503.)

CODIFICATION

Another section 798 was renumbered section 798A of this title.

AMENDMENTS

1996—Subsec. (d)(5). Pub. L. 104–294 struck out ''the Trust Territory of the Pacific Islands,'' after ''Puerto Rico,''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in concluding provisions.

Subsec. (d). Pub. L. 103–359 added subsec. (d).

§ 798A. Temporary extension of section 794

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

(Added June 30, 1953, ch. 175, § 4, 67 Stat. 133, § 798; renumbered § 798A, Pub. L. 101–647, title XXXV, § 3519(a), Nov. 29, 1990, 104 Stat. 4923.)

REFERENCES IN TEXT

Section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in text, was formerly set out as a note under section 791 of this title and was repealed by section 7 of act June 30, 1953.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in text, is an erroneous citation. It should refer to Proc. 2914 which is set out as a note preceding section 1 of Title 50, Appendix, War and National Defense.

AMENDMENTS

1990—Pub. L. 101–647 renumbered the second section 798 of this title as this section.

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

§ 799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 85–568, title III, § 304(c)(1), July 29, 1958, 72 Stat. 434; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

CODIFICATION

Section was added by subsec. (c)(1) of section 304 of Pub. L. 85–568. Subsecs. (a) and (b) of section 304 are classified to section 2455 of Title 42, The Public Health and Welfare. Subsec. (d) of section 304 is classified to section 1114 of this title. Subsec. (e) of section 304 is classified to section 2456 of Title 42.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

CHAPTER 39—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Sec.
831. Prohibited transactions involving nuclear materials.
832. Participation in nuclear and weapons of mass destruction threats to the United States.
[833 to 835. Repealed.]
836. Transportation of fireworks into State prohibiting sale or use.
[837. Repealed.]

AMENDMENTS

2004—Pub. L. 108–458, title VI, § 6803(c)(1), Dec. 17, 2004, 118 Stat. 3768, added item 832.

1982—Pub. L. 97–351, § 2(b), Oct. 18, 1982, 96 Stat. 1666, substituted ''Prohibited transactions involving nuclear materials'' for ''Definitions'' in item 831 and struck out items 832 ''Transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles'', 833 ''Marking packages containing explosives and other dangerous articles'', 834 ''Regulation by Interstate Commerce Commission'', and 835 ''Administration''.

1970—Pub. L. 91–452, title XI, § 1106(b)(2), Oct. 15, 1970, 84 Stat. 960, struck out item 837.

1960—Pub. L. 86–710, Sept. 6, 1960, 74 Stat. 808, substituted ''OTHER DANGEROUS ARTICLES'' for ''COMBUSTIBLES'' in chapter heading, ''explosives, radioactive materials, etiologic agents, and other dangerous articles'' for ''dynamite, powder and fuses'' in item 832, ''Marking packages containing explosives and other dangerous articles'' for ''Transportation of nitroglycerin'' in item 833, ''Regulation by Interstate Commerce Commission'' for ''Marking packages containing explosives'' in item 834, and ''Administration'' for ''Regulations by Interstate Commerce Commission'' in item 835.

Pub. L. 86–449, title II, § 204, May 6, 1960, 74 Stat. 88, added item 837.

1954—Act June 4, 1954, ch. 261, § 2, 68 Stat. 171, added item 836.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86–613, § 18, formerly 17, July 12, 1960, 74 Stat. 380, as amended Pub. L. 89–756, § 4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91–113, § 4(a), (b)(1), Nov. 6, 1969, 83 Stat. 189, 190, set out as a note under section 1261 of Title 15, Commerce and Trade.

§ 831. Prohibited transactions involving nuclear materials

(a) Whoever, if one of the circumstances described in subsection (c) of this section occurs—

(1) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material or nuclear byproduct material and—

(A) thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property or to the environment; or

(B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;

(2) with intent to deprive another of nuclear material or nuclear byproduct material, knowingly—

(A) takes and carries away nuclear material or nuclear byproduct material of another without authority;

(B) makes an unauthorized use, disposition, or transfer, of nuclear material or nuclear byproduct material belonging to another; or

(C) uses fraud and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(3) knowingly—

(A) uses force; or

(B) threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury;

and thereby takes nuclear material or nuclear byproduct material belonging to another from the person or presence of any other;

(4) intentionally intimidates any person and thereby obtains nuclear material or nuclear byproduct material belonging to another;

(5) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (2)(A) or (3) of this subsection;

(6) knowingly threatens to use nuclear material or nuclear byproduct material to cause death or serious bodily injury to any person or substantial damage to property or to the environment under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

(7) attempts to commit an offense under paragraph (1), (2), (3), or (4) of this subsection; or

(8) is a party to a conspiracy of two or more persons to commit an offense under paragraph (1), (2), (3), or (4) of this subsection, if any of the parties intentionally engages in any conduct in furtherance of such offense;

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under—

(1) paragraphs (1) through (7) of subsection (a) of this section is—

(A) a fine under this title; and

(B) imprisonment—

(i) for any term of years or for life (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing an offense under paragraph (1) or (3) of subsection (a) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and

(ii) for not more than 20 years in any other case; and

(2) paragraph (8) of subsection (a) of this section is—

(A) a fine under this title; and

(B) imprisonment—

(i) for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (1)(B)(i); and

(ii) for not more than 10 years in any other case.

(c) The circumstances referred to in subsection (a) of this section are that—

(1) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

(2) an offender or a victim is—

(A) a national of the United States; or

(B) a United States corporation or other legal entity;

(3) after the conduct required for the offense occurs the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States;

(4) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material or nuclear byproduct material by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is the United States; or

(5) either—

(A) the governmental entity under subsection (a)(5) is the United States; or

(B) the threat under subsection (a)(6) is directed at the United States.

(d) The Attorney General may request assistance from the Secretary of Defense under chapter 18 of title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with chapter 18 of title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense personnel.

(e)(1) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding section 1385 of this title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if—

(A) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion); and

(B) the provision of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(2) As used in this subsection, the term ''emergency situation'' means a circumstance—

(A) that poses a serious threat to the interests of the United States; and

(B) in which—

(i) enforcement of the law would be seriously impaired if the assistance were not provided; and

(ii) civilian law enforcement personnel are not capable of enforcing the law.

(3) Assistance under this section may include—

(A) use of personnel of the Department of Defense to arrest persons and conduct searches

and seizures with respect to violations of this section; and

(B) such other activity as is incidental to the enforcement of this section, or to the protection of persons or property from conduct that violates this section.

(4) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(5) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(f) As used in this section—

(1) the term ''nuclear material'' means material containing any—

(A) plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(2) the term ''nuclear byproduct material'' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(3) the term ''international organization'' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(4) the term ''serious bodily injury'' means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term ''bodily injury'' means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of a function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary;

(6) the term ''national of the United States'' has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(7) the term ''United States corporation or other legal entity'' means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.

(Added Pub. L. 97–351, § 2(a), Oct. 18, 1982, 96 Stat. 1663; amended Pub. L. 100–690, title VII, § 7022, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103–272, § 5(e)(6), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title XXXIII, § 330016(2)(C), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–132, title V, § 502, Apr. 24, 1996, 110 Stat. 1282.)

PRIOR PROVISIONS

A prior section 831, acts June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 808; July 27, 1965, Pub. L. 89–95, 79 Stat. 285; Oct. 17, 1978, Pub. L. 95–473; § 2(a)(1)(A), 92 Stat. 1464, defined terms used in this chapter, prior to repeal by Pub. L. 96–129, title II, § 216(b), Nov. 30, 1979, 93 Stat. 1015. For savings provisions regarding former section 831, see section 218 of Pub. L. 96–129, set out as a note under former sections 832 to 835 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 502(1)(A), substituted ''nuclear material or nuclear byproduct material'' for ''nuclear material'' wherever appearing.

Subsec. (a)(1)(A). Pub. L. 104–132, § 502(1)(B)(i), inserted ''or to the environment'' after ''damage to property''.

Subsec. (a)(1)(B). Pub. L. 104–132, § 502(1)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;''.

Subsec. (a)(6). Pub. L. 104–132, § 502(1)(C), inserted ''or to the environment'' after ''damage to property''.

Subsec. (c)(2). Pub. L. 104–132, § 502(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the defendant is a national of the United States, as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101);''.

Subsec. (c)(3). Pub. L. 104–132, § 502(2)(B), struck out ''at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and'' before ''after the conduct'' and struck out ''or'' at end.

Subsec. (c)(4). Pub. L. 104–132, § 502(2)(C), substituted ''nuclear material or nuclear byproduct material'' for ''nuclear material for peaceful purposes'' and ''; or'' for period at end.

Subsec. (c)(5). Pub. L. 104–132, § 502(2)(D), added par. (5).

Subsec. (f)(1)(A). Pub. L. 104–132, § 502(3)(A)(i), struck out ''with an isotopic concentration not in excess of 80 percent plutonium 238'' after ''plutonium''.

Subsec. (f)(1)(C). Pub. L. 104–132, § 502(3)(A)(ii), substituted ''enriched uranium, defined as uranium'' for ''uranium''.

Subsec. (f)(2) to (7). Pub. L. 104–132, § 502(3)(B)–(F), added par. (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and added pars. (6) and (7).

1994—Subsec. (b)(1)(A), (2)(A). Pub. L. 103–322 substituted ''fined under this title'' for ''fine of not more than $250,000''.

Subsec. (c)(1). Pub. L. 103–272 substituted ''section 46501 of title 49'' for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)''.

1988—Subsec. (e)(2) to (6). Pub. L. 100–690 redesignated pars. (3) to (6) as (2) to (5), respectively.

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–351 provided that: ''This Act [enacting this section and amending section 1116 of this title] may be cited as the 'Convention on the Physical Protection of Nuclear Material Implementation Act of 1982'.''

FINDINGS AND PURPOSE OF TITLE V OF PUB. L. 104–132 RELATING TO NUCLEAR MATERIALS

Section 501 of title V of Pub. L. 104–132 provided that: ''(a) FINDINGS.—The Congress finds that—

''(1) nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices that are capable of causing serious bodily injury as well as substantial damage to property and to the environment;

''(2) the potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

''(3) due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in ensuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

''(4) the threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation that implemented the Convention on the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code;

''(5) the successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

''(6) the trafficking in the relatively more common, commercially available, and usable nuclear and byproduct materials creates the potential for significant loss of life and environmental damage;

''(7) report trafficking incidents in the early 1990's suggest that the individuals involved in trafficking in these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, the former Soviet Union, Central Europe, and to a lesser extent in the Middle European countries;

''(8) the international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

''(9) the potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant threat that the United States must use all lawful methods available to combat the illegal use of such materials;

''(10) the United States has an interest in encouraging United States corporations to do business in the countries that comprised the former Soviet Union, and in other developing democracies;

''(11) protection of such United States corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage business ventures in these countries, and to further the foreign relations and commerce of the United States;

''(12) the nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts that constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward foreign nationals; and

''(13) there is presently no Federal criminal statute that provides adequate protection to United States interests from nonweapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials that are held for other than peaceful purposes.

''(b) PURPOSE.—The purpose of this title [enacting section 2332c of this title, amending this section and sections 175, 177, 178, and 2332a of this title, and enacting provisions set out as notes under section 262 of Title 42, The Public Health and Welfare, and section 1522 of Title 50, War and National Defense] is to provide Federal law enforcement agencies with the necessary means and the maximum authority permissible under the Constitution to combat the threat of nuclear contamination and proliferation that may result from the illegal possession and use of radioactive materials.''

§ 832. Participation in nuclear and weapons of mass destruction threats to the United States

(a) Whoever, within the United States or subject to the jurisdiction of the United States, willfully participates in or knowingly provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

(b) There is extraterritorial Federal jurisdiction over an offense under this section.

(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such national is outside of the United States or against any property that is owned, leased, funded, or used by the United States, whether that property is within or outside of the United States, shall be imprisoned for any term of years or for life.

(d) As used in this section—

(1) ''nuclear weapons program'' means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

(2) ''weapons of mass destruction program'' means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

(3) ''foreign terrorist power'' means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

(4) ''nuclear weapon'' means any weapon that contains or uses nuclear material as defined in section 831(f)(1).

(Added Pub. L. 108–458, title VI, § 6803(c)(2), Dec. 17, 2004, 118 Stat. 3768.)

REFERENCES IN TEXT

Section 219 of the Immigration and Nationality Act, referred to in subsec. (d)(3), is classified to section 1189 of Title 8, Aliens and Nationality.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (d)(3), is classified to section 2405(j) of Title 50, Appendix, War and National Defense.

Section 620A of the Foreign Assistance Act of 1961, referred to in subsec. (d)(3), is classified to section 2371 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 832, acts June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 809, related to transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles, prior to repeal by Pub. L. 96–129, title II, § 216(b), Nov. 30, 1979, 93 Stat. 1015.

[§§ 833 to 835. Repealed. Pub. L. 96–129, title II, § 216(b), Nov. 30, 1979, 93 Stat. 1015]

Section 833, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 810, related to

marking of packages containing explosives and other dangerous articles.

Section 834, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 810, related to formulation of regulations by Interstate Commerce Commission regarding transportation of explosives and other dangerous articles within United States.

Section 835, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86–710, 74 Stat. 811; Oct. 15, 1970, Pub. L. 91–452, title II, § 222, 84 Stat. 929; Oct. 17, 1978, Pub. L. 95–473, § 2(a)(1)(B), 92 Stat. 1464, authorized Interstate Commerce Commission to administer, execute and enforce all provisions of sections 831 to 835 of this title.

SAVINGS PROVISION

Pub. L. 96–129, title II, § 218, Nov. 30, 1979, 93 Stat. 1015, provided a savings provision for orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges issued, made, granted, or allowed to become effective under former sections 831 to 835 of this title, prior to repeal by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

§ 836. Transportation of fireworks into State prohibiting sale or use

Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective States shall be applied.

As used in this section, the term ''State'' includes the several States, Territories, and possessions of the United States, and the District of Columbia.

This section shall be effective from and after July 1, 1954.

(Added June 4, 1954, ch. 261, § 1, 68 Stat. 170; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

FIREWORKS FOR AGRICULTURAL PURPOSES

Section 3 of act June 4, 1954, provided that: ''This Act [enacting this section] shall not be effective with respect to—

''(1) the transportation of fireworks into any State or Territory for use solely for agricultural purposes,

''(2) the delivery of fireworks for transportation into any State or Territory for use solely for agricultural purposes, or

''(3) any attempt to engage in any such transportation or delivery for use solely for agricultural purposes, until sixty days have elapsed after the commencement of the next regular session of the legislature of such State or Territory which begins after the date of enactment of this Act [June 4, 1954].''

[§ 837. Repealed. Pub. L. 91–452, title XI, § 1106(b)(1), Oct. 15, 1970, 84 Stat. 960]

Section, Pub. L. 86–449, title II, § 203, May 6, 1960, 74 Stat. 87, related to illegal use or possession of explosives and threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives. See section 844 of this title.

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

Sec.
841. Definitions.
842. Unlawful acts.
843. Licenses and user permits.
844. Penalties.
845. Exceptions; relief from disabilities.
846. Additional powers of the Attorney General.
847. Rules and regulations.
848. Effect on State law.

AMENDMENTS

2002—Pub. L. 107–296, title XI, § 1112(e)(3), Nov. 25, 2002, 116 Stat. 2276, substituted ''Attorney General'' for ''Secretary'' in item 846.

1990—Pub. L. 101–647, title XXXV, § 3520, Nov. 29, 1990, 104 Stat. 4923, substituted ''Licenses'' for ''Licensing'' in item 843.

1970—Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 952, added chapter 40 and items 841 to 848.

§ 841. Definitions

As used in this chapter—

(a) ''Person'' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) ''Interstate'' or foreign commerce means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) ''Explosive materials'' means explosives, blasting agents, and detonators.

(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, ''explosives'' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Attorney General shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term ''explosive'' is defined in subsection (j) of such section 844.

(e) ''Blasting agent'' means any material or mixture, consisting of fuel and oxidizer, in-

tended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

(f) ''Detonator'' means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) ''Importer'' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) ''Manufacturer'' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) ''Dealer'' means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) ''Permittee'' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.

(k) ''Attorney General'' means the Attorney General of the United States.

(*l*) ''Crime punishable by imprisonment for a term exceeding one year'' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Attorney General may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) ''Licensee'' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) ''Distribute'' means sell, issue, give, transfer, or otherwise dispose of.

(*o*) ''Convention on the Marking of Plastic Explosives'' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

(p) ''Detection agent'' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance in the concentration specified by the Attorney General, after consultation with the Secretary of State and the Secretary of Defense, that has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(q) ''Plastic explosive'' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

(r) ''Alien'' means any person who is not a citizen or national of the United States.

(s) ''Responsible person'' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 952; amended Pub. L. 104–132, title VI, § 602, Apr. 24, 1996, 110 Stat. 1288; Pub. L. 107–296, title XI, §§ 1112(e)(1), (3), 1122(a), Nov. 25, 2002, 116 Stat. 2276, 2280.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary''.

Subsec. (j). Pub. L. 107–296, § 1122(a)(1), added subsec. (j) and struck out former subsec. (j) which read as follows: '' 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.''

Subsec. (k). Pub. L. 107–296, § 1112(e)(1), added subsec. (k) and struck out former subsec. (k) which read as follows: '' 'Secretary' means the Secretary of the Treasury or his delegate.''

Subsec. (*l*). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary''.

Subsec. (p)(5). Pub. L. 107–296, § 1112(e)(3), which directed amendment of par. (5) by substituting ''Attorney General'' for ''Secretary'' wherever appearing, was executed by making the substitution the first place appearing to reflect the probable intent of Congress.

Subsecs. (r), (s). Pub. L. 107–296, § 1122(a)(2), added subsecs. (r) and (s).

1996—Subsecs. (*o*) to (q). Pub. L. 104–132 added subsecs. (*o*) to (q).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 1112(e)(1), (3) of Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Amendment by section 1122(a) of Pub. L. 107–296 effective 180 days after Nov. 25, 2002, see section 1122(i) of Pub. L. 107–296, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 607 of title VI of Pub. L. 104–132 provided that: ''Except as otherwise provided in this title [amending this section, sections 842, 844, and 845 of this title, and section 1595a of Title 19, Customs Duties, and enacting provisions set out as a note below], this title

and the amendments made by this title shall take effect 1 year after the date of enactment of this Act [Apr. 24, 1996].''

EFFECTIVE DATE

Section 1105(a), (b) of Pub. L. 91–452 provided that:

''(a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act [Oct. 15, 1970].

''(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act [Oct. 15, 1970]: sections 841, 844(d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848 and 849 [no section 849 was enacted].''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–296, title XI, § 1121, Nov. 25, 2002, 116 Stat. 2280, provided that: ''This subtitle [subtitle C (§§ 1121–1128) of title XI of Pub. L. 107–296, amending this section and sections 842 to 845 of this title and enacting provisions set out as a note under section 843 of this title] may be referred to as the 'Safe Explosives Act'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–298, § 1, Oct. 12, 1982, 96 Stat. 1319, provided: ''That this Act [amending section 844 of this title] may be cited as the 'Anti-Arson Act of 1982'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93–639, § 1, Jan. 4, 1975, 88 Stat. 2217, provided: ''That this Act [amending sections 845 and 921 of this title] may be cited as 'Amendments of 1973 to Federal Law Relating to Explosives'.''

FINDINGS AND PURPOSES OF TITLE VI OF PUB. L. 104–132

Section 601 of title VI of Pub. L. 104–132 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) plastic explosives were used by terrorists in the bombings of Pan American Airlines flight number 103 in December 1988 and UTA flight number 722 in September 1989;

''(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

''(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

''(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

''(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

''(b) PURPOSE.—The purpose of this title [amending this section, sections 842, 844, and 845 of this title, and section 1595a of Title 19, Customs Duties, and enacting provisions set out as a note above] is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.''

MARKING, RENDERING INERT, AND LICENSING OF EXPLOSIVE MATERIALS

Section 732 of Pub. L. 104–132, as amended by Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 113], Sept. 30, 1996, 110 Stat. 3009, 3009–21; Pub. L. 105–61, title I, Oct. 10, 1997, 111 Stat. 1272, required study by the Secretary of the Treasury of the marking, rendering inert, and licensing of explosive materials not later than 12 months after Apr. 24, 1996, report to Congress on results and recommendations, hearings by Congress to review study results, promulgation of regulations, and special study on the tagging of smokeless and black powder and report two years after Sept. 30, 1996.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 1101 of title XI of Pub. L. 91–452 provided that: ''The Congress hereby declares that the purpose of this title [enacting this chapter amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.''

MODIFICATION OF OTHER PROVISIONS

Section 1104 of title XI of Pub. L. 91–452, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set out as notes under this section] shall be construed as modifying or affecting any provision of—

''(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1986);

''(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

''(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

''(d) Sections 831 through 836 of title 18, United States Code; or

''(e) Chapter 44 of title 18, United States Code.''

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Section 1105(c) of Pub. L. 91–452 provided that: ''Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18, who was engaged in such business or operation on the date of enactment of this Act [Oct. 15, 1970] and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 [see Effective Date note set out above] may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40.''

AUTHORIZATION OF APPROPRIATIONS

Section 1107 of title XI of Pub. L. 91–452 provided that: ''There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title [enacting this chapter, amending section 2516 of this title, repealing section 837 of this title and sections 121 to 144 of Title 50, War and National Defense, and enacting provisions set as notes under this section].''

§ 842. Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter;

(3) other than a licensee or permittee knowingly—

(A) to transport, ship, cause to be transported, or receive any explosive materials; or

(B) to distribute explosive materials to any person other than a licensee or permittee; or

(4) who is a holder of a limited permit—

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder.

(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

(1) a licensee;

(2) a holder of a user permit; or

(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any person knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(6) has been adjudicated a mental defective or who has been committed to a mental institution;

(7) is an alien, other than an alien who—

(A) is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary[1] in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business; or

(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(8) has been discharged from the armed forces under dishonorable conditions;[2]

(9) having been a citizen of the United States, has renounced the citizenship of that person.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Attorney General may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local

[1] So in original. Probably should be ''Attorney General''.

[2] So in original. Probably should be followed by ''or''.

places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.

(i) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who is an alien, other than an alien who—

(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary[1] in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business; or

(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, who is present in the United States under military orders for training or other military purpose authorized by the United States and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the authorized military purpose; or

(D) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) who has been discharged from the armed forces under dishonorable conditions;[2]

(7) who, having been a citizen of the United States, has renounced the citizenship of that person[3]

to ship or transport any explosive in or affecting interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Attorney General. In promulgating such regulations, the Attorney General shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Attorney General and to appropriate local authorities.

(*l*) It shall be unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to—

(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by any person during the period beginning on that date and ending 3 years after that date of enactment; or

(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States per-

[3] So in original. Probably should be followed by a semicolon.

forming a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(*o*) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment of this subsection, to fail to report to the Attorney General within 120 days after such date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Attorney General may prescribe by regulation.

(p) DISTRIBUTION OF INFORMATION RELATING TO EXPLOSIVES, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''destructive device'' has the same meaning as in section 921(a)(4);

(B) the term ''explosive'' has the same meaning as in section 844(j); and

(C) the term ''weapon of mass destruction'' has the same meaning as in section 2332a(c)(2).

(2) PROHIBITION.—It shall be unlawful for any person—

(A) to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; or

(B) to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 953; amended Pub. L. 100–690, title VI, § 6474(c), (d), Nov. 18, 1988, 102 Stat. 4380; Pub. L. 101–647, title XXXV, § 3521, Nov. 29, 1990, 104 Stat. 4923; Pub. L. 103–322, title XI, §§ 110508, 110516, Sept. 13, 1994, 108 Stat. 2018, 2020; Pub. L. 104–132, title VI, § 603, title VII, § 707, Apr. 24, 1996, 110 Stat. 1289, 1296; Pub. L. 106–54, § 2(a), Aug. 17, 1999, 113 Stat. 398; Pub. L. 107–296, title XI, §§ 1112(e)(3), 1122(b), 1123, Nov. 25, 2002, 116 Stat. 2276, 2280, 2283; Pub. L. 108–177, title III, § 372, Dec. 13, 2003, 117 Stat. 2627.)

REFERENCES IN TEXT

Section 101(a)(20) of the Immigration and Nationality Act, referred to in subsecs. (d)(7)(A) and (i)(5)(A), is classified to section 1101(a)(20) of Title 8, Aliens and Nationality.

The date of enactment of this subsection, referred to in subsecs. (m)(2), (n)(2), and (*o*), is the date of enactment of Pub. L. 104–132, which was approved Apr. 24, 1996.

AMENDMENTS

2003—Subsec. (d)(7)(A). Pub. L. 108–177, § 372(a)(1), struck out ''or'' at end.

Subsec. (d)(7)(B). Pub. L. 108–177, § 372(a)(2), inserted ''or'' at end of cl. (i) and struck out cls. (iii) and (iv) which read as follows:

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

Subsec. (d)(7)(C), (D). Pub. L. 108–177, § 372(a)(3), added subpars. (C) and (D).

Subsec. (i)(5)(A). Pub. L. 108–177, § 372(b)(1), struck out ''or'' at end.

Subsec. (i)(5)(B). Pub. L. 108–177, § 372(b)(2), inserted ''or'' at end of cl. (i) and struck out cls. (iii) and (iv) which read as follows:

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;''.

Subsec. (i)(5)(C), (D). Pub. L. 108–177, § 372(b)(3), added subpars. (C) and (D).

2002—Subsec. (a)(3), (4). Pub. L. 107–296, § 1122(b)(1), (2), added pars. (3) and (4) and struck out former par. (3) which read as follows: ''other than a licensee or permittee knowingly—

''(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

''(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.''

Subsec. (b). Pub. L. 107–296, § 1122(b)(3), added subsec. (b) and struck out former subsec. (b) which read as follows: ''It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

''(1) a licensee;

''(2) a permittee; or

''(3) a resident of the State where distribution is made and in which the licensee is licensed to do busi-

ness or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.''

Subsec. (d)(6). Pub. L. 107–296, § 1123(a)(2), substituted ''or who has been committed to a mental institution;'' for period at end.

Subsec. (d)(7) to (9). Pub. L. 107–296, § 1123(a)(1), (3), added pars. (7) to (9).

Subsec. (f). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary''.

Subsec. (i). Pub. L. 107–296, § 1123(b)(3), inserted ''or affecting'' before ''interstate'' in two places in concluding provisions.

Subsec. (i)(5) to (7). Pub. L. 107–296, § 1123(b)(1), (2), added pars. (5) to (7).

Subsecs. (j), (k), (*o*). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

1999—Subsec. (p). Pub. L. 106–54 added subsec. (p).

1996—Subsec. (h). Pub. L. 104–132, § 707, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.''

Subsecs. (*l*) to (*o*). Pub. L. 104–132, § 603, added subsecs. (*l*) to (*o*).

1994—Subsec. (d). Pub. L. 103–322, § 110516, substituted ''any person'' for ''any licensee'' in introductory provisions.

Subsec. (i). Pub. L. 103–322, § 110508, inserted ''or possess'' after ''receive'' in concluding provisions.

1990—Subsec. (d)(5). Pub. L. 101–647, § 3521(1), substituted ''; or'' for a period.

Subsec. (i)(3). Pub. L. 101–647, § 3521(2), substituted ''; or'' for a period.

1988—Subsec. (d)(5). Pub. L. 100–690, § 6474(c), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or''.

Subsec. (i)(3). Pub. L. 100–690, § 6474(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by sections 1112(e)(3) and 1123 of Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Amendment by section 1122(b) of Pub. L. 107–296 effective 180 days after Nov. 25, 2002, see section 1122(i) of Pub. L. 107–296, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 603 of Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104–132, set out as a note under section 841 of this title.

§ 843. Licenses and user permits

(a) An application for a user permit or limited permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Attorney General shall by regulation prescribe, including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person. Each applicant for a license or permit shall pay a fee to be charged as set by the Attorney General, said fee not to exceed $50 for a limited permit and $200 for any other license or permit. Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Attorney General shall issue to such applicant the appropriate license or permit if—

(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4)(A) the Secretary[1] verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary[1] determines appropriate, that the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe; and

(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary[1] has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business;

(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-

[1] So in original. Probably should be ''Attorney General''.

month period for which the limited permit is valid.

(c) The Attorney General shall approve or deny an application within a period of 90 days for licenses and permits, beginning on the date such application is received by the Attorney General.

(d) The Attorney General may revoke any license or permit issued under this section if in the opinion of the Attorney General the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's[2] action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Attorney General stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Attorney General may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Attorney General shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's[2] written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.

(f) Licensees and holders of user permits shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and licensees and permittees shall submit to the Attorney General such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Attorney General may enter during business hours the premises (including places of storage) of any licensee or holder of a user permit, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Attorney General may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials. The Secretary[1] may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) Licenses and user permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

(h)(1) If the Secretary[1] receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary[1] shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary[1] may take into account a letter or document issued under paragraph (2).

(2)(A) If the Secretary[1] determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary[1] shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

(B) If the Secretary[1] determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary[1] shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

(i) confirms the determination;

(ii) explains the grounds for the determination;

(iii) provides information on how the disability may be relieved; and

(iv) explains how the determination may be appealed.

(i) FURNISHING OF SAMPLES.—

(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary,[1] furnish—

(A) samples of such explosive materials or ammonium nitrate;

(B) information on chemical composition of those products; and

(C) any other information that the Secretary[1] determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

(2) REIMBURSEMENT.—The Secretary[1] shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 955; amended Pub. L. 107–296, title XI, §§ 1112(e)(3), 1122(c)–(h), 1124, Nov. 25, 2002, 116 Stat. 2276, 2281, 2282, 2285.)

[2] So in original. Probably should be ''Attorney General's''.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296, § 1122(c), in first sentence, inserted ''or limited permit'' after ''user permit'' and inserted before period at end '', including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person'', in second sentence, substituted ''$50 for a limited permit and $200 for any other'' for ''$200 for each'', inserted third and fourth sentences, and struck out former third sentence which read as follows: ''Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.''

Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in two places.

Subsec. (b). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–296, § 1122(d)(1), added par. (1) and struck out former par. (1) which read as follows: ''the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;''.

Subsec. (b)(4). Pub. L. 107–296, § 1122(d)(2), designated existing provisions as subpar. (A), inserted ''the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that'' before ''the applicant'', and added subpar. (B).

Pub. L. 107–296, § 1112(e)(3), substituted ''the Attorney General by regulations'' for ''the Secretary by regulations''.

Subsec. (b)(6), (7). Pub. L. 107–296, § 1122(d)(3), (4), added pars. (6) and (7).

Subsec. (c). Pub. L. 107–296, § 1122(e), substituted ''90 days for licenses and permits,'' for ''forty-five days''.

Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in two places.

Subsecs. (d), (e). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 107–296, § 1122(f), in first sentence, substituted ''Licensees and holders of user permits'' for ''Licensees and permittees'' and inserted ''licensees and permittees'' before ''shall submit'', in second sentence, substituted ''holder of a user permit'' for ''permittee'', and inserted at end ''The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).''

Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (g). Pub. L. 107–296, § 1122(g), inserted ''user'' before ''permits''.

Subsec. (h). Pub. L. 107–296, § 1122(h), added subsec. (h).

Subsec. (i). Pub. L. 107–296, § 1124, added subsec. (i).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by sections 1112(e)(3) and 1124 of Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–296, title XI, § 1122(i), Nov. 25, 2002, 116 Stat. 2283, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 841 and 842 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 25, 2002].

''(2) EXCEPTION.—Notwithstanding any provision of this Act [see Tables for classification], a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act [Nov. 25, 2002], shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.''

CONTINUATION IN BUSINESS OR OPERATION OF ANY PERSON ENGAGED IN BUSINESS OR OPERATION ON OCTOBER 15, 1970

Filing of application for a license or permit prior to the effective date of this section as authorizing any person engaged in a business or operation requiring a license or a permit on Oct. 15, 1970 to continue such business or operation pending final action on such application, see section 1105(c) of Pub. L. 91–452, set out as a note under section 841 of this title.

§ 844. Penalties

(a) Any person who—

(1) violates any of subsections (a) through (i) or (*l*) through (*o*) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both; and

(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined under this title or imprisoned not more than one year, or both.

(c)(1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Attorney General may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Attorney General for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Attorney General that—

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Attorney General shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.

(g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to—

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Pipeline and Hazardous Materials Safety Administration for the handling of hazardous materials pursuant to chapter 51 of title 49.

(h) Whoever—

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States,

including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 20 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section and section 842(p), the term ''explosive'' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by

fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(k) A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(*l*) A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.

(m) A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

(*o*) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.

(p) THEFT REPORTING REQUIREMENT.—

(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary[1] not later than 24 hours after the discovery of the theft.

(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.

(Added Pub. L. 91–452, title XI, §1102(a), Oct. 15, 1970, 84 Stat. 956; amended Pub. L. 97–298, §2, Oct. 12, 1982, 96 Stat. 1319; Pub. L. 98–473, title II, §1014, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–690, title VI, §6474(a), (b), Nov. 18, 1988, 102 Stat. 4379; Pub. L. 101–647, title XXXV, §3522, Nov. 29, 1990, 104 Stat. 4924; Pub. L. 103–272, §5(e)(7), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title VI, §60003(a)(3), title XI, §§110504(b), 110509, 110515(b), 110518(b), title XXXII, §§320106, 320917(a), title XXXIII, §330016(1)(H), (K), (L), (N), Sept. 13, 1994, 108 Stat. 1969, 2016, 2018, 2020, 2111, 2129, 2147, 2148; Pub. L. 104–132, title VI, §604, title VII, §§701, 706, 708(a), (c)(3), 724, Apr. 24, 1996, 110 Stat. 1289, 1291, 1295–1297, 1300; Pub. L. 104–294, title VI, §603(a), Oct. 11, 1996, 110 Stat. 3503; Pub. L. 106–54, §2(b), Aug. 17, 1999, 113 Stat. 399; Pub. L. 107–296, title XI, §§1112(e)(3), 1125, 1127, Nov. 25, 2002, 116 Stat. 2276, 2285; Pub. L. 108–426, §2(c)(6), Nov. 30, 2004, 118 Stat. 2424.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c)(1), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (c)(1), is section 5845(a) of Title 26.

AMENDMENTS

2004—Subsec. (g)(2)(B). Pub. L. 108–426 substituted ''Pipeline and Hazardous Materials Safety Administration'' for ''Research and Special Projects Administration''.

2002—Subsec. (c)(2), (3). Pub. L. 107–296, §1112(e)(3), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (f)(1). Pub. L. 107–296, §1125, inserted ''or any institution or organization receiving Federal financial assistance,'' before ''shall''.

Subsec. (p). Pub. L. 107–296, §1127, added subsec. (p).

1999—Subsec. (a). Pub. L. 106–54, §2(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 106–54, §2(b)(2), inserted ''and section 842(p)'' after ''this section''.

1996—Subsec. (a). Pub. L. 104–132, §604, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined under this title or imprisoned not more than ten years, or both.''

Subsec. (e). Pub. L. 104–132, §§708(a)(1), 724, substituted ''interstate or foreign commerce, or in or affecting interstate or foreign commerce,'' for ''commerce'' and ''10'' for ''five''.

Subsec. (f). Pub. L. 104–132, §708(a)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.''

Subsec. (h). Pub. L. 104–132, §708(a)(3), in concluding provisions, substituted ''10 years'' and ''20 years'' for ''5 years but not more than 15 years'' and ''10 years but not more than 25 years'', respectively.

Subsec. (i). Pub. L. 104–294, which directed substitution of comma for ''.,'' each place appearing, could not be executed because ''.,'' did not appear in text subsequent to amendment by Pub. L. 104–132, §708(a)(4). See below.

Pub. L. 104–132, §708(c)(3), struck out at end ''No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.''

Pub. L. 104–132, §708(a)(4)(B), which directed substitution of ''not less than 7 years and not more than 40 years, fined under this title'' for ''not more than 40 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'', was executed by making the substitution in text which read ''not more than 40 years, fined the greater of the fine under this title'' to reflect the probable intent of Congress.

Pub. L. 104–132, §708(a)(4)(A), substituted ''not less than 5 years and not more than 20 years, fined under this title'' for ''not more than 20 years, fined the great-

[1] So in original. Probably should be ''Attorney General''.

er of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,''.

Subsec. (n). Pub. L. 104–132, § 701, added subsec. (n).

Subsec. (*o*). Pub. L. 104–132, § 706, added subsec. (*o*).

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000''.

Subsec. (c). Pub. L. 103–322, § 110509, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (d). Pub. L. 103–322, § 330016(1)(L), (N), substituted ''fined under this title'' for ''fined not more than $10,000'' after ''ten years, or'' and for ''fined not more than $20,000'' after ''twenty years or''.

Pub. L. 103–322, § 60003(a)(3)(A), struck out before period at end ''as provided in section 34 of this title''.

Subsec. (e). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (f). Pub. L. 103–322, § 320106(1)(B), which directed the substitution of ''not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' for ''not more than twenty years, or fined not more than $10,000'', was executed by making the substitution for ''not more than twenty years, or fined not more than $20,000'', to reflect the probable intent of Congress.

Pub. L. 103–322, § 320106(1)(A), substituted ''not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' for ''not more than ten years, or fined not more than $10,000''.

Pub. L. 103–322, § 60003(a)(3)(B), struck out before period at end ''as provided in section 34 of this title''.

Subsec. (g)(2)(B). Pub. L. 103–272 substituted ''chapter 51 of title 49'' for ''the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)''.

Subsec. (h). Pub. L. 103–322, § 320106(2), in concluding provisions, substituted ''5 years but not more than 15 years'' for ''five years'' and ''10 years but not more than 25 years'' for ''ten years''.

Subsec. (i). Pub. L. 103–322, § 320917(a), inserted at end ''No person shall be prosecuted, tried, or punished for any noncapital offense under this subsection unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.''

Pub. L. 103–322, § 320106(3), substituted ''not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' for ''not more than ten years or fined not more than $10,000'' and ''not more than 40 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' for ''not more than twenty years or fined not more than $20,000''.

Pub. L. 103–322, § 60003(a)(3)(C), struck out ''as provided in section 34 of this title'' after ''death penalty or to life imprisonment''.

Subsec. (k). Pub. L. 103–322, § 110504(b), added subsec. (k).

Subsec. (*l*). Pub. L. 103–322, § 110515(b), added subsec. (*l*).

Subsec. (m). Pub. L. 103–322, § 110518(b), added subsec. (m).

1990—Subsec. (d). Pub. L. 101–647 substituted ''subsection,'' for ''subsection,,'' before ''shall be subject to imprisonment''.

1988—Subsec. (g). Pub. L. 100–690, § 6474(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), whoever'' for ''Whoever'', inserted ''in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or'' after ''possess an explosive'', inserted ''or airport'' after ''such building'', substituted ''not more than five years, or fined under this title, or both'' for ''not more than one year, or fined not more than $1,000, or both'', and added par. (2).

Subsec. (h). Pub. L. 100–690, § 6474(b)(2), which directed the amendment of subsec. (h) by striking ''shall be sentenced'' through the end and inserting new provisions was executed by striking ''shall be sentenced'' the first time it appeared through the end of the subsection which resulted in inserting concluding provisions and striking out former concluding provisions which read as follows: ''shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.''

Subsec. (h)(2). Pub. L. 100–690, § 6474(b)(1), in par. (2), struck out ''unlawfully'' after ''explosive''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsecs. (d), (f), (i). Pub. L. 98–473 substituted ''personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,'' for ''personal injury results'' and ''death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,'' for ''death results''.

1982—Subsecs. (e), (f). Pub. L. 97–298, § 2(a), inserted ''fire or'' after ''by means of'' wherever appearing.

Subsec. (h)(1). Pub. L. 97–298, § 2(b), inserted ''fire or'' after ''uses''.

Subsec. (i). Pub. L. 97–298, § 2(c), inserted ''fire or'' after ''by means of''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604 of Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104–132, set out as a note under section 841 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 320917(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to any offense described in the amendment that was committed more than 5 years prior to the date of enactment of this Act [Sept. 13, 1994].''

EFFECTIVE DATE

Subsecs. (a) to (c) of this section effective 120 days after Oct. 15, 1970, and subsecs. (d) to (j) of this section effective on Oct. 15, 1970, see section 1105(a), (b), set out as a note under section 841 of this title.

§ 845. Exceptions; relief from disabilities

(a) Except in the case of subsections[1] (*l*), (m), (n), or (*o*) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security;

[1] So in original. Probably should be ''subsection''.

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United States Code, or in antique devices as exempted from the term ''destructive device'' in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary[2] for relief from such prohibition.

(2) The Secretary[2] may grant the relief requested under paragraph (1) if the Secretary[2] determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (*l*) through (*o*) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

(3) For purposes of this subsection, the term ''military device'' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 958; amended Pub. L. 93–639, § 101, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 104–132, title VI, § 605, Apr. 24, 1996, 110 Stat. 1289; Pub. L. 107–296, title XI, §§ 1112(e)(3), 1126, Nov. 25, 2002, 116 Stat. 2276, 2285; Pub. L. 109–59, title VII, § 7127, Aug. 10, 2005, 119 Stat. 1909.)

REFERENCES IN TEXT

The date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 104–132, which was approved Apr. 24, 1996.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–59 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety;''.

2002—Subsec. (b). Pub. L. 107–296, § 1126, amended subsec. (b) generally. Prior to amendment, text read as follows: ''A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Attorney General for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.''

Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in two places.

1996—Subsec. (a). Pub. L. 104–132, § 605(1), inserted ''(*l*), (m), (n), or (*o*) of section 842 and subsections'' after ''subsections'' in introductory provisions and '', and which pertain to safety'' before semicolon at end of par. (1).

Subsec. (c). Pub. L. 104–132, § 605(2), added subsec. (c).

1975—Subsec. (a)(5). Pub. L. 93–639 substituted provisions exempting commercially manufactured black powder in quantities not exceeding fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be

[2] So in original. Probably should be ''Attorney General''.

used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices for such exemption of black powder in quantities not exceeding five pounds.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104–132, set out as a note under section 841 of this title.

§ 846. Additional powers of the Attorney General

(a) The Attorney General is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Attorney General is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

(b) The Attorney General is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Attorney General pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Attorney General by State and local authorities.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959; amended Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 654(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–369; Pub. L. 107–296, title XI, § 1112(e)(2), (3), Nov. 25, 2002, 116 Stat. 2276.)

AMENDMENTS

2002—Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in section catchline.

Subsec. (a). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' in two places.

Pub. L. 107–296, § 1112(e)(2), substituted ''the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives'' for ''the Attorney General and the Federal Bureau of Investigation, together with the Secretary''.

Subsec. (b). Pub. L. 107–296, § 1112(e)(3), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

1996—Pub. L. 104–208 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

AUTHORIZATION OF APPROPRIATIONS

Section 101(f) [title VI, § 654(b)] of div. A of Pub. L. 104–208 provided that: ''There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection [probably means ''this section'' which amended this section].''

CERTIFICATION OF EXPLOSIVES DETECTION CANINES

Pub. L. 106–554, § 1(a)(3) [title VI, § 626], Dec. 21, 2000, 114 Stat. 2763, 2763A–162, provided that: ''Hereafter, the Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by Federal agencies, or other agencies providing explosives detection services at airports in the United States.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–58, title VI, § 630, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105–277, div. A, § 101(h) [title VI, § 640], Oct. 21, 1998, 112 Stat. 2681–480, 2681–526.

Pub. L. 105–61, title VI, § 627, Oct. 10, 1997, 111 Stat. 1315.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 653(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–369.

§ 847. Rules and regulations

The administration of this chapter shall be vested in the Attorney General. The Attorney General may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Attorney General shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959; amended Pub. L. 107–296, title XI, § 1112(e)(3), Nov. 25, 2002, 116 Stat. 2276.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''Attorney General'' for ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 848. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)

CHAPTER 41—EXTORTION AND THREATS

Sec.
871. Threats against President and successors to the Presidency.

Sec.
872. Extortion by officers or employees of the United States.
873. Blackmail.
874. Kickbacks from public works employees.
875. Interstate communications.
876. Mailing threatening communications.
877. Mailing threatening communications from foreign country.
878. Threats and extortion against foreign officials, official guests, or internationally protected persons.
879. Threats against former Presidents and certain other persons.
880. Receiving the proceeds of extortion.

AMENDMENTS

2000—Pub. L. 106–544, § 2(b)(2), Dec. 19, 2000, 114 Stat. 2715, struck out ''protected by the Secret Service'' after ''other persons'' in item 879.

1994—Pub. L. 103–322, title XXXII, § 320601(a)(2), Sept. 13, 1994, 108 Stat. 2115, added item 880.

1982—Pub. L. 97–297, § 1(b), Oct. 12, 1982, 96 Stat. 1317, added item 879.

1976—Pub. L. 94–467, § 9, Oct. 8, 1976, 90 Stat. 2001, added item 878.

1962—Pub. L. 87–829, § 2, Oct. 15, 1962, 76 Stat. 956, substituted ''and successors to the Presidency'' for '', President-elect, and Vice President'' in item 871.

1955—Act June 1, 1955, ch. 115, § 2, 69 Stat. 80, inserted ''President-elect, and Vice President'' in item 871.

§ 871. Threats against President and successors to the Presidency

(a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined under this title or imprisoned not more than five years, or both.

(b) The terms ''President-elect'' and ''Vice President-elect'' as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2. The phrase ''other officer next in the order of succession to the office of President'' as used in this section shall mean the person next in the order of succession to act as President in accordance with title 3, United States Code, sections 19 and 20.

(June 25, 1948, ch. 645, 62 Stat. 740; June 1, 1955, ch. 115, § 1, 69 Stat. 80; Pub. L. 87–829, § 1, Oct. 15, 1962, 76 Stat. 956; Pub. L. 97–297, § 2, Oct. 12, 1982, 96 Stat. 1318; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 89 (Feb. 14, 1917, ch. 64, 39 Stat. 919).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1982—Subsec. (a). Pub. L. 97–297 inserted '', to kidnap,'' after ''containing any threat to take the life of''.

1962—Pub. L. 87–829 designated existing provisions as subsec. (a), extended the provisions of such subsection to include any other officer next on the order of succession to the office of President and the Vice-President-elect, added subsec. (b), and substituted ''and successors to the Presidency'' for '', President-elect, and Vice President'' in section catchline.

1955—Act June 1, 1955, included in section catchline and in text, provision for penalties for threats against the President-elect and the Vice President.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–544, § 1, Dec. 19, 2000, 114 Stat. 2715, provided that: ''This Act [amending sections 879, 3056 and 3486 of this title, repealing section 3486A of this title, and enacting provisions set out as notes under section 3056 of this title, section 551 of Title 5, Government Organization and Employees, and section 566 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Presidential Threat Protection Act of 2000'.''

§ 872. Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Oct. 31, 1951, ch. 655, § 24(b), 65 Stat. 720; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 171 (Mar. 4, 1909, ch. 321, § 85, 35 Stat. 1104).

Words ''or any department or agency'' were inserted to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

The punishment provided by section 171 of title 18, U.S.C., 1940 ed., of fine of not more than $500 or imprisonment of not more than 1 year, or both, was increased for offenses involving more than $100 to conform to Congressional policy reflected in later Acts. See section 4047(e)(1) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and the punishment provision following paragraph (10) of said subsection.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' after ''extortion, shall be'' and for ''fined not more than $500'' after ''he shall be''.

1951—Act Oct. 31, 1951, changed punctuation to make section applicable not only to persons falsely representing themselves as Federal officers or employees at the time of extortion or the attempt thereof, but also to Federal officers and employees who attempt or commit extortion under color of office or employment.

§ 873. Blackmail

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based upon title 18, U.S.C., 1940 ed., § 250 (Mar. 4, 1909, ch. 321, § 145, 35 Stat. 1114).

Only minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 874. Kickbacks from public works employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 276b of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (June 13, 1934, ch. 482, § 1, 48 Stat. 948).

Slight changes of phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 875. Interstate communications

(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 99–646, § 63, Nov. 10, 1986, 100 Stat. 3614; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (H), (K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408d (May 18, 1934, ch. 300, 48 Stat. 781; May 15, 1939, ch. 133, § 2, 53 Stat. 743).

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Definition of ''interstate commerce'' was omitted in conformity with definitive section 10 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (c). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000''.

Subsec. (d). Pub. L. 103–322, § 330016(1)(G), substituted ''fined under this title'' for ''fined not more than $500''.

1986—Pub. L. 99–646 inserted ''or foreign'' after ''interstate'' wherever appearing.

§ 876. Mailing threatening communications

(a) Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(d) Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as

aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 91–375, § 6(j)(7), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322, title XXXIII, §§ 330016(1)(G), (H), (K), 330021(2), Sept. 13, 1994, 108 Stat. 2147, 2150; Pub. L. 107–273, div. C, title I, § 11008(d), Nov. 2, 2002, 116 Stat. 1818.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338a (July 8, 1932, ch. 464, § 1, 47 Stat. 649; June 28, 1935, ch. 326, 49 Stat. 427; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107–273 designated first to fourth pars. as subsecs. (a) to (d), respectively, and, in subsecs. (c) and (d), inserted at end ''If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.''

1994—Pub. L. 103–322, § 330021(2), substituted ''kidnapped'' for ''kidnaped'' in first par.

Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in first and second pars.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in third par.

Pub. L. 103–322, § 330016(1)(G), substituted ''fined under this title'' for ''fined not more than $500'' in fourth par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department'' in two places in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 877. Mailing threatening communications from foreign country

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 91–375, § 6(j)(8), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322, title XXXIII, §§ 330016(1)(G), (H), (K), 330021(2), Sept. 13, 1994, 108 Stat. 2147, 2150.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338b (July 8, 1932, ch. 464, § 2, 47 Stat. 649; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

AMENDMENTS

1994—Pub. L. 103–322, § 330021(2), substituted ''kidnapped'' for ''kidnaped'' in first par.

Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in first and second pars.

Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in third par.

Pub. L. 103–322, § 330016(1)(G), substituted ''fined under this title'' for ''fined not more than $500'' in fourth par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department of the United States'' in two places in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

(a) Whoever knowingly and willfully threatens to violate section 112, 1116, or 1201 shall be fined under this title or imprisoned not more than five years, or both, except that imprisonment

for a threatened assault shall not exceed three years.

(b) Whoever in connection with any violation of subsection (a) or actual violation of section 112, 1116, or 1201 makes any extortionate demand shall be fined under this title or imprisoned not more than twenty years, or both.

(c) For the purpose of this section ''foreign official'', ''internationally protected person'', ''national of the United States'', and ''official guest'' shall have the same meanings as those provided in section 1116(a) of this title.

(d) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(Added Pub. L. 94–467, § 8, Oct. 8, 1976, 90 Stat. 2000; amended Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 103–272, § 5(e)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (N), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–132, title VII, §§ 705(a)(4), 721(e), Apr. 24, 1996, 110 Stat. 1295, 1299.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 705(a)(4), struck out ''by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person'' before ''shall be fined''.

Subsec. (c). Pub. L. 104–132, § 721(e)(1), inserted '' 'national of the United States','' before ''and 'official guest' ''.

Subsec. (d). Pub. L. 104–132, § 721(e)(2), inserted first sentence and struck out former first sentence which read as follows: ''If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.''

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(N), substituted ''fined under this title'' for ''fined not more than $20,000''.

Subsec. (d). Pub. L. 103–272 substituted ''section 46501(2) of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))''.

1978—Subsec. (d). Pub. L. 95–504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (d). Pub. L. 95–163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

§ 879. Threats against former Presidents and certain other persons

(a) Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon—

(1) a former President or a member of the immediate family of a former President;

(2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect;

(3) a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate; or

(4) a person protected by the Secret Service under section 3056(a)(6);

shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term ''immediate family'' means—

(A) with respect to subsection (a)(1) of this section, the wife of a former President during his lifetime, the widow of a former President until her death or remarriage, and minor children of a former President until they reach sixteen years of age; and

(B) with respect to subsection (a)(2) and (a)(3) of this section, a person to whom the President, President-elect, Vice President, Vice President-elect, or major candidate for the office of President or Vice President—

(i) is related by blood, marriage, or adoption; or

(ii) stands in loco parentis;

(2) the term ''major candidate for the office of President or Vice President'' means a candidate referred to in subsection (a)(7) of section 3056 of this title; and

(3) the terms ''President-elect'' and ''Vice President-elect'' have the meanings given those terms in section 871(b) of this title.

(Added Pub. L. 97–297, § 1(a), Oct. 12, 1982, 96 Stat. 1317; amended Pub. L. 98–587, § 3(a), Oct. 30, 1984, 98 Stat. 3111; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 106–544, § 2(a), (b)(1), Dec. 19, 2000, 114 Stat. 2715.)

AMENDMENTS

2000—Pub. L. 106–544, § 2(b)(1), struck out ''protected by the Secret Service'' after ''other persons'' in section catchline.

Subsec. (a). Pub. L. 106–544, § 2(a)(1)–(4), in par. (3), substituted ''a member of the immediate family'' for ''the spouse'', added par. (4), and, in concluding provisions, struck out ''who is protected by the Secret Service as provided by law,'' before ''shall be fined'' and substituted ''5 years'' for ''three years''.

Subsec. (b)(1)(B). Pub. L. 106–544, § 2(a)(5), in introductory provisions, inserted ''and (a)(3)'' after ''subsection (a)(2)'' and substituted ''Vice President-elect, or major candidate for the office of President or Vice President'' for ''or Vice President-elect''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in concluding provisions.

1984—Subsec. (b)(2). Pub. L. 98–587 substituted ''subsection (a)(7) of section 3056 of this title'' for ''the first section of the joint resolution entitled 'Joint resolution to authorize the United States Secret Service to furnish protection to major Presidential or Vice Presidential candidates', approved June 6, 1968 (18 U.S.C. 3056 note)''.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security,

and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 880. Receiving the proceeds of extortion

A person who receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than 1 year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 3 years, fined under this title, or both.

(Added Pub. L. 103–322, title XXXII, § 320601(a)(1), Sept. 13, 1994, 108 Stat. 2115.)

CHAPTER 42—EXTORTIONATE CREDIT TRANSACTIONS

Sec.
891. Definitions and rules of construction.
892. Making extortionate extensions of credit.
893. Financing extortionate extensions of credit.
894. Collection of extensions of credit by extortionate means.
[895. Repealed.]
896. Effect on State laws.

AMENDMENTS

1970—Pub. L. 91–452, title II, § 223(b), Oct. 15, 1970, 84 Stat. 929, struck out item 895 ''Immunity of witnesses''.

1968—Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 159, added chapter 42 and items 891 to 896.

§ 891. Definitions and rules of construction

For the purposes of this chapter:

(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

(2) The term ''creditor'', with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) The term ''debtor'', with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(8) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

(Added Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 160.)

EFFECTIVE DATE

Chapter effective May 29, 1968, see section 504(a) of Pub. L. 90–321.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 201 of Pub. L. 90–321 provided that:

''(a) The Congress makes the following findings:

''(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

''(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evidence stricter than necessary for the protection of constitutional rights.

''(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

''(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purposes of the laws enacted by the Congress on the subject of bankruptcies.

''(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of chapter 42 of title 18 of the United States Code are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy.''

ANNUAL REPORT TO CONGRESS BY ATTORNEY GENERAL

Section 203 of Pub. L. 90–321 directed Attorney General to make an annual report to Congress of activities of Department of Justice in enforcement of this chapter, prior to repeal by Pub. L. 97–375, title I, § 109(b), Dec. 21, 1982, 96 Stat. 1820.

§ 892. Making extortionate extensions of credit

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined

under this title or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

(A) in the jurisdiction within which the debtor, if a natural person, resided or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business

at the time the extension of credit was made.

(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(3) At the time the extension of credit was made, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded $100.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of any of the circumstances described in subsection (b)(1) or (b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

(Added Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 160; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 893. Financing extortionate extensions of credit

Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined under this title or an amount not exceeding twice the value of the money or property so advanced, whichever is greater, or shall be imprisoned not more than 20 years, or both.

(Added Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 161; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 894. Collection of extensions of credit by extortionate means

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit, or

(2) to punish any person for the nonrepayment thereof,

shall be fined under this title or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b)(1) or the circumstances described in section 892(b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

(Added Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 161; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in concluding provisions.

[§895. Repealed. Pub. L. 91–452, title II, §223(a), Oct. 15, 1970, 84 Stat. 929]

Section, Pub. L. 90–321, title II, §202(a), May 29, 1968, 82 Stat. 162, related to immunity from prosecution of any witness compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

§896. Effect on State laws

This chapter does not preempt any field of law with respect to which State legislation would be permissible in the absence of this chapter. No law of any State which would be valid in the absence of this chapter may be held invalid or inapplicable by virtue of the existence of this chapter, and no officer, agency, or instrumentality of any State may be deprived by virtue of this chapter of any jurisdiction over any offense over which it would have jurisdiction in the absence of this chapter.

(Added Pub. L. 90–321, title II, §202(a), May 29, 1968, 82 Stat. 162.)

CHAPTER 43—FALSE PERSONATION

Sec.
911. Citizen of the United States.
912. Officer or employee of the United States.
913. Impersonator making arrest or search.
914. Creditors of the United States.
915. Foreign diplomats, consuls or officers.
916. 4–H Club members or agents.
917. Red Cross members or agents.

§911. Citizen of the United States

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsection (a), paragraph (18) and subsection (d), of section 746, title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, §346(a), par. (18), and (d), 54 Stat. 1165, 1167).

Section consolidates said provisions of section 746, title 8, U.S.C., 1940 ed., Aliens and Nationality. The word ''willfully'' was substituted for ''knowingly'', ''$1,000'' for ''$5,000'', and ''three years'' for ''five years'', to harmonize with congressional intent evidenced by the other sections of this chapter.

Minor changes were made in phraseology and unnecessary words were omitted.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§912. Officer or employee of the United States

Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§76 and 123 (Mar. 4, 1909, ch. 321, §§32 and 66, 35 Stat. 1095, 1100; Feb. 28, 1938, ch. 37, 52 Stat. 82).

Section consolidates sections 76 and 123 of title 18, U.S.C., 1940 ed. The effect of this consolidation was to increase the punishment for revenue officers from $500 to $1,000 and from 2 years to 3 years, and to rephrase in the alternative the mandatory punishment provision.

This section now applies the same punishment to all officers and agents of the United States found guilty of false personation.

Words ''agency or'' were inserted to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.) Other words referring to ''authority of any corporation owned or controlled by the United States'' were omitted for the same reason. (See *Pierce v. U.S.*, 1941, 62 S. Ct. 237, 314 U.S. 306, 86 L. Ed. 226.)

The words ''with the intent to defraud the United States or any person'', contained in said section 76 of title 18, U.S.C., 1940 ed., were omitted as meaningless in view of *United States v. Lapowich*, 63 S. Ct. 914.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§913. Impersonator making arrest or search

Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742; Pub. L. 103–322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §77a (Aug. 27, 1935, ch. 740, §201, 49 Stat. 877).

Words ''shall be deemed guilty of a misdemeanor'' were omitted. (See definitive section 1 of this title.) Words ''and upon conviction thereof'' preceding ''shall be'' were omitted as surplusage since punishment cannot be imposed until conviction is secured.

Maximum imprisonment provision was changed from 1 year to 3 years so as to be consistent with sections 911 and 912 of this title, the latter having also been changed to 3 years. There is no sound reason why a uniform punishment should not be prescribed for the offenses defined in these three sections.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§914. Creditors of the United States

Whoever falsely personates any true and lawful holder of any share or sum in the public

stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, wages, or other debt due from the United States, and, under color of such false personation, transfers or endeavors to transfer such public stock or any part thereof, or receives or endeavors to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, wages, or other debt, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 742; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 78 (Mar. 4, 1909, ch. 321, § 33, 35 Stat. 1095).

Words ''prize money'' after ''pension'' were deleted as repealed by act Mar. 3, 1899, ch. 413, 30 Stat. 1007, repealing all laws authorizing prize money distribution.

Mandatory punishment was rephrased in the alternative.

In the punishment provision the words ''five years'' were substituted for ''ten years'' to harmonize it with the punishment provisions in sections 287 and 1001 of this title, covering similar offenses. (See reviser's note under section 287 of this title.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 915. Foreign diplomats, consuls or officers

Whoever, with intent to defraud within the United States, falsely assumes or pretends to be a diplomatic, consular or other official of a foreign government duly accredited as such to the United States and acts as such, or in such pretended character, demands or obtains or attempts to obtain any money, paper, document, or other thing of value, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 232 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 2, 40 Stat. 226; Mar. 28, 1940, ch. 72, § 6, 54 Stat. 80).

Reference to ''jurisdiction'' of the United States was omitted as unnecessary in view of definition of ''United States'' in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 916. 4–H Club members or agents

Whoever, falsely and with intent to defraud, holds himself out as or represents or pretends himself to be a member of, associated with, or an agent or representative for the 4–H clubs, an organization established by the Extension Service of the United States Department of Agriculture and the land grant colleges, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 743; Pub. L. 103–322, title XXXIII, § 330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 76c (June 5, 1939, ch. 184, § 1, 53 Stat. 809).

Section 76c of title 18, U.S.C., 1940 ed., was incorporated in this section and section 707 of this title.

Reference to offense as a misdemeanor was omitted in view of definitive section 1 of this title. Words ''upon conviction thereof'' were omitted, since criminal punishment can follow only after conviction.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $300''.

§ 917. Red Cross members or agents

Whoever, within the United States, falsely or fraudulently holds himself out as or represents or pretends himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material, shall be fined under this title or imprisoned not more than 5 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–56, title X, § 1011(c), Oct. 26, 2001, 115 Stat. 396.)

HISTORICAL AND REVISION NOTES

Based on section 4 of title 36, U.S.C., 1940 ed., Patriotic Societies and Observances (Jan. 5, 1905, ch. 23, § 4, 33 Stat. 600; June 23, 1910, ch. 372, § 1, 36 Stat. 604).

Section 4 of title 36, U.S.C., 1940 ed., Patriotic Societies and Observances, was divided into this section and section 706 of this title.

Reference to ''jurisdiction'' of the United States was omitted as unnecessary in view of definition of ''United States'' in section 5 of this title.

Reference to offense as a misdemeanor was omitted in view of definitive section 1 of this title.

Words ''upon conviction thereof'' were omitted as punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''5 years'' for ''one year''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

CHAPTER 44—FIREARMS

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921. Definitions.
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AMENDMENTS

2004—Pub. L. 108–277, §§2(b), 3(b), July 22, 2004, 118 Stat. 866, 867, added items 926B and 926C.

2002—Pub. L. 107–273, div. C, title I, §11009(e)(2)(B), Nov. 2, 2002, 116 Stat. 1821, added item 931.

1993—Pub. L. 103–159, title I, §104(b), Nov. 30, 1993, 107 Stat. 1543, added item 925A.

1990—Pub. L. 101–647, title XXXV, §3523, Nov. 29, 1990, 104 Stat. 4924, struck out ''clause'' after ''Separability'' in item 928.

1988—Pub. L. 100–690, title VI, §6215(b), Nov. 18, 1988, 102 Stat. 4362, added item 930.

1986—Pub. L. 99–308, §107(b), May 19, 1986, 100 Stat. 460, added item 926A.

1984—Pub. L. 98–473, title II, §1006(b), Oct. 12, 1984, 98 Stat. 2139, added item 929.

1968—Pub. L. 90–618, title I, §102, Oct. 22, 1968, 82 Stat. 1214, reenacted chapter analysis without change.

Pub. L. 90–351, title IV, §902, June 19, 1968, 82 Stat. 226, added chapter 44 and items 921 to 928.

§921. Definitions

(a) As used in this chapter—

(1) The term ''person'' and the term ''whoever'' include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term ''interstate or foreign commerce'' includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term ''firearm'' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term ''destructive device'' means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term ''destructive device'' shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term ''shotgun'' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term ''short-barreled shotgun'' means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term ''rifle'' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term ''short-barreled rifle'' means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term ''importer'' means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term ''licensed importer'' means any such person licensed under the provisions of this chapter.

(10) The term ''manufacturer'' means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term ''licensed manufacturer'' means any such person licensed under the provisions of this chapter.

(11) The term ''dealer'' means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term ''licensed dealer'' means any dealer who is licensed under the provisions of this chapter.

(12) The term ''pawnbroker'' means any person whose business or occupation includes the tak-

ing or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term ''collector'' means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term ''licensed collector'' means any such person licensed under the provisions of this chapter.

(14) The term ''indictment'' includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term ''fugitive from justice'' means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term ''antique firearm'' means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term ''antique firearm'' shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)(A) The term ''ammunition'' means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term ''armor piercing ammunition'' means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term ''armor piercing ammunition'' does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term ''Attorney General'' means the Attorney General of the United States[1]

(19) The term ''published ordinance'' means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term ''crime punishable by imprisonment for a term exceeding one year'' does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term ''engaged in the business'' means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of liveli-

[1] So in original. Probably should be followed by a period.

hood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term ''with the principal objective of livelihood and profit'' means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term ''terrorism'' means activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term ''machinegun'' has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms ''firearm silencer'' and ''firearm muffler'' mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term ''school zone'' means—

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term ''school'' means a school which provides elementary or secondary education, as determined under State law.

(27) The term ''motor vehicle'' has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term ''semiautomatic rifle'' means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term ''handgun'' means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

[(30), (31) Repealed. Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(32) The term ''intimate partner'' means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C),[2] the term ''misdemeanor crime of domestic violence'' means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal[3] law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term ''secure gun storage or safety device'' means—

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the op-

[2] So in original. No subparagraph (C) has been enacted.

[3] So in original. Probably should not be capitalized.

eration of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term ''body armor'' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 226; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub. L. 93–639, § 102, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 99–308, § 101, May 19, 1986, 100 Stat. 449; Pub. L. 99–360, § 1(b), July 8, 1986, 100 Stat. 766; Pub. L. 99–408, § 1, Aug. 28, 1986, 100 Stat. 920; Pub. L. 101–647, title XVII, § 1702(b)(2), title XXII, § 2204(a), Nov. 29, 1990, 104 Stat. 4845, 4857; Pub. L. 103–159, title I, § 102(a)(2), Nov. 30, 1993, 107 Stat. 1539; Pub. L. 103–322, title XI, §§ 110102(b), 110103(b), 110105(2), 110401(a), 110519, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1997, 1999, 2000, 2014, 2020, 2150; Pub. L. 104–88, title III, § 303(1), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 658(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–371; Pub. L. 105–277, div. A, § 101(b) [title I, § 119(a)], (h) [title I, § 115], Oct. 21, 1998, 112 Stat. 2681–50, 2681–69, 2681–480, 2681–490; Pub. L. 107–273, div. C, title I, § 11009(e)(1), Nov. 2, 2002, 116 Stat. 1821; Pub. L. 107–296, title XI, § 1112(f)(1)–(3), (6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 109–162, title IX, § 908(a), Jan. 5, 2006, 119 Stat. 3083.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a)(2), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2006—Subsec. (a)(33)(A)(i). Pub. L. 109–162, which directed the general amendment of ''section 921(33)(A)(i) of title 18'', was executed to par. (33)(A)(i) of subsec. (a), to reflect the probable intent of Congress. Prior to amendment, cl. (i) read as follows: ''is a misdemeanor under Federal or State law; and''.

2002—Subsec. (a)(4). Pub. L. 107–296, § 1112(f)(2), substituted ''Attorney General'' for ''Secretary of the Treasury'' in concluding provisions.

Subsec. (a)(4)(B). Pub. L. 107–296, § 1112(f)(1), substituted ''Attorney General'' for ''Secretary''.

Subsec. (a)(13), (17)(C). Pub. L. 107–296, § 1112(f)(6), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (a)(18). Pub. L. 107–296, § 1112(f)(3), added par. (18) and struck out former par. (18) which read as follows: ''The term 'Secretary' or 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.''

Subsec. (a)(19). Pub. L. 107–296, § 1112(f)(6), substituted ''Attorney General'' for ''Secretary'' in two places.

Subsec. (a)(35). Pub. L. 107–273 added par. (35).

1998—Subsec. (a)(5). Pub. L. 105–277, § 101(h) [title I, § 115(1)], substituted ''an explosive'' for ''the explosive in a fixed shotgun shell''.

Subsec. (a)(7). Pub. L. 105–277, § 101(h) [title I, § 115(2)], substituted ''an explosive'' for ''the explosive in a fixed metallic cartridge''.

Subsec. (a)(16). Pub. L. 105–277, § 101(h) [title I, § 115(3)], added par. (16) and struck out former par. (16) which read as follows: ''The term 'antique firearm' means—

''(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

''(B) any replica of any firearm described in subparagraph (A) if such replica—

''(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

''(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.''

Subsec. (a)(34). Pub. L. 105–277, § 101(b) [title I, § 119(a)], added par. (34).

1996—Subsec. (a)(33). Pub. L. 104–208 added par. (33).

1995—Subsec. (a)(27). Pub. L. 104–88 substituted ''section 13102'' for ''section 10102''.

1994—Subsec. (a)(17)(B). Pub. L. 103–322, § 110519, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'armor piercing ammunition' means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. Such term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.''

Subsec. (a)(17)(C). Pub. L. 103–322, § 110519, added subpar. (C).

Subsec. (a)(22)(C)(iii). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping''.

Subsec. (a)(30). Pub. L. 103–322, § 110102(b), which added par. (30) defining ''semiautomatic assault weapon'', was repealed by Pub. L. 103–322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(31). Pub. L. 103–322, § 110103(b), which added par. (31) defining ''large capacity ammunition feeding device'', was repealed by Pub. L. 103–322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(32). Pub. L. 103–322, § 110401(a), added par. (32).

1993—Subsec. (a)(29). Pub. L. 103–159 added par. (29).

1990—Subsec. (a)(25) to (27). Pub. L. 101–647, § 1702(b)(2), added pars. (25) to (27).

Subsec. (a)(28). Pub. L. 101–647, § 2204(a), added par. (28).

1986—Subsec. (a)(10). Pub. L. 99–308, § 101(1), substituted ''business of manufacturing'' for ''manufacture of''.

Subsec. (a)(11)(A). Pub. L. 99–308, § 101(2), struck out ''or ammunition'' after ''firearms''.

Subsec. (a)(12). Pub. L. 99–308, § 101(3), struck out ''or ammunition'' after ''firearm''.

Subsec. (a)(13). Pub. L. 99–308, § 101(4), struck out ''or ammunition'' after ''firearms''.

Subsec. (a)(17). Pub. L. 99–408 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(20). Pub. L. 99–308, § 101(5), amended par. (20) generally. Prior to amendment, par. (20) read as follows: ''The term 'crime punishable by imprisonment for a term exceeding one year' shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of

business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.''

Subsec. (a)(21). Pub. L. 99–308, §101(6), added par. (21).

Subsec. (a)(22). Pub. L. 99–360 inserted provision that proof of profit not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism and defined terrorism.

Pub. L. 99–308, §101(6), added par. (22).

Subsec. (a)(23), (24). Pub. L. 99–308, §101(6), added pars. (23) and (24).

1975—Subsec. (a)(4). Pub. L. 93–639 substituted ''to use solely for sporting, recreational or cultural purposes'' for ''to use solely for sporting purposes''.

1968—Subsec. (a). Pub. L. 90–618 inserted definitions of ''collector'', ''licensed collector'', and ''crime punishable by imprisonment for a term exceeding one year'', amended definitions of ''person'', ''whoever'', ''interstate or foreign commerce'', ''State'', ''firearm'', ''destructive device'', ''dealer'', ''indictment'', ''fugitive from justice'', ''antique firearm'', ''ammunition'', and ''published ordinance'', and reenacted without change definitions of ''shotgun'', ''short-barreled shotgun'', ''rifle'', ''short-barreled rifle'', ''importer'', ''licensed importer'', ''manufacturer'', ''licensed manufacturer'', ''licensed dealer'', ''pawnbroker'', and ''Secretary'' or ''Secretary of the Treasury''.

Subsec. (b). Pub. L. 90–618 substituted provisions determining that a member of the armed forces on active duty is a resident of the State in which his permanent duty station is located for provisions defining ''firearm'', ''destructive device'', and ''crime punishable by imprisonment for a term exceeding one year''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, §101(b) [title I, §119(e)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–70, provided that: ''The amendments made by this section [amending this section and section 923 of this title] shall take effect 180 days after the date of enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Pub. L. 103–322, title XI, §110105, Sept. 13, 1994, 108 Stat. 2000, provided that subtitle A (§§110101–110106) of title XI of Pub. L. 103–322 (amending this section and sections 922 to 924 of this title and enacting provisions set out as notes under this section) and the amendments made by that subtitle were effective Sept. 13, 1994, and were repealed effective as of the date that is 10 years after that date.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1702(b)(4) of Pub. L. 101–647 provided that: ''The amendments made by this section [amending this section and sections 922 and 924 of this title] shall apply to conduct engaged in after the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENTS; PUBLICATION AND AVAILABILITY OF COMPILATION OF STATE LAWS AND PUBLISHED ORDINANCES

Section 9 of Pub. L. 99–408 provided that: ''The amendments made by this Act [amending this section and sections 922, 923, and 929 of this title and enacting provisions set out as notes under this section] shall take effect on the date of enactment of this Act [Aug. 28, 1986], except that sections 3, 4, and 5 [amending section 923 of this title] shall take effect on the first day of the first calendar month which begins more than ninety days after the date of the enactment of this Act.''

Section 2 of Pub. L. 99–360 provided that: ''This Act and the amendments made by this Act [enacting section 926A of this title, amending this section and section 923 of this title, and repealing former section 926A of this title], intended to amend the Firearms Owners' Protection Act [Pub. L. 99–308, see Short Title of 1986 Amendment note below], shall become effective on the date on which the section they are intended to amend in such Firearms Owners' Protection Act becomes effective [see section 110 of Pub. L. 99–308 set out below] and shall apply to the amendments to title 18, United States Code, made by such Act.''

Section 110 of Pub. L. 99–308 provided that:

''(a) IN GENERAL.—The amendments made by this Act [enacting section 926A of this title, amending this section, sections 922 to 926 and 929 of this title, and section 5845 of Title 26, Internal Revenue Code, repealing title VII of Pub. L. 90–351, set out in the Appendix to this title, and enacting provisions set out as notes under this section] shall become effective one hundred and eighty days after the date of the enactment of this Act [May 19, 1986]. Upon their becoming effective, the Secretary shall publish and provide to all licensees a compilation of the State laws and published ordinances of which licensees are presumed to have knowledge pursuant to chapter 44 of title 18, United States Code, as amended by this Act. All amendments to such State laws and published ordinances as contained in the aforementioned compilation shall be published in the Federal Register, revised annually, and furnished to each person licensed under chapter 44 of title 18, United States Code, as amended by this Act.

''(b) PENDING ACTIONS, PETITIONS, AND APPELLATE PROCEEDINGS.—The amendments made by sections 103(6)(B), 105, and 107 of this Act [enacting section 926A of this title and amending sections 923 and 925 of this title] shall be applicable to any action, petition, or appellate proceeding pending on the date of the enactment of this Act [May 19, 1986].

''(c) MACHINEGUN PROHIBITION.—Section 102(9) [amending section 922 of this title] shall take effect on the date of the enactment of this Act [May 19, 1986].''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 105 of Pub. L. 90–618 provided that:

''(a) Except as provided in subsection (b), the provisions of chapter 44 of title 18, United States Code, as amended by section 102 of this title [amending this chapter], shall take effect on December 16, 1968.

''(b) The following sections of chapter 44 of title 18, United States Code, as amended by section 102 of this title shall take effect on the date of the enactment of this title [Oct. 22, 1968]: Sections 921, 922(*l*), 925(a)(1), and 925(d).''

EFFECTIVE DATE

Section 907 of title IV of Pub. L. 90–351 provided that: ''The amendments made by this title [enacting this chapter and provisions set out as notes under this section and repealing sections 901 to 910 of Title 15, Commerce and Trade] shall become effective one hundred and eighty days after the date of its enactment [June 19, 1968]; except that repeal of the Federal Firearms Act [sections 901 to 910 of Title 15] shall not in itself terminate any valid license issued pursuant to that Act and any such license shall be deemed valid until it shall expire according to its terms unless it be sooner revoked or terminated pursuant to applicable provisions of law.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–92, §5(a), Oct. 26, 2005, 119 Stat. 2099, provided that: ''This section [amending sections 922 and

924 of this title and enacting provisions set out as notes under section 922 of this title] may be cited as the 'Child Safety Lock Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–277, § 1, July 22, 2004, 118 Stat. 865, provided that: ''This Act [enacting sections 926B and 926C of this title] may be cited as the 'Law Enforcement Officers Safety Act of 2004'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–322, title XI, § 110101, Sept. 13, 1994, 108 Stat. 1996, provided that subtitle A (§§ 110101–110106) of title XI of Pub. L. 103–322 (amending this section and sections 922 to 924 of this title and enacting provisions set out as notes under this section) could be cited as the ''Public Safety and Recreational Firearms Use Protection Act'', prior to repeal by Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000, effective 10 years after Sept. 13, 1994.

SHORT TITLE OF 1993 AMENDMENT

Section 101 of title I of Pub. L. 103–159 provided that: ''This title [enacting section 925A of this title, amending this section, sections 922 and 924 of this title, and section 3759 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 922 of this title] may be cited as the 'Brady Handgun Violence Prevention Act'.''

Section 301 of title III of Pub. L. 103–159 provided that: ''This title [amending sections 922 to 924 of this title] may be cited as the 'Federal Firearms License Reform Act of 1993'.''

SHORT TITLE OF 1990 AMENDMENT

Section 1702(a) of Pub. L. 101–647 provided that: ''This section [amending this section and sections 922 and 924 of this title and enacting provisions set out as notes under this section and section 922 of this title] may be cited as the 'Gun-Free School Zones Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–649, § 1, Nov. 10, 1988, 102 Stat. 3816, provided that: ''This Act [amending sections 922, 924, and 925 of this title and enacting provisions set out as notes under section 922 of this title and section 1356 of former Title 49, Transportation] may be cited as the 'Undetectable Firearms Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–570, title I, subtitle I, § 1401, Oct. 27, 1986, 100 Stat. 3207–39, provided that: ''This subtitle [amending section 924 of this title] may be cited as the 'Career Criminals Amendment Act of 1986'.''

Section 1(a) of Pub. L. 99–308 provided that: ''This Act [enacting section 926A of this title, amending this section, sections 922 to 926 and 929 of this title, and section 5845 of Title 26, Internal Revenue Code, repealing title VII of Pub. L. 90–351, set out in the Appendix to this title, and enacting provisions set out as notes under this section] may be cited as the 'Firearms Owners' Protection Act'.''

SHORT TITLE

Section 1 of Pub. L. 90–618 provided: ''That this Act [enacting sections 5822, 5871 and 5872 of Title 26, Internal Revenue Code, amending this section, sections 922 to 928 of this title, and Appendix to this title, and sections 5801, 5802, 5811, 5812, 5821, 5841 to 5849, 5851 to 5854, 5861, 6806, and 7273 of Title 26, repealing sections 5692 and 6107 of Title 26, omitting sections 5803, 5813, 5814, 5831, 5855, and 5862 of Title 26, and enacting material set out as notes under this section and Appendix to this title, and section 5801 of Title 26] may be cited as the 'Gun Control Act of 1968'.''

CONSTRUCTION OF PUB. L. 103–159 WITH SECTION 552a OF TITLE 5

Section 105 of Pub. L. 103–159 provided that: ''This Act [enacting section 925A of this title, amending this section, sections 922 to 924 of this title, and section 3759 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 922 of this title] and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code.''

STATUTORY CONSTRUCTION; EVIDENCE

For provisions relating to statutory construction of, and admissibility of evidence regarding compliance or noncompliance with, the amendment by section 101(b) [title I, § 119(a)] of Pub. L. 105–277, see section 101(b) [title I, § 119(d)] of Pub. L. 105–277, set out as a note under section 923 of this title.

STUDY BY ATTORNEY GENERAL

Pub. L. 103–322, title XI, § 110104, Sept. 13, 1994, 108 Stat. 2000, which provided that the Attorney General was to study the effect of subtitle A (§§ 110101–110106) of title XI of Pub. L. 103–322 and to report the results of the study to Congress not later than 30 months after Sept. 13, 1994, was repealed by Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000, effective 10 years after Sept. 13, 1994.

CONGRESSIONAL FINDINGS AND DECLARATION

Section 1(b) of Pub. L. 99–308 provided that: ''The Congress finds that—

''(1) the rights of citizens—

''(A) to keep and bear arms under the second amendment to the United States Constitution;

''(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;

''(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and

''(D) against unconstitutional exercise of authority under the ninth and tenth amendments;

require additional legislation to correct existing firearms statutes and enforcement policies; and

''(2) additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968 [section 101 of Pub. L. 90–618, set out below], that 'it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.'.''

Section 101 of title I of Pub. L. 90–618 provided that: ''The Congress hereby declares that the purposes of this title [amending this chapter] is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.''

Section 901 of title IV of Pub. L. 90–351 provided that: ''(a) The Congress hereby finds and declares—

''(1) that there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce, and that the existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

''(2) that the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals, juveniles without the knowledge or consent of their parents or guardians, narcotics addicts, mental defectives, armed groups who would supplant the functions of duly constituted public authorities, and others whose possession of such weapon is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States;

''(3) that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible;

''(4) that the acquisition on a mail-order basis of firearms other than a rifle or shotgun by nonlicensed individuals, from a place other than their State of residence, has materially tended to thwart the effectiveness of State laws and regulations, and local ordinances;

''(5) that the sale or other disposition of concealable weapons by importers, manufacturers, and dealers holding Federal licenses, to nonresidents of the State in which the licensees' places of business are located, has tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms;

''(6) that there is a casual relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior;

''(7) that the United States has become the dumping ground of the castoff surplus military weapons of other nations, and that such weapons, and the large volume of relatively inexpensive pistols and revolvers (largely worthless for sporting purposes), imported into the United States in recent years, has contributed greatly to lawlessness and to the Nation's law enforcement problems;

''(8) that the lack of adequate Federal control over interstate and foreign commerce in highly destructive weapons (such as bazookas, mortars, antitank guns, and so forth, and destructive devices such as explosive or incendiary grenades, bombs, missiles, and so forth) has allowed such weapons and devices to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern;

''(9) that the existing licensing system under the Federal Firearms Act [former sections 901 to 910 of Title 15, Commerce and Trade] does not provide adequate license fees or proper standards for the granting or denial of licenses, and that this has led to licenses being issued to persons not reasonably entitled thereto, thus distorting the purposes of the licensing system.

''(b) The Congress further hereby declares that the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15, Commerce and Trade] is to cope with the conditions referred to in the foregoing subsection, and that it is not the purpose of this title [enacting this chapter and repealing sections 901 to 910 of Title 15] to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title [enacting this chapter and repealing sections 901 to 910 of Title 15] is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title [enacting this chapter and repealing sections 901 to 910 of Title 15].''

ADMINISTRATION AND ENFORCEMENT

Section 103 of title I of Pub. L. 90–618, as amended by Pub. L. 107–296, title XI, § 1112(s), Nov. 25, 2002, 116 Stat. 2279, provided that: ''The administration and enforcement of the amendment made by this title [amending this chapter] shall be vested in the Attorney General.''

Section 903 of title IV of Pub. L. 90–351 provided that: ''The administration and enforcement of the amendment made by this title [enacting this chapter and provisions set out as notes under this section] shall be vested in the Secretary of the Treasury [now Attorney General].''

MODIFICATION OF OTHER LAWS

Section 104 of title I of Pub. L. 90–618, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in this title or the amendment made thereby [amending this chapter] shall be construed as modifying or affecting any provision of—

''(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1986) [section 5801 et seq. of Title 26, Internal Revenue Code];

''(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

''(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.''

Section 904 of title IV of Pub. L. 90–351, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in this title or amendment made thereby [enacting this chapter and provisions set out as notes under this section] shall be construed as modifying or affecting any provision of—

''(a) the National Firearms Act (chapter 53 of the Internal Revenue Code of 1986) [section 5801 et seq. of Title 26, Internal Revenue Code]; or

''(b) section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control; or

''(c) section 1715 of title 18, United States Code, relating to nonmailable firearms.''

DEFINITION OF ''HANDGUN''

Section 10 of Pub. L. 99–408 provided that: ''For purposes of section 921(a)(17)(B) of title 18, United States Code, as added by the first section of this Act, 'handgun' means any firearm including a pistol or revolver designed to be fired by the use of a single hand. The term also includes any combination of parts from which a handgun can be assembled.''

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed

manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;[1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such per-

[1] So in original. Probably should be followed with ''and''.

son of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____

_____

Signature _____ Date _____."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who[2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such per-

[2] So in original. The word "who" probably should not appear.

son or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which

is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(*o*)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term ''firearm'' does not include the frame or receiver of any such weapon;

(B) the term ''major component'' means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term ''Security Exemplar'' means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17–4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a ''Security Exemplar'' which contains 3.7 ounces of material type 17–4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary[3] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of

[3] So in original. Probably should be followed by "of".

the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)[4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report

[4] See References in Text note below.

under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term ''chief law enforcement officer'' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique

identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term ''juvenile'' means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) PROVISIONS RELATING TO ALIENS ADMITTED UNDER NONIMMIGRANT VISAS.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''alien'' has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term ''nonimmigrant visa'' has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) WAIVER.—

(A) CONDITIONS FOR WAIVER.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) PETITION.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) APPROVAL OF PETITION.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

(C) DEFINED TERM.—As used in this paragraph, the term ''qualified civil liability action''—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub. L. 103–322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 228; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub. L. 97–377,

title I, §165(a), Dec. 21, 1982, 96 Stat. 1923; Pub. L. 99–308, §102, May 19, 1986, 100 Stat. 451; Pub. L. 99–408, §2, Aug. 28, 1986, 100 Stat. 920; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–649, §2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub. L. 100–690, title VII, §7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub. L. 101–647, title XVII, §1702(b)(1), title XXII, §§2201, 2202, 2204(b), title XXXV, §3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub. L. 103–159, title I, §102(a)(1), (b), title III, §302(a)–(c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub. L. 103–322, title XI, §§110102(a), 110103(a), 110105(2), 110106, 110201(a), 110401(b), (c), 110511, 110514, title XXXII, §§320904, 320927, title XXXIII, §330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub. L. 104–208, div. A, title I, §101(f) [title VI, §§657, 658(b)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–369, 3009–372; Pub. L. 104–294, title VI, §603(b), (c)(1), (d)–(f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub. L. 105–277, div. A, §101(b) [title I, §121], Oct. 21, 1998, 112 Stat. 2681–50, 2681–71; Pub. L. 107–273, div. B, title IV, §4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 107–296, title XI, §1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 109–92, §§5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101.)

AMENDMENT OF SECTION

Pub. L. 100–649, §2(f)(2)(A), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 105–277, div. A, §101(h) [title VI, §649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, §1(1), Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988, subsection (p) of this section is repealed.

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3), is December 16, 1968.

Section 5845 of the Internal Revenue Code of 1986, referred to in subsecs. (a)(4) and (b)(4), is classified to section 5845 of Title 26, Internal Revenue Code.

For date this subsection takes effect, referred to in subsec. (*o*)(2)(B), as May 19, 1986, see Effective Date of 1986 Amendment note, set out below.

The date of the enactment of this subsection and the date of the enactment of the Undetectable Firearms Act of 1988, referred to in subsec. (p)(2)(C)(i), (6), respectively, are both the date of enactment of Pub. L. 100–649, which enacted subsec. (p) of this section and which was approved Nov. 10, 1988.

The date of enactment of this subsection, referred to in subsec. (s)(1), is the date of enactment of Pub. L. 103–159, which was approved Nov. 30, 1993.

Section 5812 of the Internal Revenue Code of 1986, referred to in subsecs. (s)(1)(E) and (t)(3)(B), is classified to section 5812 of Title 26, Internal Revenue Code.

Section 1028 of this title, referred to in subsec. (s)(3)(A), was subsequently amended, and section 1028(d)(1) no longer defines the term ''identification document''. However, such term is defined elsewhere in that section.

Section 102 of the Controlled Substances Act, referred to in subsec. (s)(3)(B)(iii), is classified to section 802 of Title 21, Food and Drugs.

Section 103 of the Brady Handgun Violence Prevention Act, referred to in subsec. (t)(1), is section 103 of Pub. L. 103–159, which is set out below.

AMENDMENTS

2005—Subsec. (a)(7), (8). Pub. L. 109–92, §6(a), added pars. (7) and (8) and struck out former pars. (7) and (8) which related to prohibitions on the manufacture, importation, sale, and delivery of armor piercing ammunition.

Subsec. (z). Pub. L. 109–92, §5(c)(1), added subsec. (z).

2002—Subsecs. (a) to (c), (p)(2) to (4). Pub. L. 107–296, §1112(f)(6), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (p)(5)(A). Pub. L. 107–296, §1112(f)(4), substituted ''after consultation with the Attorney General'' for ''after consultation with the Secretary''.

Subsecs. (r), (s). Pub. L. 107–296, §1112(f)(6), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (t)(1)(C). Pub. L. 107–273 substituted ''1028(d)'' for ''1028(d)(1)''.

Subsecs. (t)(3), (5), (v), (w). Pub. L. 107–296, §1112(f)(6), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

1998—Subsec. (d)(5). Pub. L. 105–277, §101(b) [title I, §121(1)], added par. (5) and struck out former par. (5) which read as follows: ''who, being an alien, is illegally or unlawfully in the United States;''.

Subsec. (g)(5). Pub. L. 105–277, §101(b) [title I, §121(2)], added par. (5) and struck out former par. (5) which read as follows: ''who, being an alien, is illegally or unlawfully in the United States;''.

Subsec. (s)(3)(B)(v). Pub. L. 105–277, §101(b) [title I, §121(3)], added cl. (v) and struck out former cl. (v) which read as follows: ''is not an alien who is illegally or unlawfully in the United States;''.

Subsec. (y). Pub. L. 105–277, §101(b) [title I, §121(4)], added subsec. (y).

1996—Pub. L. 104–294, §603(g), amended Appendix A by substituting ''Uberti 1866 Sporting Rifle'' for ''Uberti 1866 Sporting Rilfe'' in category designated ''Centerfire Rifles—Lever & Slide'', ''Sako FiberClass Sporter'' for ''Sako Fiberclass Sporter'' in category designated ''Centerfire Rifles—Bolt Action'', ''Remington 870 SPS Special Purpose Magnum'' for ''Remington 879 SPS Special Purpose Magnum'' in category designated ''Shotguns—Slide Actions'', and ''E.A.A./Sabatti Falcon-Mon Over/Under'' for ''E.A.A/Sabatti Falcon-Mon Over/Under'' in category designated ''Shotguns—Over/Unders''.

Subsec. (d)(9). Pub. L. 104–208, §101(f) [§658(b)(1)], added par. (9).

Subsec. (g)(7). Pub. L. 104–208, §101(f) [§658(b)(2)(A)], struck out ''or'' at end.

Subsec. (g)(8)(C)(ii). Pub. L. 104–294, §603(b), which directed the amendment of cl. (ii) by substituting a semicolon for the comma at end, could not be executed because of the prior amendment by Pub. L. 104–208, §101(f) [§658(b)(2)]. See below.

Pub. L. 104–208, §101(f) [§658(b)(2)(B)], substituted ''; or'' for comma at end.

Subsec. (g)(9). Pub. L. 104–208, §101(f) [§658(b)(2)(C)], added par. (9).

Subsec. (q). Pub. L. 104–208, §101(f) [title VI, §657], amended subsec. generally, revising and restating former provisions.

Subsec. (s)(1). Pub. L. 104–294, §603(c)(1), amended directory language of Pub. L. 103–322, §320927. See 1994 Amendment note below.

Subsec. (s)(3)(B)(i). Pub. L. 104–208, §101(f) [title VI, §658(b)(3)], inserted '', and has not been convicted in any court of a misdemeanor crime of domestic violence'' before the semicolon.

Subsec. (t)(2). Pub. L. 104–294, §603(d), substituted ''subsection (g) or (n)'' for ''section 922(g) or (n)'' in introductory provisions.

Subsec. (w)(4). Pub. L. 104–294, §603(e), substituted ''section 923(i) of this title'' for ''section 923(i) of title 18, United States Code,''.

Subsec. (x). Pub. L. 104–294, §603(f)(1), amended directory language of Pub. L. 103–322, §110201(a). See 1994 Amendment note below.

1994—Pub. L. 103–322, §110106, which added Appendix A specifying firearms that were not prohibited by subsec. (v)(1) at end of section, was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(9). Pub. L. 103–322, §110514, added par. (9).

Subsec. (b)(1). Pub. L. 103–322, §330011(i), amended directory language of Pub. L. 101–647, §3524. See 1990 Amendment note below.

Subsec. (d)(8). Pub. L. 103–322, § 110401(b), added par. (8).

Subsec. (g)(8). Pub. L. 103–322, § 110401(c), added par. (8).

Subsec. (j). Pub. L. 103–322, § 110511, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.''

Subsec. (q). Pub. L. 103–322, § 320904, added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (s)(1). Pub. L. 103–322, § 320927, as amended by Pub. L. 104–294, § 603(c)(1), inserted ''(other than the return of a handgun to the person from whom it was received)'' after ''handgun'' in introductory provisions.

Subsec. (v). Pub. L. 103–322, § 110102(a), which added subsec. (v) prohibiting the manufacture, transfer, or possession of automatic assault weapons, was repealed by Pub. L. 103–322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (w). Pub. L. 103–322, § 110103(a), which added subsec. (w) prohibiting the transfer or possession of a large capacity ammunition feeding device, was repealed by Pub. L. 103–322, § 110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (x). Pub. L. 103–322, § 110201(a), as amended by Pub. L. 104–294, § 603(f)(1), added subsec. (x).

1993—Subsec. (e). Pub. L. 103–159, § 302(a), inserted at end ''No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.''

Subsec. (f). Pub. L. 103–159, § 302(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (s). Pub. L. 103–159, § 102(a)(1), added subsec. (s).

Subsec. (t). Pub. L. 103–159, § 102(b), added subsec. (t).

Subsec. (u). Pub. L. 103–159, § 302(c), added subsec. (u).

1990—Subsec. (a)(5). Pub. L. 101–647, § 2201, substituted ''does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides;'' for ''resides in any State other than that in which the transferor resides (or other than that in which its place of business is located if the transferor is a corporation or other business entity);''.

Subsec. (b)(1). Pub. L. 101–647, § 3524, as amended by Pub. L. 103–322, § 330011(i), substituted semicolon for period at end.

Subsec. (j). Pub. L. 101–647, § 2202(a), substituted ''which constitutes, or which has been shipped or transported in'' for ''or which constitutes''.

Subsec. (k). Pub. L. 101–647, § 2202(b), inserted before period at end ''or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce''.

Subsec. (q). Pub. L. 101–647, § 1702(b)(1), added subsec. (q).

Subsec. (r). Pub. L. 101–647, § 2204(b), added subsec. (r).

1988—Subsec. (g)(3). Pub. L. 100–690 inserted ''who'' before ''is''.

Subsec. (p). Pub. L. 100–649 added subsec. (p).

1986—Subsec. (a)(1). Pub. L. 99–308, § 102(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce;''

Subsec. (a)(2). Pub. L. 99–308, § 102(2)(A), in provision preceding subpar. (A) struck out ''or ammunition'' after ''any firearm''.

Subsec. (a)(2)(A). Pub. L. 99–308, § 102(2)(B), substituted ''licensed dealer, or licensed collector'' for ''or licensed dealer for the sole purpose of repair or customizing''.

Subsec. (a)(3)(B). Pub. L. 99–308, § 102(3), substituted ''firearm'' for ''rifle or shotgun'' and ''with subsection (b)(3) of this section'' for ''with the provisions of subsection (b)(3) of this section''.

Subsec. (a)(4). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(7), (8). Pub. L. 99–408 added pars. (7) and (8).

Subsec. (b)(2). Pub. L. 99–308, § 102(4)(A), struck out ''or ammunition'' after ''firearm'' in two places.

Subsec. (b)(3)(A). Pub. L. 99–308, § 102(4)(B), inserted a new cl. (A) and struck out former cl. (A) which provided that par. (3) ''shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises,''.

Subsec. (b)(3)(B), (C). Pub. L. 99–308, § 102(4)(C), (D), inserted ''and'' before ''(B)'' and struck out cl. (C), which provided that par. (3) ''shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail''.

Subsec. (b)(4). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(5). Pub. L. 99–308, § 102(4)(E), substituted ''or armor-piercing ammunition'' for ''or ammunition except .22 caliber rimfire ammunition''.

Subsec. (d). Pub. L. 99–308, § 102(5)(A), substituted ''person'' for ''licensed importer, licensed manufacturer, licensed dealer, or licensed collector'' in provision preceding par. (1).

Subsec. (d)(3). Pub. L. 99–308, § 102(5)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or''.

Subsec. (d)(5) to (7). Pub. L. 99–308, § 102(5)(C), (D), added pars. (5) to (7).

Subsec. (g). Pub. L. 99–308, § 102(6)(D), in concluding provision substituted ''in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce'' for ''any firearm or ammunition in interstate or foreign commerce''.

Subsec. (g)(1). Pub. L. 99–308, § 102(6)(A), struck out ''is under indictment for, or who'' after ''who''.

Subsec. (g)(3). Pub. L. 99–308, § 102(6)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined

in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or''.

Subsec. (g)(5) to (7). Pub. L. 99–308, §102(6)(C), added pars. (5) to (7).

Subsec. (h). Pub. L. 99–308, §102(7), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''It shall be unlawful for any person—

''(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

''(2) who is a fugitive from justice;

''(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

''(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.''

Subsec. (n). Pub. L. 99–308, §102(8), added subsec. (n).

Subsec. (*o*). Pub. L. 99–308, §102(9), added subsec. (*o*).

1982—Subsec. (b)(5). Pub. L. 97–377 inserted ''except .22 caliber rimfire ammunition'' after ''or ammunition''.

1968—Subsec. (a)(1). Pub. L. 90–618 reenacted par. (1) without change.

Subsec. (a)(2). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees subject to the provisions of this chapter, struck out exemption for the shipment or transportation in interstate or foreign commerce for rifles or shotguns, and inserted exemption authorizing an individual to mail a lawfully owned firearm to the specified licensees for the sole purpose of repair or customizing.

Subsec. (a)(3). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees, struck out exemption for shotguns or rifles purchased or otherwise obtained outside the state of residence of the recipient, struck out provision making it unlawful for any person to purchase or otherwise obtain outside his state of residence any firearm which it would be unlawful for him to purchase or possess in that state, and provided for exemptions when any person outside of his state of residence acquires a firearm by bequest or interstate succession and transports the firearm or otherwise receives it in his state of residence, if it is lawful for such person to purchase or possess such firearm in his state of residence, when a rifle or shotgun is obtained in conformity with the provisions of subsec. (b)(3) of this section, and when any firearm has been acquired in any state prior to the effective date of this chapter.

Subsec. (a)(4). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees, and provided that the transporting of the specified articles be authorized by the Secretary when consistent with public safety and necessity.

Subsec. (a)(5). Pub. L. 90–618 added licensed collectors to the enumerated list of exempted licensees, prohibited the transfer, etc., of any firearm when the transferor has reasonable cause to believe that the transferee resides in a State other than that in which the transferor resides, and substituted provisions which exempted the transfer, transportation, or delivery of firearms incident to a bequest or intestate succession and the loan or rental of firearms to any person for temporary use for lawful sporting purposes for provisions which exempted the transfer of shotguns or rifles and prohibited the transfer, etc., of any firearm which the transferee could not lawfully purchase or possess in accord with the applicable laws, regulations or ordinances of the state or political subdivision in which the transferee resides.

Subsec. (a)(6). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees, and extended the provisions to include the acquisition or attempted acquisition of ammunition.

Subsec. (b). Pub. L. 90–618, in provision preceding par. (1), added licensed collectors to the enumerated list of licensees.

Subsec. (b)(1). Pub. L. 90–618 substituted provisions making it unlawful to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than 18, and to sell or deliver any firearm, other than a rifle or shotgun, or ammunition, other than ammunition for a rifle or shotgun, to any individual who the licensee knows or has reasonable cause to believe is less than 21, for provisions making it unlawful to sell or deliver any firearm to any individual who the licensee knows or has reasonable cause to believe is less than 21, if the firearm is other than a shotgun or rifle.

Subsec. (b)(2). Pub. L. 90–618 extended the prohibition to include the sale or delivery of ammunition to any person where the purchase or possession by such person of such ammunition would be unlawful, and struck out ''or in the locality in which such person resides'' after ''or other disposition,''.

Subsec. (b)(3). Pub. L. 90–618 inserted the exemptions to the prohibition against the sale or delivery of any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in the state in which the licensee's place of business is located.

Subsec. (b)(4). Pub. L. 90–618 substituted provisions making it unlawful to sell or deliver any of the specified articles, except as specifically authorized by the Secretary as consistent with public safety and necessity, for provisions making it unlawful to sell or deliver any of the specified articles, unless the transferor has obtained a sworn statement executed by the principal law enforcement officer of the locality in which the transferee resides stating that such person's receipt or possession would not be unlawful, and that the receipt or possession is intended for lawful purposes, with such sworn statement to be retained by the licensee as part of the records required to be kept under this chapter.

Subsec. (b)(5). Pub. L. 90–618 extended the prohibition to include the sale or delivery of ammunition and, in the material following subsec. (b)(5), added licensed collectors to the enumerated list of licensees, and the provision that subsec. (b)(4) shall not apply to a sale or delivery to any research organization designated by the Secretary.

Subsecs. (c), (d). Pub. L. 90–618 added subsec. (c), redesignated former subsec. (c) as (d), added licensed collectors to the enumerated list of licensees, extended the prohibition against disposal of firearms or ammunition to include the disposal by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution, and inserted ''or ammunition'' after ''the sale or disposition of a firearm''. Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 90–618 added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 90–618 redesignated former subsec. (d) as (f) and extended the prohibition against transportation or delivery to include ammunition. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 90–618 redesignated former subsec. (e) as (g) and extended the prohibition against the shipment or transportation of firearms or ammunition to include the shipment or transportation by any persons who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to a mental institution. Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 90–618 redesignated former subsec. (f) as (h) and extended the prohibition against the receipt of any firearms or ammunition to include the receipt by any person who is an unlawful user of or addicted to marihuana or any depressant, stimulant, or narcotic drug, or any person who has been adjudicated a mental defective or has been committed to any mental institution. Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 90–618 redesignated former subsec. (g) as (i) and substituted ''that the firearm or ammunition was'' for ''the same to have been''. Former subsec. (i) redesignated (k).

Subsec. (j). Pub. L. 90–618 redesignated former subsec. (h) as (j) and substituted ''which is moving as, which is a part of,'' for ''moving as or which is a part of'' and ''that the firearm or ammunition was'' for ''the same to have been''. Former subsec. (j) redesignated (*l*).

Subsec. (k). Pub. L. 90–618 redesignated former subsec. (i) as (k). Former subsec. (k) redesignated (m).

Subsec. (*l*). Pub. L. 90–618 redesignated former subsec. (j) as (*l*).

Subsec. (m). Pub. L. 90–618 redesignated former subsec. (k) as (m) and added licensed collectors to the enumerated list of licensees.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

Post Office Department, referred to in subsec. (c)(2), redesignated United States Postal Service pursuant to Pub. L. 91–375, § 6(*o*), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–92, § 5(d), Oct. 26, 2005, 119 Stat. 2101, provided that: ''This section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] and the amendments made by this section shall take effect 180 days after the date of enactment of this Act [Oct. 26, 2005].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 603(c)(2) of Pub. L. 104–294 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 320927 of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

Section 603(f)(2) of Pub. L. 104–294 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 110201 of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

Section 603(i)(2) of Pub. L. 104–294 provided that: ''The amendment made by paragraph (1) [amending section 210603(b) of Pub. L. 103–322, which amended sections 103(k) and 106(b)(2) of Pub. L. 103–159, set out as notes below] shall take effect as if the amendment had been included in section 210603(b) of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by sections 110102(a), 110103(a), and 110106 of Pub. L. 103–322 repealed 10 years after Sept. 13, 1994, see section 110105(2) of Pub. L. 103–322, formerly set out as a note under section 921 of this title.

Section 330011(i) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3524 of Pub. L. 101–647 took effect.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1702(b)(1) of Pub. L. 101–647 applicable to conduct engaged in after the end of the 60-day period beginning on Nov. 29, 1990, see section 1702(b)(4) of Pub. L. 101–647, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT; SUNSET PROVISION

Pub. L. 100–649, § 2(f), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 101–647, title XXXV, § 3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub. L. 105–277, div. A, § 101(h) [title VI, § 649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, § 1, Dec. 9, 2003, 117 Stat. 2481, provided that:

''(1) EFFECTIVE DATE.—This Act and the amendments made by this Act [amending this section and sections 924 and 925 of this title and enacting provisions set out as notes under this section, section 921 of this title, and section 1356 of former Title 49, Transportation] shall take effect on the 30th day beginning after the date of the enactment of this Act [Nov. 10, 1988].

''(2) Sunset.—Effective 25 years after the effective date of this Act—

''(A) subsection (p) of section 922 of title 18, United States Code, is hereby repealed;

''(B) subsection (f) of section 924 of such title is hereby repealed and subsections (g) through (*o*) of such section are hereby redesignated as subsections (f) through (n), respectively;

''(C) subsection (f) of section 925 of such title is hereby repealed;

''(D) section 924(a)(1) of such title is amended by striking 'this subsection, subsection (b), (c), or (f) of this section, or in section 929' and inserting 'this chapter'; and

''(E) section 925(a) of such title is amended—

''(i) in paragraph (1), by striking 'and provisions relating to firearms subject to the prohibitions of section 922(p)'; and

''(ii) in paragraph (2), by striking ', except for provisions relating to firearms subject to the prohibitions of section 922(p),'; and

''(iii) in each of paragraphs (3) and (4), by striking 'except for provisions relating to firearms subject to the prohibitions of section 922(p),'.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 102(1)–(8) of Pub. L. 99–308 effective 180 days after May 19, 1986, and amendment by section 102(9) of Pub. L. 99–308 effective May 19, 1986, see section 110(a), (c) of Pub. L. 99–308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, except subsec. (*l*) effective Oct. 22, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

PURPOSES

Pub. L. 109–92, § 5(b), Oct. 26, 2005, 119 Stat. 2099, provided that: ''The purposes of this section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] are—

''(1) to promote the safe storage and use of handguns by consumers;

''(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

''(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.''

[For definition of ''person'' as used in section 5(b) of Pub. L. 109–92, set out above, see section 7903 of Title 15, Commerce and Trade.]

LIABILITY; EVIDENCE

Pub. L. 109–92, §5(c)(3), Oct. 26, 2005, 119 Stat. 2101, provided that:

''(A) LIABILITY.—Nothing in this section [amending this section and section 924 of this title and enacting provisions set out as notes under this section and section 921 of this title] shall be construed to—

''(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

''(ii) establish any standard of care.

''(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

''(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.''

[For definition of ''person'' as used in section 5(c)(3) of Pub. L. 109–92, set out above, see section 7903 of Title 15, Commerce and Trade.]

CRIMINAL BACKGROUND CHECKS FOR PERSONS OFFERING FIREARM AS COLLATERAL

Pub. L. 106–58, title VI, §634, Sept. 29, 1999, 113 Stat. 473, provided that: ''None of the funds made available in this or any other Act with respect to any fiscal year may be used for any system to implement section 922(t) of title 18, United States Code, unless the system allows, in connection with a person's delivery of a firearm to a Federal firearms licensee as collateral for a loan, the background check to be performed at the time the collateral is offered for delivery to such licensee: *Provided*, That the licensee notifies local law enforcement within 48 hours of the licensee receiving a denial on the person offering the collateral: *Provided further*, That the provisions of section 922(t) shall apply at the time of the redemption of the firearm.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–277, div. A, §101(h) [title VI, §655], Oct. 21, 1998, 112 Stat. 2681–480, 2681–530.

AVAILABILITY OF VIOLENT CRIME REDUCTION TRUST FUND TO FUND ACTIVITIES AUTHORIZED BY BRADY HANDGUN VIOLENCE PREVENTION ACT AND NATIONAL CHILD PROTECTION ACT OF 1993

Pub. L. 103–322, title XXI, §210603(a), Sept. 13, 1994, 108 Stat. 2074, which provided that certain amounts authorized in sections 103(k) and 106(b)(2) of Pub. L. 103–159, set out below, and section 5119b(b) of Title 42, The Public Health and Welfare, may be appropriated from the Violent Crime Reduction Trust Fund, was repealed by Pub. L. 109–162, title XI, §1154(b)(4), Jan. 5, 2006, 119 Stat. 3113.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Section 103 of Pub. L. 103–159, as amended by Pub. L. 103–322, title XXI, §210603(b), Sept. 13, 1994, 103 Stat. 2074; Pub. L. 104–294, title VI, §603(h), (i)(1), Oct. 11, 1996, 110 Stat. 3504, provided that:

''(a) DETERMINATION OF TIMETABLES.—Not later than 6 months after the date of enactment of this Act [Nov. 30, 1993], the Attorney General shall—

''(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

''(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

''(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

''(b) ESTABLISHMENT OF SYSTEM.—Not later than 60 months after the date of the enactment of this Act [Nov. 30, 1993], the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

''(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

''(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

''(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

''(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

''(d) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

''(e) ADMINISTRATIVE PROVISIONS.—

''(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

''(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

''(f) WRITTEN REASONS PROVIDED ON REQUEST.—If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

''(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

''(h) REGULATIONS.—After 90 days' notice to the public and an opportunity for hearing by interested par-

ties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

''(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

''(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

''(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922(g) or (n) of title 18, United States Code, or State law, from receiving a firearm.

''(j) DEFINITIONS.—As used in this section:

''(1) LICENSEE.—The term 'licensee' means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

''(2) OTHER TERMS.—The terms 'firearm', 'handgun', 'licensed importer', 'licensed manufacturer', and 'licensed dealer' have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to enable the Attorney General to carry out this section.''

FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS

Section 106(b) of Pub. L. 103–159, as amended by Pub. L. 103–322, title XXI, § 210603(b), Sept. 13, 1994, 103 Stat. 2074; Pub. L. 104–294, title VI, § 603(i)(1), Oct. 11, 1996, 110 Stat. 3504, provided that:

''(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act [Nov. 30, 1993] have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

''(A) for the creation of a computerized criminal history record system or improvement of an existing system;

''(B) to improve accessibility to the national instant criminal background system; and

''(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1) a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.''

GUN-FREE ZONE SIGNS

Section 1702(b)(5) of Pub. L. 101–647 provided that: ''Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone.''

IDENTIFICATION OF FELONS AND OTHER PERSONS INELIGIBLE TO PURCHASE HANDGUNS

Section 6213 of Pub. L. 100–690 provided that:

''(a) IDENTIFICATION OF FELONS INELIGIBLE TO PURCHASE HANDGUNS.—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

''(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 18, 1988], the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

''(c) ADDITIONAL STUDY OF OTHER PERSONS INELIGIBLE TO PURCHASE FIREARMS.—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act [Nov. 18, 1988] and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

''(d) DEFINITIONS.—As used in this section, the terms 'firearm' and 'dealer' shall have the meanings given such terms in section 921(a) of title 18, United States Code.''

STUDIES TO IDENTIFY EQUIPMENT CAPABLE OF DISTINGUISHING SECURITY EXEMPLAR FROM OTHER METAL OBJECTS LIKELY TO BE CARRIED ON ONE'S PERSON

Section 2(e) of Pub. L. 100–649 provided that: ''The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall each conduct studies to identify available state-of-the-art equipment capable of detecting the Security Exemplar (as defined in section 922(p)(2)(C) of title 18, United States Code) and distinguishing the Security Exemplar from innocuous metal objects likely to be carried on one's person. Such studies shall be completed within 6 months after the date of the enactment of this Act [Nov. 10, 1988] and shall include a schedule providing for the installation of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be installed in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning the use of secondary security equipment and procedures to enhance detection capability at security checkpoints.''

§ 923. Licensing

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year;

(B) of firearms other than destructive devices, a fee of $50 per year; or

(C) of ammunition for firearms, other than ammunition for destructive devices or armor piercing ammunition, a fee of $10 per year.

(2) If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of $1,000 per year; or

(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing ammunition, a fee of $50 per year.

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of $200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility as the Attorney General shall by regulation prescribe. The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

(c) Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, subject to the provisions of this chapter and other applicable provisions of law, shall entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce during the period stated in the license. Nothing in this chapter shall be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms, subject only to such restrictions as apply in this chapter to dispositions by a person other than a licensed manufacturer, importer, or dealer. If any firearm is so disposed of by a licensee within one year after its transfer from his business inventory into such licensee's personal collection or if such disposition or any other acquisition is made for the purpose of willfully evading the restrictions placed upon licensees by this chapter, then such firearm shall be deemed part of such licensee's business inventory, except that any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and who sells or otherwise disposes of such firearm shall record the description of the firearm in a bound volume, containing the name and place of residence and date of birth of the transferee if the transferee is an individual, or the identity and principal and local places of business of the transferee if the transferee is a corporation or other business entity: *Provided*, That no other recordkeeping shall be required.

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (n) of this chapter;

(C) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder;

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application;

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time;

(F) the applicant certifies that—

(i) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premise is located;

(ii)(I) within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business; and

(II) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met; and

(iii) that the applicant has sent or delivered a form to be prescribed by the Attorney General, to the chief law enforcement officer of the locality in which the premises are located, which indicates that the applicant intends to apply for a Federal firearms license; and

(G) in the case of an application to be licensed as a dealer, the applicant certifies that secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees (subject to the exception that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement under this subparagraph to make available such a device).

(2) The Attorney General must approve or deny an application for a license within the 60-day period beginning on the date it is received. If the Attorney General fails to act within such

period, the applicant may file an action under section 1361 of title 28 to compel the Attorney General to act. If the Attorney General approves an applicant's application, such applicant shall be issued a license upon the payment of the prescribed fee.

(e) The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device). The Attorney General may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's[1] action under this subsection may be reviewed only as provided in subsection (f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is revoked shall receive a written notice from the Attorney General stating specifically the grounds upon which the application was denied or upon which the license was revoked. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the Attorney General denies an application for, or revokes, a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation of a license, the Attorney General shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Attorney General decides not to reverse his decision to deny an application or revoke a license, the Attorney General shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Attorney General was not authorized to deny the application or to revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Attorney General shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges. No proceedings for the revocation of a license shall be instituted by the Attorney General more than one year after the filing of the indictment or information.

(g)(1)(A) Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section. The Attorney General, when he has reasonable cause to believe a violation of this chapter has occurred and that evidence thereof may be found on such premises, may, upon demonstrating such cause before a Federal magistrate judge and securing from such magistrate judge a warrant authorizing entry, enter during business hours the premises (including places of storage) of any licensed firearms importer, licensed manufacturer, licensed dealer, licensed collector, or any licensed importer or manufacturer of ammunition, for the purpose of inspecting or examining—

(i) any records or documents required to be kept by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector under this chapter or rules or regulations under this chapter, and

(ii) any firearms or ammunition kept or stored by such licensed importer, licensed manufacturer, licensed dealer, or licensed collector, at such premises.

(B) The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant—

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping requirements of this chapter—

(I) not more than once during any 12-month period; or

(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(C) The Attorney General may inspect the inventory and records of a licensed collector without such reasonable cause or warrant—

[1] So in original. Probably should be ''Attorney General's''.

(i) for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or

(ii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

(D) At the election of a licensed collector, the annual inspection of records and inventory permitted under this paragraph shall be performed at the office of the Attorney General designated for such inspections which is located in closest proximity to the premises where the inventory and records of such licensed collector are maintained. The inspection and examination authorized by this paragraph shall not be construed as authorizing the Attorney General to seize any records or other documents other than those records or documents constituting material evidence of a violation of law. If the Attorney General seizes such records or documents, copies shall be provided the licensee within a reasonable time. The Attorney General may make available to any Federal, State, or local law enforcement agency any information which he may obtain by reason of this chapter with respect to the identification of persons prohibited from purchasing or receiving firearms or ammunition who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition, and he may provide information to the extent such information may be contained in the records required to be maintained by this chapter, when so requested by any Federal, State, or local law enforcement agency.

(2) Each licensed collector shall maintain in a bound volume the nature of which the Attorney General may by regulations prescribe, records of the receipt, sale, or other disposition of firearms. Such records shall include the name and address of any person to whom the collector sells or otherwise disposes of a firearm. Such collector shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, except as expressly required by this section.

(3)(A) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.

(4) Where a firearms or ammunition business is discontinued and succeeded by a new licensee, the records required to be kept by this chapter shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, such records shall be delivered within thirty days after the business discontinuance to the Attorney General. However, where State law or local ordinance requires the delivery of records to other responsible authority, the Attorney General may arrange for the delivery of such records to such other responsible authority.

(5)(A) Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

(B) The Attorney General may authorize such record information to be submitted in a manner other than that prescribed in subparagraph (A) of this paragraph when it is shown by a licensee that an alternate method of reporting is reasonably necessary and will not unduly hinder the effective administration of this chapter. A licensee may use an alternate method of reporting if the licensee describes the proposed alternate method of reporting and the need therefor in a letter application submitted to the Attorney General, and the Attorney General approves such alternate method of reporting.

(6) Each licensee shall report the theft or loss of a firearm from the licensee's inventory or collection, within 48 hours after the theft or loss is discovered, to the Attorney General and to the appropriate local authorities.

(7) Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation. The requested information shall be provided orally or in writing, as the Attorney General may require. The Attorney General shall implement a system whereby the licensee can positively identify and establish that an individual requesting information via telephone is employed by and authorized by the agency to request such information.

(h) Licenses issued under the provisions of subsection (c) of this section shall be kept post-

ed and kept available for inspection on the premises covered by the license.

(i) Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.

(j) A licensed importer, licensed manufacturer, or licensed dealer may, under rules or regulations prescribed by the Attorney General, conduct business temporarily at a location other than the location specified on the license if such temporary location is the location for a gun show or event sponsored by any national, State, or local organization, or any affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms in the community, and such location is in the State which is specified on the license. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or other disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license. Nothing in this subsection shall authorize any licensee to conduct business in or from any motorized or towed vehicle. Notwithstanding the provisions of subsection (a) of this section, a separate fee shall not be required of a licensee with respect to business conducted under this subsection. Any inspection or examination of inventory or records under this chapter by the Attorney General at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall be construed to authorize the Attorney General to inspect or examine the inventory or records of a licensed importer, licensed manufacturer, or licensed dealer at any location other than the location specified on the license. Nothing in this subsection shall be construed to diminish in any manner any right to display, sell, or otherwise dispose of firearms or ammunition, which is in effect before the date of the enactment of the Firearms Owners' Protection Act, including the right of a licensee to conduct ''curios or relics'' firearms transfers and business away from their business premises with another licensee without regard as to whether the location of where the business is conducted is located in the State specified on the license of either licensee.

(k) Licensed importers and licensed manufacturers shall mark all armor piercing projectiles and packages containing such projectiles for distribution in the manner prescribed by the Attorney General by regulation. The Attorney General shall furnish information to each dealer licensed under this chapter defining which projectiles are considered armor piercing ammunition as defined in section 921(a)(17)(B).

(*l*) The Attorney General shall notify the chief law enforcement officer in the appropriate State and local jurisdictions of the names and addresses of all persons in the State to whom a firearms license is issued.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 231; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1221; Pub. L. 92–377, title I, § 165(b), Dec. 21, 1982, 96 Stat. 1923; Pub. L. 99–308, § 103, May 19, 1986, 100 Stat. 453; Pub. L. 99–360, § 1(c), July 8, 1986, 100 Stat. 766; Pub. L. 99–408, §§ 3–7, Aug. 28, 1986, 100 Stat. 921; Pub. L. 100–690, title VII, § 7060(d), Nov. 18, 1988, 102 Stat. 4404; Pub. L. 101–647, title XXII, § 2203(a), title XXXV, § 3525, Nov. 29, 1990, 104 Stat. 4857, 4924; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–159, title II, § 201, title III, § 303, Nov. 30, 1993, 107 Stat. 1544, 1545; Pub. L. 103–322, title XI, §§ 110102(d), 110103(d), 110105(2), 110301(a), 110302–110307, title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1998–2000, 2012–2014, 2145; Pub. L. 104–208, div. A, title I, § 101(f) [title I, § 118], Sept. 30, 1996, 110 Stat. 3009–314, 3009–326; Pub. L. 104–294, title VI, § 603(j)(1), (k), (*l*), Oct. 11, 1996, 110 Stat. 3504, 3505; Pub. L. 105–277, div. A, § 101(b) [title I, § 119(b), (c)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–69; Pub. L. 107–296, title XI, § 1112(f)(5), (6), Nov. 25, 2002, 116 Stat. 2276.)

REFERENCES IN TEXT

The effective date of this subparagraph, referred to in subsec. (g)(3)(B), is the date of enactment of Pub. L. 103–159, which was approved Nov. 30, 1993.

The date of the enactment of the Firearms Owners' Protection Act, referred to in subsec. (j), is the date of enactment of Pub. L. 99–308, which was approved May 19, 1986.

AMENDMENTS

2002—Subsecs. (a) to (g), (i) to (k). Pub. L. 107–296, § 1112(f)(6), substituted ''Attorney General'' for ''Secretary'' wherever appearing.

Subsec. (*l*). Pub. L. 107–296, § 1112(f)(5), substituted ''Attorney General'' for ''Secretary of the Treasury''.

1998—Subsec. (d)(1)(G). Pub. L. 105–277, § 101(b) [title I, § 119(b)], added subpar. (G).

Subsec. (e). Pub. L. 105–277, § 101(b) [title I, § 119(c)], inserted before period at end of first sentence ''or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device)''.

1996—Subsec. (g)(1)(B)(ii). Pub. L. 104–294, § 603(k), substituted ''; or'' for period at end of subcl. (II) and realigned margins.

Subsec. (g)(3)(A). Pub. L. 104–294, § 603(j)(1), amended directory language of Pub. L. 103–159, § 201(1). See 1993 Amendment note below.

Subsec. (j). Pub. L. 104–208 substituted for period at end '', including the right of a licensee to conduct 'curios or relics' firearms transfers and business away from their business premises with another licensee without regard as to whether the location of where the business is conducted is located in the State specified on the license of either licensee.''

Subsec. (*l*). Pub. L. 104–294, § 603(*l*), redesignated last subsec. as subsec. (*l*) and realigned margins.

1994—Subsec. (a). Pub. L. 103–322, § 110301(a), inserted ''and shall include a photograph and fingerprints of the applicant'' after ''regulation prescribe'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 103–322, § 330011(i), amended directory language of Pub. L. 101–647, § 3525. See 1990 Amendment note below.

Subsec. (d)(1)(F). Pub. L. 103–322, § 110302, added subpar. (F).

Subsec. (d)(2). Pub. L. 103–322, § 110303, substituted ''60-day period'' for ''forty-five-day period''.

Subsec. (g)(1)(B)(ii). Pub. L. 103–322, §110304, amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''for ensuring compliance with the record keeping requirements of this chapter not more than once during any twelve-month period; or''.

Subsec. (g)(6). Pub. L. 103–322, §110305, added par. (6).

Subsec. (g)(7). Pub. L. 103–322, §110306, added par. (7).

Subsec. (i). Pub. L. 103–322, §110103(d), which inserted at end ''A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.'', was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Pub. L. 103–322, §110102(d), which inserted penultimate sentence which read as follows: ''The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured.'', was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (*l*). Pub. L. 103–322, §110307, which directed the amendment of this section by adding subsec. (1) at end, was executed by adding subsec. (*l*) at end to reflect the probable intent of Congress.

1993—Subsec. (a)(3)(A). Pub. L. 103–159, §303(1), inserted ''or'' at end of subpar. (A).

Subsec. (a)(3)(B). Pub. L. 103–159, §303(2), (3), substituted ''who is not a dealer in destructive devices, a fee of $200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.'' for ''who is a pawnbroker dealing in firearms other than destructive devices, a fee of $25 per year; or''.

Subsec. (a)(3)(C). Pub. L. 103–159, §303(4), struck out subpar. (C) which read as follows: ''who is not a dealer in destructive devices or a pawnbroker, a fee of $10 per year.''

Subsec. (g)(3). Pub. L. 103–159, §201, as amended by Pub. L. 104–294, §603(j)(1), designated existing provisions as subpar. (A), inserted ''and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,'' after ''thereon'', and added subpar. (B).

1990—Subsec. (a)(3)(B). Pub. L. 101–647, §3525, as amended by Pub. L. 103–322, §330011(i), inserted a comma after ''devices''.

Subsec. (d)(1)(B). Pub. L. 101–647, §2203(a), substituted ''(n)'' for ''(h)''.

1988—Subsec. (a). Pub. L. 100–690, §7060(d)(1), struck out period after ''licensing'' in introductory provisions.

Subsec. (f)(3). Pub. L. 100–690, §7060(d)(2), struck out the period that followed a period after ''paragraph (2)''.

1986—Subsec. (a). Pub. L. 99–308, §103(1), amended first sentence generally and substituted ''only that information necessary to determine eligibility for licensing.'' for ''such information'' in second sentence. Prior to amendment, first sentence read as follows: ''No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary.''

Subsec. (a)(1)(A). Pub. L. 99–408, §3, in amending subpar. (A) generally, substituted '', ammunition for destructive devices or armor piercing ammunition'' for ''or ammunition for destructive devices''.

Subsec. (a)(1)(C). Pub. L. 99–408, §4, in amending subpar. (C) generally, substituted '', other than ammunition for destructive devices or armor piercing ammunition'' for ''other than destructive devices''.

Subsec. (a)(2). Pub. L. 99–408, §5, amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

''(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, a fee of $50 per year.''

Subsec. (a)(3)(B). Pub. L. 99–308, §103(2), struck out ''or ammunition for firearms other than destructive devices,'' after ''destructive devices''.

Subsec. (b). Pub. L. 99–308, §103(3), substituted ''only that information necessary to determine eligibility'' for ''such information''.

Subsec. (c). Pub. L. 99–360 inserted provision which required any licensed manufacturer, importer, or dealer who has maintained a firearm as part of a personal collection for one year and sells or otherwise disposes of such firearm to record the description of the firearm in a bound volume, specified other information to be recorded, and provided that no other recordkeeping be required.

Pub. L. 99–308, §103(4), inserted provision that nothing in this chapter be construed to prohibit a licensed manufacturer, importer, or dealer from maintaining and disposing of a personal collection of firearms subject to such restrictions as apply in this chapter to other persons, and provision specifying circumstances under which such disposition or any other acquisition shall result in such firearms being deemed part of the licensee's business inventory.

Subsec. (e). Pub. L. 99–408, §6, inserted provisions relating to licenses of dealers willfully transferring armor piercing ammunition.

Pub. L. 99–308, §103(5), inserted ''willfully'' before ''violated''.

Subsec. (f)(3). Pub. L. 99–308, §103(6)(A), inserted ''de novo'' before ''judicial review'' in second sentence and ''whether or not such evidence was considered at the hearing held under paragraph (2).'' after ''to the proceeding'' in third sentence.

Subsec. (f)(4). Pub. L. 99–308, §103(6)(B), added par. (4).

Subsec. (g). Pub. L. 99–308, §103(7), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition except .22 caliber rimfire ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.''

Subsec. (j). Pub. L. 99–308, §103(8), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''This section shall not apply to anyone who engages only in hand loading, reloading, or custom loading ammunition for his own firearm, and who does not hand load, reload, or custom load ammunition for others.''

Subsec. (k). Pub. L. 99–408, §7, added subsec. (k).

1982—Subsec. (g). Pub. L. 97–377 inserted ''except .22 caliber rimfire ammunition'' after ''and ammunition''. The amendment by Pub. L. 97–377, which purported to amend subsec. (9), was executed instead to subsec. (g) as the probable intent of Congress because this section does not contain a subsec. (9).

1968—Subsec. (a). Pub. L. 90–618 struck out ''be required to'' after ''Each applicant shall''.

Subsec. (a)(1). Pub. L. 90–618 inserted ''the applicant is'' after ''If'' in text preceding subpar. (A), substituted ''or ammunition for destructive devices,'' for ''and/or ammunition'' in subpar. (A), decreased the fee from $500 per year to $50 per year in subpar. (B), and added subpar. (C).

Subsec. (a)(2). Pub. L. 90–618 inserted ''the applicant is'' after ''If'' in text preceding subpar. (A), substituted ''or ammunition for destructive devices,'' for ''and/or ammunition'' in subpar. (A), and inserted provision for ammunition for firearms other than destructive devices and decreased the fee from $500 per year to $50 per year in subpar. (B).

Subsec. (a)(3). Pub. L. 90–618 inserted ''the applicant is'' after ''If'' in text preceding subpar. (A), substituted ''in destructive devices or ammunition for destructive devices,'' for ''of destructive devices and/or ammunition'' in subpar. (A), and inserted provision for ammunition for firearms other than destructive devices and decreased the fee from $250 per year to $25 per year in subpar. (B).

Subsecs. (b), (c). Pub. L. 90–618 added subsec. (b), redesignated former subsec. (b) as (c) and made mandatory the requirement that the Secretary issue the appropriate license to a qualified applicant. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 90–618 redesignated former subsec. (c) as (d)(1), made changes in phraseology, inserted references to section 922(g) and (h) of this chapter in subsec. (d)(1)(B) and to applicants engaged in collecting in subsec. (d)(1)(E)(ii), and added subsec. (d)(2). Former subsec. (d) redesignated (g).

Subsecs. (e), (f). Pub. L. 90–618 added subsecs. (e) and (f) and redesignated former subsecs. (e) and (f) as (h) and (i), respectively.

Subsec. (g). Pub. L. 90–618 redesignated former subsec. (d) as (g) and added licensed collectors to the enumerated list of licensees subject to the provisions of this section.

Subsec. (h). Pub. L. 90–618 redesignated former subsec. (e) as (h) and substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (i). Pub. L. 90–618 redesignated former subsec. (f) as (i) and inserted '', by means of a serial number engraved or cast on the receiver or frame of the weapon,'' after ''shall identify''.

Subsec. (j). Pub. L. 90–618 added subsec. (j).

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in subsec. (g)(1)(A) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277, effective 180 days after Oct. 21, 1998, see section 101(b) [title I, § 119(e)] of Pub. L. 105–277, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 603(j)(2) of Pub. L. 104–294 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in the Act referred to in paragraph (1) [Pub. L. 103–159] on the date of the enactment of such Act [Nov. 30, 1993].''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by sections 110102(d) and 110103(d) of Pub. L. 103–322 repealed 10 years after Sept. 13, 1994, see section 110105(2) of Pub. L. 103–322, formerly set out as a note under section 921 of this title.

Section 330011(i) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3525 of Pub. L. 101–647 took effect.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 3 to 5 of Pub. L. 99–408 effective first day of first calendar month beginning more than ninety days after Aug. 28, 1986, and amendment by sections 6 and 7 of Pub. L. 99–408 effective Aug. 28, 1986, see section 9 of Pub. L. 99–408, set out as a note under section 921 of this title.

Amendment by Pub. L. 99–360 effective on date on which amendment of this section by Firearms Owners' Protection Act, Pub. L. 99–308, became effective, see section 2 of Pub. L. 99–360, set out as a note under section 921 of this title.

Amendment by section 103(1)–(6)(A), (7), (8) of Pub. L. 99–308 effective 180 days after May 19, 1986, and amendment by section 103(6)(B) of Pub. L. 99–308 applicable to any action, petition, or appellate proceeding pending on May 19, 1986, see section 110(a), (b) of Pub. L. 99–308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

STATUTORY CONSTRUCTION; EVIDENCE

Pub. L. 105–277, div. A, § 101(b) [title I, § 119(d)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–70, provided that:

''(1) STATUTORY CONSTRUCTION.—Nothing in the amendments made by this section [amending this section and section 921 of this title] shall be construed—

''(A) as creating a cause of action against any firearms dealer or any other person for any civil liability; or

''(B) as establishing any standard of care.

''(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity.''

FUNDING FOR BUREAU NOT AUTHORIZED FOR DISCLOSURE OF DATA

Pub. L. 109–108, title I, Nov. 22, 2005, 119 Stat. 2295, provided in part: ''That no funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based upon such data, in any civil action pending on or filed after the effective date of this Act [Pub. L. 109–108, approved Nov. 22, 2005] in any State (including the District of Columbia) or Federal court or in any administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco,

Firearms and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title)''.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108–447, div. B, title I, Dec. 8, 2004, 118 Stat. 2859.

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to

a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term ''drug trafficking crime'' means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term ''crime of violence'' means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term ''brandish'' means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or

the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term ''serious drug offense'' means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term ''violent felony'' means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term ''conviction'' includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(*l*) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(*o*) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 233; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1223; Pub. L. 91–644, title II, § 13, Jan. 2, 1971, 84 Stat. 1889; Pub. L. 98–473, title II, §§ 223(a), 1005(a), Oct. 12, 1984, 98 Stat. 2028, 2138; Pub. L. 99–308, § 104(a), May 19, 1986, 100 Stat. 456; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–570, title I, § 1402, Oct. 27, 1986, 100 Stat. 3207–39; Pub. L. 100–649, § 2(b), (f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub. L. 100–690, title VI, §§ 6211, 6212, 6451, 6460, 6462, title VII, §§ 7056, 7060(a), Nov. 18, 1988, 102 Stat. 4359, 4360, 4371, 4373, 4374, 4402, 4403; Pub. L. 101–647, title XI, § 1101, title XVII, § 1702(b)(3), title XXII, §§ 2203(d), 2204(c), title XXXV, §§ 3526–3529, Nov. 29, 1990, 104 Stat. 4829, 4845, 4857, 4924; Pub. L. 103–159, title I, § 102(c), title III, § 302(d), Nov. 30, 1993, 107 Stat. 1541, 1545; Pub. L. 103–322, title VI, § 60013, title XI, §§ 110102(c), 110103(c), 110105(2), 110201(b), 110401(e), 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518(a), title XXXIII, §§ 330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), Sept. 13, 1994, 108 Stat. 1973, 1998–2000, 2011, 2015, 2016, 2018–2020, 2140, 2141, 2145, 2147; Pub. L. 104–294, title VI, § 603(m)(1), (n)–(p)(1), (q)–(s), Oct. 11, 1996, 110 Stat. 3505; Pub. L. 105–386, § 1(a), Nov. 13, 1998, 112 Stat. 3469; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(E), div. C, title I, § 11009(e)(3), Nov. 2, 2002, 116 Stat. 1809, 1821; Pub. L. 108–174, § 1(2), (3), Dec. 9, 2003, 117 Stat. 2481; Pub. L. 109–92, §§ 5(c)(2), 6(b), Oct. 26, 2005, 119 Stat. 2100, 2102; Pub. L. 109–304, § 17(d)(3), Oct. 6, 2006, 120 Stat. 1707.)

AMENDMENT OF SECTION

Pub. L. 100–649, § 2(f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 101–647, title XXXV, § 3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub. L. 105–277, div. A, § 101(h) [title VI, § 649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, § 1, Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988, subsection (a)(1) of this section is amended by striking ''this subsection, subsection (b), (c), or (f) of this section, or in section 929'' and inserting ''this chapter'', subsection (f) of this section is repealed, and subsections (g) through (o) of this section are redesignated as subsections (f) through (n), respectively, of this section.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d)(1), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (d)(1), is classified to section 5845(a) of Title 26.

The Controlled Substances Act, referred to in subsecs. (c)(2), (d)(3)(B), (e)(2)(A)(i), (g)(2), and (k)(1), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (c)(2), (d)(3)(B), (e)(2)(A)(i), (g)(2), and (k)(1), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

2006—Subsecs. (c)(2), (e)(2)(A)(i). Pub. L. 109–304, § 17(d)(3)(A), substituted ''chapter 705 of title 46'' for ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)''.

Subsec. (g)(2). Pub. L. 109–304, § 17(d)(3), substituted ''801 et seq.'' for ''802 et seq.'' and ''chapter 705 of title 46'' for ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)''.

Subsec. (k)(1). Pub. L. 109–304, § 17(d)(3)(A), substituted ''chapter 705 of title 46'' for ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)''.

2005—Subsec. (a)(1). Pub. L. 109–92, § 5(c)(2)(A), substituted ''(f), or (p)'' for ''or (f)'' in introductory provisions.

Subsec. (c)(5). Pub. L. 109–92, § 6(b), added par. (5).

Subsec. (p). Pub. L. 109–92, § 5(c)(2)(B), added subsec. (p).

2002—Subsec. (a)(7). Pub. L. 107–273, § 11009(e)(3), added par. (7).

Subsec. (e)(1). Pub. L. 107–273, § 4002(d)(1)(E), substituted ''under this title'' for ''not more than $25,000''.

1998—Subsec. (c)(1). Pub. L. 105–386, § 1(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a

deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried.''

Subsec. (c)(4). Pub. L. 105–386, §1(a)(2), added par. (4).

1996—Subsec. (a)(1)(B). Pub. L. 104–294, §603(n), repealed Pub. L. 103–322, §330002(h). See 1994 Amendment note below.

Pub. L. 104–294, §603(m)(1)(A), amended directory language of Pub. L. 103–322, §110507. See 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 104–294, §603(m)(1)(B), amended directory language of Pub. L. 103–322, §110507(2). See 1994 Amendment note below.

Subsec. (a)(5), (6). Pub. L. 104–294, §603(*o*), redesignated par. (5), relating to punishment for juveniles, as (6).

Subsec. (c)(1). Pub. L. 104–294, §603(p)(1), amended directory language of Pub. L. 103–322, §110102(c)(2). See 1994 Amendment note below.

Subsec. (i). Pub. L. 104–294, §603(r), redesignated subsec. (i), relating to death penalty for gun murders, as (j).

Subsec. (j). Pub. L. 104–294, §603(r), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 104–294, §603(q), inserted closing parenthesis before comma at end.

Subsec. (k). Pub. L. 104–294, §603(r), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 104–294, §603(s), amended directory language of Pub. L. 103–322, §110504. See 1994 Amendment note below.

Pub. L. 104–294, §603(r), redesignated subsec. (k) as (*l*). Former subsec. (*l*) redesignated (m).

Subsecs. (m) to (*o*). Pub. L. 104–294, §603(r), redesignated subsecs. (*l*) to (n) as (m) to (*o*), respectively.

1994—Subsec. (a)(1). Pub. L. 103–322, §330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in concluding provisions.

Pub. L. 103–322, §330011(i), amended directory language of Pub. L. 101–647, §3528. See 1990 Amendment note below.

Pub. L. 103–322, §110201(b)(1), which directed the striking of ''paragraph (2) or (3) of'' in subsec. (a)(1), could not be executed because of prior amendment by Pub. L. 103–159. See 1993 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 103–322, §330002(h), which directed amendment of subpar. (B) by substituting ''(r)'' for ''(q)'', was repealed by Pub. L. 104–294, §603(n), which provided that §330002(h) shall be considered never to have been enacted.

Pub. L. 103–322, §110507(1), as amended by Pub. L. 104–294, §603(m)(1)(A), struck out ''(a)(6),'' after ''(a)(4),''.

Pub. L. 103–322, §110103(c), which substituted ''(v), or (w)'' for ''or (v)'', was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Pub. L. 103–322, §110102(c)(1), which substituted ''(r), or (v) of section 922'' for ''or (q) of section 922'', was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 103–322, §110507(2), as amended by Pub. L. 104–294, §603(m)(1)(B), inserted ''(a)(6),'' after ''subsection''.

Subsec. (a)(3). Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000''.

Subsec. (a)(4). Pub. L. 103–322, §330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (a)(5). Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in par. (5) relating to knowing violations of subsec. (s) or (t) of section 922.

Pub. L. 103–322, §110201(b)(2), added par. (5) relating to punishment for juveniles.

Subsec. (b). Pub. L. 103–322, §330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

Subsec. (c)(1). Pub. L. 103–322, §330011(j), amended directory language of Pub. L. 101–647, §3527. See 1990 Amendment note below.

Pub. L. 103–322, §110510(b), which directed the amendment of subsec. (c)(1) by striking ''No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed under this subsection.'', was executed by striking the last sentence, which read ''No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.'', to reflect the probable intent of Congress.

Pub. L. 103–322, §§110102(c)(2), 110105(2), as amended by Pub. L. 104–294, §603(p)(1), temporarily amended subsec. (c)(1) by inserting '', or semiautomatic assault weapon,'' after ''short-barreled shotgun''. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (d)(1). Pub. L. 103–322, §110401(e), substituted ''or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms'' for ''the seized firearms''.

Subsec. (e)(1). Pub. L. 103–322, §110510(a), struck out before period at end '', and such person shall not be eligible for parole with respect to the sentence imposed under this subsection''.

Subsec. (e)(2)(A)(i). Pub. L. 103–322, §330003(f)(2), substituted ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)'' for ''the first section or section 3 of Public Law 96–350 (21 U.S.C. 955a et seq.)''.

Subsec. (i). Pub. L. 103–322, §60013, added subsec. (i) relating to death penalty for gun murders.

Subsec. (i)(1). Pub. L. 103–322, §330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' in par. (1) of subsec. (i) relating to knowing violations of section 922(u).

Subsec. (j). Pub. L. 103–322, §110503, added subsec. (j).

Subsec. (k). Pub. L. 103–322, §110504(a), as amended by Pub. L. 104–294, §603(s), added subsec. (k).

Subsec. (*l*). Pub. L. 103–322, §110515(a), added subsec. (*l*).

Subsec. (m). Pub. L. 103–322, §110517, added subsec. (m).

Subsec. (n). Pub. L. 103–322, §110518(a), added subsec. (n).

1993—Subsec. (a)(1). Pub. L. 103–159, §102(c)(1), struck out ''paragraph (2) or (3) of'' before ''this subsection'' in introductory provisions.

Subsec. (a)(5). Pub. L. 103–159, §102(c)(2), added par. (5).

Subsec. (i). Pub. L. 103–159, §302(d), added subsec. (i).

1990—Subsec. (a)(1). Pub. L. 101–647, §3528, as amended by Pub. L. 103–322, §330011(i), substituted ''(3) of this subsection'' for ''3 of this subsection'' in introductory provisions.

Pub. L. 101–647, §2203(d), struck out '', and shall become eligible for parole as the Parole Commission shall determine'' before period at end.

Subsec. (a)(1)(B). Pub. L. 101–647, §2204(c), substituted ''(k), or (q)'' for ''or (k)''.

Subsec. (a)(2). Pub. L. 101–647, §3529(1), substituted ''subsection'' for ''subsections'' and inserted a comma after ''10 years''.

Subsec. (a)(3). Pub. L. 101–647, § 2203(d), struck out ‘‘, and shall become eligible for parole as the Parole Commission shall determine’’ before period at end.

Subsec. (a)(4). Pub. L. 101–647, § 1702(b)(3), added par. (4).

Subsec. (c)(1). Pub. L. 101–647, § 3527, as amended by Pub. L. 103–322, § 330011(j), struck out ‘‘imprisonment for’’ before ‘‘life imprisonment without release’’.

Pub. L. 101–647, § 1101(2), which directed amendment of first sentence by ‘‘inserting ‘or a destructive device,’ after ‘a machinegun,’ wherever the term ‘machine gun’ appears, in section 924(c)(1)’’, was executed by inserting the new language after ‘‘a machinegun,’’ once in the first sentence and once in the second sentence to reflect the probable intent of Congress.

Pub. L. 101–647, § 1101(1), inserted ‘‘and if the firearm is a short-barreled rifle, short-barreled shotgun to imprisonment for ten years,’’ after ‘‘sentenced to imprisonment for five years,’’.

Subsec. (e)(2). Pub. L. 101–647, § 3529(2), (3), struck out ‘‘and’’ at end of subpar. (A)(ii) and substituted ‘‘; and’’ for period at end of subpar. (B)(ii).

Subsecs. (f) to (h). Pub. L. 101–647, § 3526(a), redesignated subsec. (f) relating to punishment for traveling from any State or foreign country into another State to obtain firearms for drug trafficking purposes as subsec. (g) and redesignated former subsec. (g) as (h).

1988—Subsec. (a). Pub. L. 100–690, § 6462, in par. (1), inserted ‘‘or 3’’ and substituted ‘‘, (c), or (f)’’ for ‘‘or (c)’’ in introductory provisions and struck out ‘‘(g), (i), (j),’’ after ‘‘(f),’’ in subpar. (B), added par. (2), and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 100–690, § 7060(a), substituted ‘‘crime (including a crime of violence or drug trafficking crime which’’ for ‘‘crime,, including a crime of violence or drug trafficking crime, which’’, ‘‘device) for’’ for ‘‘device, for’’, ‘‘crime, be sentenced’’ for ‘‘crime,, be sentenced’’, and ‘‘crime in which’’ for ‘‘crime, or drug trafficking crime in which’’.

Pub. L. 100–690, § 6460(1), (2)(A), substituted ‘‘thirty years. In’’ for ‘‘ten years. In’’ and ‘‘twenty years, and if’’ for ‘‘ten years, and if’’.

Pub. L. 100–690, § 6460(2)(B), which directed amendment of subsec. (c)(1) by striking ‘‘20 years’’ and inserting ‘‘life imprisonment without release’’ was executed by substituting ‘‘life imprisonment without release’’ for ‘‘twenty years’’ to reflect the probable intent of Congress because ‘‘20 years’’ did not appear.

Subsec. (c)(2). Pub. L. 100–690, § 6212, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘For purposes of this subsection, the term ‘drug trafficking crime’ means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).’’

Subsec. (e)(1). Pub. L. 100–690, § 7056, inserted ‘‘committed on occasions different from one another,’’ after ‘‘or both,’’.

Subsec. (e)(2)(B). Pub. L. 100–690, § 6451(1), inserted ‘‘, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult,’’ after ‘‘one year’’.

Subsec. (e)(2)(C). Pub. L. 100–690, § 6451(2), added subpar. (C).

Subsec. (f). Pub. L. 100–690, § 6211, added subsec. (f) relating to punishment for traveling from any State or foreign country into another State to obtain firearms for drug trafficking purposes.

Pub. L. 100–649, § 2(b)(2), added subsec. (f) relating to penalty for violating section 922(p).

Subsec. (g). Pub. L. 100–690, § 6211, added subsec. (g).

1986—Subsec. (a). Pub. L. 99–308, § 104(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ‘‘Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.’’

Subsec. (c)(1). Pub. L. 99–308, § 104(a)(2)(C)–(E), designated existing provision as par. (1), and substituted ‘‘violence or drug trafficking crime,’’ for ‘‘violence’’ in four places and inserted ‘‘, and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for ten years’’ after ‘‘five years’’, ‘‘, and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for twenty years’’ after ‘‘ten years’’, and ‘‘or drug trafficking crime’’ before ‘‘in which the firearm was used or carried’’.

Subsec. (c)(2), (3). Pub. L. 99–308, § 104(a)(2)(F), added pars. (2) and (3).

Subsec. (d). Pub. L. 99–308, § 104(a)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ‘‘Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.’’

Subsec. (d)(1). Pub. L. 99–514 substituted ‘‘Internal Revenue Code of 1986’’ for ‘‘Internal Revenue Code of 1954’’.

Subsec. (e). Pub. L. 99–308, § 104(a)(4), added subsec. (e).

Subsec. (e)(1). Pub. L. 99–570, § 1402(a), substituted ‘‘for a violent felony or a serious drug offense, or both’’ for ‘‘for robbery or burglary, or both’’.

Subsec. (e)(2). Pub. L. 99–570, § 1402(b), amended par. (2) generally, substituting provisions defining terms ‘‘serious drug offense’’ and ‘‘violent felony’’ for provisions defining ‘‘robbery’’ and ‘‘burglary’’.

1984—Subsec. (a). Pub. L. 98–473, § 223(a), which directed amendment of subsec. (a) by striking out ‘‘, and shall become eligible for parole as the Board of Parole shall determine’’ effective Nov. 1, 1987, pursuant to section 235 of Pub. L. 98–473, as amended, could not be executed because quoted language no longer appears due to general amendment of subsec. (a) by Pub. L. 99–308, § 104(a)(1). See 1986 Amendment note above.

Subsec. (c). Pub. L. 98–473, § 1005(a), amended subsec. (c) generally, substituting provisions setting forth mandatory, determinate sentence for persons who use or carry firearms during and in relation to any Federal crime of violence for provisions setting out a minimum sentencing scheme for the use or carrying, unlawfully, of a firearm during a Federal felony.

1971—Subsec. (c). Pub. L. 91–644, in first sentence, substituted ‘‘felony for which he’’ for ‘‘felony which’’ in items (1) and (2) and inserted ‘‘, in addition to the punishment provided for the commission of such felony,’’ before ‘‘be sentenced’’, and in second sentence substituted ‘‘for not less than two nor more than twenty-five years’’ for ‘‘for not less than five years nor more than 25 years’’, inserted ‘‘in the case of a second or subsequent conviction’’ after ‘‘suspend the sentence’’, and prohibited term of imprisonment imposed under this subsec. to run concurrently with any term for commission of the felony.

1968—Subsec. (a). Pub. L. 90–618 inserted provision authorizing the Board of Parole to grant parole to a person convicted under this chapter.

Subsec. (b). Pub. L. 90–618 inserted ‘‘or any ammunition’’ after ‘‘a firearm’’.

Subsecs. (c), (d). Pub. L. 90–618 added subsec. (c), redesignated former subsec. (c) as (d), and as so redesignated, substituted ‘‘section 5845(a) of that Code’’ for ‘‘section 5848(1) of said Code’’.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 5(c)(2) of Pub. L. 109–92 effective 180 days after Oct. 26, 2005, see section 5(d) of Pub. L. 109–92, set out as a note under section 922 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 603(m)(2) of Pub. L. 104–294 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if the amendments had been included in section 110507 of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

Section 603(p)(2) of Pub. L. 104–294 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 110102(c)(2) of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by sections 110102(c) and 110103(c) of Pub. L. 103–322 repealed 10 years after Sept. 13, 1994, see section 110105(2) of Pub. L. 103–322, formerly set out as a note under section 921 of this title.

Section 330011(i) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3528 of Pub. L. 101–647 took effect.

Section 330011(j) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3527 of Pub. L. 101–647 took effect.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1702(b)(3) of Pub. L. 101–647 applicable to conduct engaged in after end of 60-day period beginning on Nov. 29, 1990, see section 1702(b)(4) of Pub. L. 101–647, set out as a note under section 921 of this title.

Section 2203(d) of Pub. L. 101–647 provided that the amendment by that section is effective with respect to any offense committed after Nov. 1, 1987.

EFFECTIVE DATE OF 1988 AMENDMENT; SUNSET PROVISION

Amendment by section 2(b) of Pub. L. 100–649 effective 30th day beginning after Nov. 10, 1988, and amendment by section 2(f)(2)(B), (D) effective 25 years after such effective date, see section 2(f) of Pub. L. 100–649, as amended, set out as a note under section 922 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–308 effective 180 days after May 19, 1986, see section 110(a) of Pub. L. 99–308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(a) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

§ 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Attorney General to be consistent with the provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), and other applicable Federal and State laws and published ordinances, the Attorney General may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraph (3) of this subsection, the term ''United States'' means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or

ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1986 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Attorney General has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Attorney General shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Attorney General shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Attorney General pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Attorney General pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) The Attorney General shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p).

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 233; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1224; Pub. L. 98–573, title II, § 233, Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–308, § 105, May 19, 1986, 100 Stat. 459; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–649, § 2(c), (f)(2)(C), (E), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub. L. 101–647, title XXII, § 2203(b), (c), Nov. 29, 1990, 104 Stat. 4857; Pub. L. 104–106, div. A, title XVI, § 1624(b)(3), Feb. 10, 1996, 110 Stat. 522; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 658(d)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372; Pub. L. 104–294, title VI, § 607(c), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 107–296, title XI, § 1112(f)(6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 108–174, § 1(3), Dec. 9, 2003, 117 Stat. 2481.)

AMENDMENT OF SECTION

Pub. L. 100–649, § 2(f)(2)(C), (E), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 105–277, div. A, § 101(h) [title VI, § 649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, § 1(1), (3), Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988, subsection (a) of this section is amended by striking ''and provisions relating to firearms subject to the prohibitions of section 922(p)'' in par. (1), striking '', except for provisions relating to firearms subject to the prohibitions of section 922(p),'' in par. (2), and striking ''except for provisions relating to firearms subject to the prohibitions of section 922(p),'' in pars. (3) and (4) and subsection (f) of this section is repealed.

REFERENCES IN TEXT

Section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, referred to in subsec. (a)(2)(A), means section 4308 of Title 10, Armed Forces, prior to repeal by section 1624(a)(1) of Pub. L. 104–106, div. A, title XVI, Feb. 10, 1996, 110 Stat. 522.

Section 5845(b) of the Internal Revenue Code of 1986, referred to in subsec. (d)(2), is classified to section 5845(b) of Title 26, Internal Revenue Code.

Section 5845(a) of the Internal Revenue Code of 1986, referred to in subsec. (d)(3), is classified to section 5845(a) of Title 26.

AMENDMENTS

2002—Subsecs. (a), (c) to (f). Pub. L. 107–296, which directed amendment of this section by substituting ''Attorney General'' for ''Secretary'' wherever appearing, was executed by making the substitution wherever appearing in subsecs. (a)(4) and (c) to (f), by not making the substitution for ''Secretary of the Army'' in subsec. (a)(2), and by substituting ''Attorney General'' for ''Secretary of the Treasury'' in subsec. (a)(3), to reflect the probable intent of Congress.

1996—Subsec. (a)(1). Pub. L. 104–208 inserted ''sections 922(d)(9) and 922(g)(9) and'' after ''except for''.

Subsec. (a)(2)(A). Pub. L. 104–106 inserted ''before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act'' after ''section 4308 of title 10''.

Subsec. (a)(5). Pub. L. 104–294 substituted ''For the purpose of paragraph (3)'' for ''For the purpose of paragraphs (3) and (4)''.

1990—Subsec. (a)(1). Pub. L. 101–647, § 2203(b), inserted ''possession,'' before ''or importation''.

Subsec. (c). Pub. L. 101–647, § 2203(c), substituted ''regarding the disability'' for ''regarding the conviction'' and ''barred by such disability'' for ''barred by such conviction'' and struck out ''by reason of such a conviction'' after ''incurred under this chapter''.

1988—Subsec. (a). Pub. L. 100–649, § 2(c)(1), inserted '', except for provisions relating to firearms subject to the prohibitions of section 922(p),'' after ''chapter'' in pars. (1) to (4).

Subsec. (f). Pub. L. 100–649, § 2(c)(2), added subsec. (f).

1986—Subsec. (c). Pub. L. 99–308, § 105(1), substituted ''is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition'' for ''has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)'' and ''shipment, transportation, or possession of firearms, and'' for ''shipment, or possession of firearms and incurred by reason of such conviction, and'' and inserted provision that any person whose application for relief has been denied may file for judicial relief of such denial and that the court may admit additional evidence to avoid a miscarriage of justice.

Subsec. (d). Pub. L. 99–308, § 105(2)(A), (B), (D), in provision preceding par. (1) substituted ''shall authorize'' for ''may authorize'' and struck out ''the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that'' after ''thereof if'', and in provision following par. (4) substituted ''shall permit'' for ''may permit''.

Subsec. (d)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (d)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 99–308, § 105(2)(C), inserted ''except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled''.

1984—Subsec. (e). Pub. L. 98–573 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–618 redesignated existing provisions as par. (1), made minor changes in phraseology, and added pars. (2) to (5).

Subsec. (b). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees.

Subsec. (c). Pub. L. 90–618 substituted ''imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and'' for ''under this chapter'', ''to act in a manner dangerous to public safety'' for ''to conduct his operations in an unlawful manner,'' and ''licensed importer, licensed manufacturer, licensed dealer, or licensed collector'' for ''licensee''.

Subsec. (d). Pub. L. 90–618 made minor changes in phraseology, subjected ammunition to the authority of the Secretary in text preceding par. (1), substituted ''section 5845(b)'' for ''section 5848(2)'' in par. (2), substituted ''section 5845(a)'' for ''section 5848(1)'' and ''excluding surplus military firearms'' for ''and in the case of surplus military firearms is a rifle or shotgun'' in par. (3), inserted ''or ammunition'' after ''the firearm'' in par. (4), and authorized the Secretary to permit the importation of ammunition for examination and testing in text following par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of [former] Title 36, Patriotic Societies and Observances, or Oct. 1, 1996, see section 1624(c) of Pub. L. 104–106, set out as a note under section 4316 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1988 AMENDMENT; SUNSET PROVISION

Amendment by section 2(c) of Pub. L. 100–649 effective 30th day beginning after Nov. 10, 1988, and amendment by section 2(f)(2)(C), (E) effective 25 years after such effective date, see section 2(f) of Pub. L. 100–649, as amended, set out as a note under section 922 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–308 applicable to any action, petition, or appellate proceeding pending on May 19, 1986, see section 110(b) of Pub. L. 99–308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, except subsecs. (a)(1) and (d) effective Oct. 22, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

§ 925A. Remedy for erroneous denial of firearm

Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

(Added Pub. L. 103–159, title I, § 104(a), Nov. 30, 1993, 107 Stat. 1543.)

REFERENCES IN TEXT

Section 103 of the Brady Handgun Violence Prevention Act, referred to in par. (1), is section 103 of Pub. L. 103–159, which is set out as a note under section 922 of this title.

§ 926. Rules and regulations

(a) The Attorney General may prescribe only such rules and regulations as are necessary to

carry out the provisions of this chapter, including—

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license;

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and

(3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922.

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's[1] authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(b) The Attorney General shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.

(c) The Attorney General shall not prescribe rules or regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of this title to complete affidavits or forms attesting to that exemption.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 234; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226; Pub. L. 99–308, § 106, May 19, 1986, 100 Stat. 459; Pub. L. 103–322, title XI, § 110401(d), Sept. 13, 1994, 108 Stat. 2015; Pub. L. 107–296, title XI, § 1112(f)(6), Nov. 25, 2002, 116 Stat. 2276.)

REFERENCES IN TEXT

The date of the enactment of the Firearms Owners' Protection Act, referred to in subsec. (a), is the date of enactment of Pub. L. 99–308, which was approved May 19, 1986.

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107–296 substituted ''Attorney General'' for ''Secretary''.

1994—Subsec. (a)(3). Pub. L. 103–322 added par. (3).

1986—Subsec. (a). Pub. L. 99–308, § 106(1)–(4), designated existing provision as subsec. (a), and in subsec. (a) as so designated, in provision preceding par. (1) substituted ''may prescribe only'' for ''may prescribe'' and ''as are'' for ''as he deems reasonably'', and in closing provision substituted provision that no rule or regulation prescribed after May 19, 1986, require that records required under this chapter be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof, nor any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established and that nothing in this section expand or restrict the authority of the Secretary to inquire into the disposition of any firearm in the course of a criminal investigation for provision that the Secretary give reasonable public notice, and afford an opportunity for a hearing, prior to prescribing rules and regulations.

Subsecs. (b), (c). Pub. L. 99–308, § 106(5), added subsecs. (b) and (c).

1968—Pub. L. 90–618 inserted provisions authorizing the Secretary to prescribe regulations requiring a licensee, when dealing with another licensee, to provide such other licensee a certified copy of the license, and regulations authorizing the issuance of certified copies of the license required under this chapter.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–308 effective 180 days after May 19, 1986, see section 110(a) of Pub. L. 99–308, set out as a note under section 921 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

§ 926A. Interstate transportation of firearms

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided*, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

(Added Pub. L. 99–360, § 1(a), July 8, 1986, 100 Stat. 766.)

PRIOR PROVISIONS

A prior section 926A, added Pub. L. 99–308, § 107(a), May 19, 1986, 100 Stat. 460, provided that any person not prohibited by this chapter from transporting, shipping, or receiving a firearm be entitled to transport an unloaded, not readily accessible firearm in interstate commerce notwithstanding any provision of any legislation enacted, or rule or regulation prescribed by any State or political subdivision thereof, prior to repeal by Pub. L. 99–360, § 1(a).

EFFECTIVE DATE

Section effective on date on which Firearms Owners' Protection Act, Pub. L. 99–308, became effective, see section 2 of Pub. L. 99–360, set out as an Effective Date of 1986 Amendments note under section 921 of this title.

§ 926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision

[1] So in original. Probably should be ''Attorney General's''.

thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term ''qualified law enforcement officer'' means an employee of a governmental agency who—

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.

(e) As used in this section, the term ''firearm'' does not include—

(1) any machinegun (as defined in section 5845 of the National Firearms Act);

(2) any firearm silencer (as defined in section 921 of this title); and

(3) any destructive device (as defined in section 921 of this title).

(Added Pub. L. 108–277, § 2(a), July 22, 2004, 118 Stat. 865.)

REFERENCES IN TEXT

Section 5845 of the National Firearms Act, referred to in subsec. (e)(1), is classified to section 5845 of Title 26, Internal Revenue Code.

§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term ''qualified retired law enforcement officer'' means an individual who—

(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(e) As used in this section, the term ''firearm'' does not include—

(1) any machinegun (as defined in section 5845 of the National Firearms Act);

(2) any firearm silencer (as defined in section 921 of this title); and

(3) a destructive device (as defined in section 921 of this title).

(Added Pub. L. 108–277, § 3(a), July 22, 2004, 118 Stat. 866.)

REFERENCES IN TEXT

Section 5845 of the National Firearms Act, referred to in subsec. (e)(1), is classified to section 5845 of Title 26, Internal Revenue Code.

§ 927. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 234; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226.)

AMENDMENTS

1968—Pub. L. 90–618 struck out ''or possession'' after ''State'' wherever appearing.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

§ 928. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Added Pub. L. 90–351, title IV, § 902, June 19, 1968, 82 Stat. 234; amended Pub. L. 90–618, title I, § 102, Oct. 22, 1968, 82 Stat. 1226.)

AMENDMENTS

1968—Pub. L. 90–618 reenacted section without change.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

§ 929. Use of restricted ammunition

(a)(1) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm, shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime be sentenced to a term of imprisonment for not less than five years.

(2) For purposes of this subsection, the term ''drug trafficking crime'' means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(b) Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this section, nor place the person on probation, nor shall the terms of imprisonment run concurrently with any other terms of imprisonment, including that imposed for the crime in which the armor piercing ammunition was used or possessed.

(Added Pub. L. 98–473, title II, § 1006(a), Oct. 12, 1984, 98 Stat. 2139; amended Pub. L. 99–308, § 108, May 19, 1986, 100 Stat. 460; Pub. L. 99–408, § 8, Aug. 28, 1986, 100 Stat. 921; Pub. L. 100–690, title VI, § 6212, title VII, § 7060(b), Nov. 18, 1988, 102 Stat. 4360, 4404; Pub. L. 107–273, div. B, title IV, § 4002(c)(4), Nov. 2, 2002, 116 Stat. 1809; Pub. L. 109–304, § 17(d)(4), Oct. 6, 2006, 120 Stat. 1707.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a)(2), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (a)(2), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–304 substituted ''chapter 705 of title 46'' for ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)''.

2002—Subsec. (b). Pub. L. 107–273 struck out at end ''No person sentenced under this section shall be eligible for parole during the term of imprisonment imposed herein.''

1988—Subsec. (a)(1). Pub. L. 100–690, § 7060(b), substituted ''trafficking crime'' for ''trafficking crime,'' in three places.

Subsec. (a)(2). Pub. L. 100–690, § 6212, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).''

1986—Subsec. (a). Pub. L. 99–408, § 8(1), substituted ''violence (including'' for ''violence including'', ''device) for'' for ''device for'', ''a firearm and is in possession of armor piercing ammunition capable of being fired in that firearm'' for ''any handgun loaded with armor-piercing ammunition as defined in subsection (b)'', and ''five years'' for ''five nor more than ten years'', and struck out provisions relating to suspension of sentence, probation, concurrent sentence and parole eligibility of any person convicted under this subsection.

Pub. L. 99–308 designated existing provision as par. (1), substituted ''violence or drug trafficking crime,'' for ''violence'' in three places, and added par. (2).

Subsec. (b). Pub. L. 99–408, § 8(2), amended subsec. (b) generally, substituting provisions that the court may not suspend sentence of any person convicted of a violation of this section or place the person on probation, that term of imprisonment may not run concurrently with other terms of imprisonment, and that the person is not eligible for parole during term of imprisonment, for provisions defining ''armor-piercing ammunition'' and ''handgun''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–308 effective 180 days after May 19, 1986, see section 110(a) of Pub. L. 99–308, set out as a note under section 921 of this title.

§ 930. Possession of firearms and dangerous weapons in Federal facilities

(a) Except as provided in subsection (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

(b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) A person who kills any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, or attempts or conspires to do such an act, shall be punished as provided in sections 1111, 1112, 1113, and 1117.

(d) Subsection (a) shall not apply to—

(1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;

(2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or

(3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (d).

(f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

(g) As used in this section:

(1) The term ''Federal facility'' means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.

(2) The term ''dangerous weapon'' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

(3) The term ''Federal court facility'' means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

(h) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (e) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (e), as the case may be.

(Added Pub. L. 100–690, title VI, § 6215(a), Nov. 18, 1988, 102 Stat. 4361; amended Pub. L. 101–647, title XXII, § 2205(a), Nov. 29, 1990, 104 Stat. 4857; Pub. L. 103–322, title VI, § 60014, Sept. 13, 1994, 108 Stat. 1973; Pub. L. 104–294, title VI, § 603(t), (u), Oct. 11, 1996, 110 Stat. 3506; Pub. L. 107–56, title VIII, § 811(b), Oct. 26, 2001, 115 Stat. 381.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–56 struck out ''or attempts to kill'' after ''A person who kills'', inserted ''or attempts or conspires to do such an act,'' before ''shall be punished'', and substituted ''1113, and 1117'' for ''and 1113''.

1996—Subsec. (e)(2). Pub. L. 104–294, § 603(t), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (g). Pub. L. 104–294, § 603(u)(1), redesignated subsec. (g), related to posting notice in Federal facilities, as (h).

Subsec. (h). Pub. L. 104–294, § 603(u)(2), substituted ''(e)'' for ''(d)'' wherever appearing.

Pub. L. 104–294, § 603(u)(1), redesignated subsec. (g), related to posting notice in Federal facilities, as (h).

1994—Subsec. (a). Pub. L. 103–322, § 60014(2), substituted ''(d)'' for ''(c)''.

Subsecs. (c) to (g). Pub. L. 103–322, § 60014(1), (3), added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1990—Subsec. (a). Pub. L. 101–647, § 2205(a)(1), inserted ''(other than a Federal court facility)'' after ''Federal facility''.

Subsecs. (d), (e). Pub. L. 101–647, § 2205(a)(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–647, § 2205(a)(2), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 101–647, § 2205(a)(4), added par. (3).

Subsec. (g). Pub. L. 101–647, § 2205(a)(5), inserted ''and notice of subsection (d) shall be posted conspicuously at each public entrance to each Federal court facility,'' after ''each Federal facility,'', ''or (d)'' before ''with respect to'', and ''or (d), as the case may be'' before the period.

Pub. L. 101–647, § 2205(a)(2), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2205(b) of Pub. L. 101–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to conduct engaged in after the date of the enactment of this Act [Nov. 29, 1990].''

§ 931. Prohibition on purchase, ownership, or possession of body armor by violent felons

(a) IN GENERAL.—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

(1) a crime of violence (as defined in section 16); or

(2) an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.

(b) AFFIRMATIVE DEFENSE.—

(1) IN GENERAL.—It shall be an affirmative defense under this section that—

(A) the defendant obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and

(B) the use and possession by the defendant were limited to the course of such performance.

(2) EMPLOYER.—In this subsection, the term ''employer'' means any other individual employed by the defendant's business that supervises defendant's activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.

(Added Pub. L. 107–273, div. C, title I, § 11009(e)(2)(A), Nov. 2, 2002, 116 Stat. 1821.)

CHAPTER 45—FOREIGN RELATIONS

Sec.
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AMENDMENTS

1996—Pub. L. 104–132, title VII, § 704(b), Apr. 24, 1996, 110 Stat. 1295, substituted ''Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country'' for ''Conspiracy to injure property of foreign government'' in item 956.

1990—Pub. L. 101–647, title XII, § 1207(a), title XXXV, § 3530, Nov. 29, 1990, 104 Stat. 4832, 4924, struck out item 968 ''Exportation of war materials to certain countries'' and item 969 ''Exportation of arms, liquors and narcotics to Pacific Islands''.

1972—Pub. L. 92–539, title IV, § 402, Oct. 24, 1972, 86 Stat. 1073, added item 970.

§ 951. Agents of foreign governments

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined under this title or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term ''agent of a foreign government'' means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

(2) such person—

(A) is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, except that the provisions of this subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.

(June 25, 1948, ch. 645, 62 Stat. 743; Pub. L. 97–462, § 6, Jan. 12, 1983, 96 Stat. 2530; Pub. L. 98–473, title II, § 1209, Oct. 12, 1984, 98 Stat. 2164; Pub. L.

99–569, title VII, §703, Oct. 27, 1986, 100 Stat. 3205; Pub. L. 103–199, title II, §202, Dec. 17, 1993, 107 Stat. 2321; Pub. L. 103–322, title XXXIII, §330016(1)(R), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on section 601 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, §3, 40 Stat. 226; Mar. 28, 1940, ch. 72, §6, 54 Stat. 80).

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

REFERENCES IN TEXT

Section 11 of the Export Administration Act of 1979, referred to in subsec. (e)(2)(B), is classified to section 2410 of Title 50, Appendix, War and National Defense.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $75,000''.

1993—Subsec. (e)(2)(A). Pub. L. 103–199 substituted ''Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section'' for ''the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba''.

1986—Subsec. (e). Pub. L. 99–569 added subsec. (e).

1984—Pub. L. 98–473 designated existing provisions as subsec. (a), substituted ''Attorney General if required in subsection (b)'' for ''Secretary of State'', and added subsecs. (b) to (d).

1983—Pub. L. 97–462 increased limitation on fines to $75,000 from $5,000.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–462 effective 45 days after Jan. 12, 1983, see section 4 of Pub. L. 97–462, set out as a note under section 2071 of Title 28, Judiciary and Judicial Procedure.

§952. Diplomatic codes and correspondence

Whoever, by virtue of his employment by the United States, obtains from another or has or has had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and without authorization or competent authority, willfully publishes or furnishes to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 743; Pub. L. 103–322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 135 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 10, 1933, ch. 57, 48 Stat. 122).

Minor changes of phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§953. Private correspondence with foreign governments

Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title or imprisoned not more than three years, or both.

This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

(June 25, 1948, ch. 645, 62 Stat. 744; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §5 (Mar. 4, 1909, ch. 321, §5, 35 Stat. 1088; Apr. 22, 1932, ch. 126, 47 Stat. 132).

The reference to any citizen or resident within the jurisdiction of the United States not duly authorized ''who counsels, advises or assists in such correspondence with such intent'' was omitted as unnecessary in view of definition of principal in section 2.

Mandatory punishment provision was rephrased in the alternative.

Minor changes of arrangement and in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

§954. False statements influencing foreign government

Whoever, in relation to any dispute or controversy between a foreign government and the United States, willfully and knowingly makes any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the United States or any department or agency thereof, to the injury of the United States, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 744; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 231 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, §1, 40 Stat. 226; Mar. 28, 1940, ch. 72, §6, 54 Stat. 80).

Mandatory punishment provision was rephrased in the alternative.

Words ''department or agency'' were added to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 955. Financial transactions with foreign governments

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined under this title or imprisoned for not more than five years, or both.

This section is applicable to individuals, partnerships, corporations, or associations other than public corporations created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest through stock ownership or otherwise. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this section shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to making of any loan to such government, political subdivision, organization, or association.

(June 25, 1948, ch. 645, 62 Stat. 744; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 804a of title 31, U.S.C., 1940 ed., Money and Finance (Apr. 13, 1934, ch. 112, §§1, 2, 48 Stat. 574).

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Words ''upon conviction thereof'' were omitted from first paragraph as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

An additional paragraph was added to the text of this section by Senate amendment, which was taken from section 804b of Title 31, U.S.C., Money and Finance. Therefore, as finally enacted, such section 804b and the Acts from which it was derived (Act Apr. 13, 1934, ch. 112, § 3, as added July 31, 1945, ch. 339, § 9, 59 Stat. 516), were an additional source of this section. See Senate Report No. 1620, amendment No. 9, 80th Cong.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in first par.

APPLICABILITY OF SECTION

Pub. L. 102–511, title IX, § 902, Oct. 24, 1992, 106 Stat. 3355, provided that: ''Section 955 of title 18, United States Code, shall not apply with respect to any obligations of the former Soviet Union, or any of the independent states of the former Soviet Union, or any political subdivision, organization, or association thereof.''

§ 956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country

(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

(2) The punishment for an offense under subsection (a)(1) of this section is—

(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.

(June 25, 1948, ch. 645, 62 Stat. 744; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 704(a), Apr. 24, 1996, 110 Stat. 1294.)

HISTORICAL AND REVISION NOTES

Based on section 234 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title VIII, § 5, 40 Stat. 226).

AMENDMENTS

1996—Pub. L. 104–132 substituted ''Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country'' for ''Conspiracy to injure property of foreign government'' as section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined under this title or imprisoned not more than three years, or both.

''(b) Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy.''

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 957. Possession of property in aid of foreign government

Whoever, in aid of any foreign government, knowingly and willfully possesses or controls any property or papers used or designed or intended for use in violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 98 (June 15, 1917, ch. 30, title XI, § 22, 40 Stat. 230; Mar. 28, 1940, ch. 72, § 8, 54 Stat. 80).

Definition of ''foreign government'' was omitted and is incorporated in section 11 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 958. Commission to serve against friendly nation

Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, against any prince, state, colony, district, or people, with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 21 (Mar. 4, 1909, ch. 321, § 9, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 959. Enlistment in foreign service

(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined under this title or imprisoned not more than three years, or both.

(b) This section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this subsection shall be under regulations prescribed by the Secretary of the Army.

(c) This section and sections 960 and 961 of this title shall not apply to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

(June 25, 1948, ch. 645, 62 Stat. 745; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 22, 30 (Mar. 4, 1909, ch. 321, §§ 10, 18, 35 Stat. 1089, 1091; May 7, 1917, ch. 11, 40 Stat. 39).

Section consolidates said sections of title 18, U.S.C., 1940 ed. Last sentence of section 30 of title 18, U.S.C., 1940 ed., relating to piracy and treason, was omitted as unnecessary.

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

References in subsection (c) to sections 960 and 961 of this title are to the only other sections to which the subsection can apply.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 745; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 25 (Mar. 4, 1909, ch. 321, § 13, 35 Stat. 1090; June 15, 1917, ch. 30, title V, § 8, 40 Stat. 223).

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Reference to territory or possessions of the United States was omitted as covered by definitive section 5 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

§ 961. Strengthening armed vessel of foreign nation

Whoever, within the United States, increases or augments the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States is at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 746; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 24 (Mar. 4, 1909, ch. 321, § 12, 35 Stat. 1090).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Mandatory punishment was rephrased in the alternative.

Words ''within the United States'' were substituted for ''within the territory or jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 962. Arming vessel against friendly nation

Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed—

Shall be fined under this title or imprisoned not more than three years, or both.

Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States.

(June 25, 1948, ch. 645, 62 Stat. 746; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 23 (Mar. 4, 1909, ch. 321, § 11, 35 Stat. 1090).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in third par.

§ 963. Detention of armed vessel

(a) During a war in which the United States is a neutral nation, the President, or any person authorized by him, may detain any armed vessel owned wholly or in part by citizens of the United States, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or upon the high seas.

(b) Whoever, in violation of this section takes, or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined under this title or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 746; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 32, 36 (June 15, 1917, ch. 30, title V, §§ 2, 6, 40 Stat. 221, 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Changes in phraseology were also made.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of authority vested in President by this section, see sec-

tion 1(*l*) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§964. Delivering armed vessel to belligerent nation

(a) During a war in which the United States is a neutral nation, it shall be unlawful to send out of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract that such vessel will be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined under this title or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 747; Pub. L. 103–322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§33, 36 (June 15, 1917, ch. 30, title V, §§3, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, §5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Minor changes of phraseology were made.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§965. Verified statements as prerequisite to vessel's departure

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 60105 of title 46, to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the Customs Service a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the Customs Service like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined under this title or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

The Secretary of the Treasury is authorized to promulgate regulations upon compliance with which vessels engaged in the coastwise trade or fisheries or used solely for pleasure may be relieved from complying with this section.

(June 25, 1948, ch. 645, 62 Stat. 747; Pub. L. 103–182, title VI, §687, Dec. 8, 1993, 107 Stat. 2221; Pub. L. 103–322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–304, §17(d)(5), Oct. 6, 2006, 120 Stat. 1707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§34, 36 (June 15, 1917, ch. 30, title V, §§4, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, §5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Words ''within the United States'' were substituted for ''within the jurisdiction'' etc., in view of the definition of United States in section 5 of this title.

Mandatory punishment provision was rephrased in the alternative.

Words in subsection (a), referring to title 46, sections 91, 92, and 94, ''each of which sections is hereby declared to be and is continued in full force and effect,'' were omitted as surplusage.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

The final paragraph of the revised section was added on advice of the Treasury Department, to conform with administrative practice and because of the unnecessary burden upon domestic commerce had the provisions of this section been enforced against coastwise, fishing, and pleasure vessels.

Minor changes of phraseology were made.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–304 substituted ''section 60105 of title 46'' for ''section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)''.

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1993—Subsec. (a). Pub. L. 103–182 substituted ''section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91),'' for ''sections 91, 92, and 94 of Title 46'', ''deliver to the Customs Service'' for ''deliver to the collector of customs for the district wherein such vessel is then located'', and ''the Customs Service like'' for ''the collector like''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950. eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 966. Departure of vessel forbidden for false statements

(a) Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in section 965 of this title are false, the collector of customs for the district in which the vessel is located may, subject to review by the head of the department or agency charged with the administration of laws relating to clearance of vessels, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the United States. It shall thereupon be unlawful for the vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined under this title or imprisoned not more than ten years, or both.

In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 747; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 35, 36 (June 15, 1917, ch. 30, title V, §§ 5, 6, 40 Stat. 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

The phrase ''by the head of the department or agency charged with the administration of laws relating to clearance of vessels,'' was substituted for ''by the Secretary of Commerce'' in view of Executive Order No. 9083 (F.R. 1609) transferring functions to the Commissioner of Customs.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Minor changes of phraseology were made.

Amendments

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

Transfer of Functions

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 967. Departure of vessel forbidden in aid of neutrality

(a) During a war in which the United States is a neutral nation, the President, or any person authorized by him, may withhold clearance from or to any vessel, domestic or foreign, or, by service of formal notice upon the owner, master, or person in command or in charge of any domestic vessel not required to secure clearances, may forbid its departure from port or from the United States, whenever there is reasonable cause to believe that such vessel is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a foreign belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations. It shall thereupon be unlawful for such vessel to depart.

(b) Whoever, in violation of this section, takes or attempts to take, or authorizes the taking of any such vessel, out of port or from the United States, shall be fined under this title or imprisoned not more than ten years, or both. In addition, such vessel, her tackle, apparel, furniture, equipment, and her cargo shall be forfeited to the United States.

(June 25, 1948, ch. 645, 62 Stat. 748; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 31, 36 (June 15, 1917, ch. 30, title V, §§ 1, 6, 40 Stat. 221, 222; Mar. 28, 1940, ch. 72, § 5, 54 Stat. 79).

Section consolidates said sections of title 18, U.S.C., 1940 ed., with minor changes in translations and phraseology.

Mandatory punishment provision was rephrased in the alternative.

The conspiracy provision of said section 36 was omitted as covered by section 371 of this title. See reviser's note under that section.

Changes in phraseology were also made.

Amendments

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

Delegation of Functions

For delegation to Secretary of Homeland Security of authority vested in President by this section, see section 1(m) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

[§ 968. Repealed. Aug. 26, 1954, ch. 937, title V, § 542(a)(14), 68 Stat. 861]

Section, act June 25, 1948, ch. 645, 62 Stat. 748, related to exportation of war materials to certain countries. See section 1934 of Title 22, Foreign Relations and Intercourse.

[§ 969. Repealed. Pub. L. 101–647, title XII, § 1207(a), Nov. 29, 1990, 104 Stat. 4832]

Section, act June 25, 1948, ch. 645, 62 Stat. 748, related to penalties for exporting arms, liquor, and narcotics to Pacific Islands.

§ 970. Protection of property occupied by foreign governments

(a) Whoever willfully injures, damages, or destroys, or attempts to injure, damage, or destroy, any property, real or personal, located within the United States and belonging to or utilized or occupied by any foreign government or international organization, by a foreign official or official guest, shall be fined under this title, or imprisoned not more than five years, or both.

(b) Whoever, willfully with intent to intimidate, coerce, threaten, or harass—

(1) forcibly thrusts any part of himself or any object within or upon that portion of any building or premises located within the United States, which portion is used or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest; or

(2) refuses to depart from such portion of such building or premises after a request—

(A) by an employee of a foreign government or of an international organization, if such employee is authorized to make such request by the senior official of the unit of such government or organization which occupies such portion of such building or premises;

(B) by a foreign official or any member of the foreign official's staff who is authorized by the foreign official to make such request;

(C) by an official guest or any member of the official guest's staff who is authorized by the official guest to make such request; or

(D) by any person present having law enforcement powers;

shall be fined under this title or imprisoned not more than six months, or both.

(c) For the purpose of this section ''foreign government'', ''foreign official'', ''international organization'', and ''official guest'' shall have the same meanings as those provided in section 1116(b) of this title.

(Added Pub. L. 92–539, title IV, § 401, Oct. 24, 1972, 86 Stat. 1073; amended Pub. L. 94–467, § 7, Oct. 8, 1976, 90 Stat. 2000; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(a)(2), Oct. 11, 1996, 110 Stat. 3498.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $500'' in concluding provisions.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1976—Subsecs. (b), (c). Pub. L. 94–467 added subsec. (b), redesignated former subsec. (b) as (c), and struck out reference to section 1116(c) of this title.

CHAPTER 46—FORFEITURE

Sec.
981. Civil forfeiture.
982. Criminal forfeiture.
983. General rules for civil forfeiture proceedings.
984. Civil forfeiture of fungible property.
985. Civil forfeiture of real property.
986. Subpoenas for bank records.
987. Anti-terrorist forfeiture protection.

AMENDMENTS

2006—Pub. L. 109–177, title IV, § 406(b)(1)(A), Mar. 9, 2006, 120 Stat. 244, added item 987.

2000—Pub. L. 106–185, §§ 2(b), 7(b), Apr. 25, 2000, 114 Stat. 210, 215, added items 983 and 985.

1992—Pub. L. 102–550, title XV, §§ 1522(b), 1523(b), Oct. 28, 1992, 106 Stat. 4063, 4064, added items 984 and 986.

1988—Pub. L. 100–690, title VII, § 7069, Nov. 18, 1988, 102 Stat. 4405, substituted ''forfeiture'' for ''Forfeiture'' in items 981 and 982.

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting ''specified unlawful activity'' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any any[1] Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5)[2] against the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government.[3] Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term ''proceeds'' is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term ''proceeds'' means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term ''proceeds'' means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

(i) the seizure is made pursuant to a lawful arrest or search; or

[1] So in original.

[2] So in original. A second closing parenthesis probably should appear.

[3] So in original. Probably should not be capitalized.

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In[3] the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may

be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms ''related criminal case'' and ''related criminal investigation'' mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is ''related'' to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h)[4] of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of prop-

[4] See References in Text below.

erty or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term ''Attorney General'' means the Attorney General or his delegate; and

(2) the term ''Secretary of the Treasury'' means the Secretary of the Treasury or his delegate.

(k) INTERBANK ACCOUNTS.—

(1) IN GENERAL.—

(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) INTERBANK ACCOUNT.—The term ''interbank account'' has the same meaning as in section 984(c)(2)(B).

(B) OWNER.—

(i) IN GENERAL.—Except as provided in clause (ii), the term ''owner''—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) EXCEPTION.—The foreign financial institution (as defined in section 984(c)(2)(A)

of this title) may be considered the ''owner'' of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

(Added Pub. L. 99–570, title I, § 1366(a), Oct. 27, 1986, 100 Stat. 3207–35; amended Pub. L. 100–690, title VI, §§ 6463(a), (b), 6469(b), 6470(b), (e), (f), 6471(c), Nov. 18, 1988, 102 Stat. 4374, 4377, 4378; Pub. L. 101–73, title IX, § 963(a), (b), Aug. 9, 1989, 103 Stat. 504; Pub. L. 101–647, title I, § 103, title XXV, §§ 2508, 2524, 2525(a), title XXXV, § 3531, Nov. 29, 1990, 104 Stat. 4791, 4862, 4873, 4874, 4924; Pub. L. 102–393, title VI, § 638(d), Oct. 6, 1992, 106 Stat. 1788; Pub. L. 102–519, title I, § 104(a), Oct. 25, 1992, 106 Stat. 3385; Pub. L. 102–550, title XV, §§ 1525(c)(1), 1533, Oct. 28, 1992, 106 Stat. 4065, 4066; Pub. L. 103–322, title XXXIII, § 330011(s)(2), Sept. 13, 1994, 108 Stat. 2146; Pub. L. 103–447, title I, § 102(b), Nov. 2, 1994, 108 Stat. 4693; Pub. L. 106–185, §§ 2(c)(1), 5(a), 6, 8(a), 20, Apr. 25, 2000, 114 Stat. 210, 213–215, 224; Pub. L. 107–56, title III, §§ 319(a), 320, 372(b)(1), 373(b), title VIII, § 806, Oct. 26, 2001, 115 Stat. 311, 315, 339, 340, 378; Pub. L. 107–197, title III, § 301(d), June 25, 2002, 116 Stat. 728; Pub. L. 107–273, div. B, title IV, § 4002(a)(2), Nov. 2, 2002, 116 Stat. 1806; Pub. L. 109–177, title I, §§ 111, 120, title IV, §§ 404, 406(a)(3), Mar. 9, 2006, 120 Stat. 209, 221, 244.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsecs. (a)(1)(B)(i), (b)(4)(A), and (k)(1)(A), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), (3), are set out in the Appendix to this title.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b)(2)(A), are set out as part of the Federal Rules of Civil Procedure in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (b)(4)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 3 of the Anti Drug Abuse Act of 1986, referred to in subsec. (e), is section 3 of Pub. L. 99–570, which is set out as a note under section 801 of Title 21, Food and Drugs.

Section 8(e)(7)(D) of the Federal Deposit Insurance Act, referred to in subsec. (e)(7), is classified to section 1818(e)(7)(D) of Title 12, Banks and Banking.

Section 481(h) of the Foreign Assistance Act of 1961, referred to in subsec. (i)(1)(C), was classified to section 2291(h) of Title 22, Foreign Relations and Intercourse, prior to repeal of subsec. (h) by Pub. L. 102–583, § 6(b)(2), Nov. 2, 1992, 106 Stat. 4932. Reference to section 481(h) of the Foreign Assistance Act of 1961 probably should be to section 490(a)(1) of the Act, which is classified to section 2291j(a)(1) of Title 22.

AMENDMENTS

2006—Subsec. (a)(1)(B)(i). Pub. L. 109–177, § 111, inserted ''trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or'' after ''involves''.

Subsec. (a)(1)(G)(i). Pub. L. 109–177, § 120(1), which directed amendment of cl. (i) by substituting ''any Federal crime of terrorism (as defined in section 2332b(g)(5))'' for ''act of international or domestic terrorism (as defined in section 2331)'', was executed by making the substitution for ''act of domestic or international terrorism (as defined in section 2331)'', to reflect the probable intent of Congress.

Subsec. (a)(1)(G)(ii). Pub. L. 109–177, § 120(2), which directed amendment of cl. (ii) by ''striking 'an act of international or domestic terrorism (as defined in section 2331)' with 'any Federal crime of terrorism (as defined in section 2332b(g)(5)' '', was executed by striking ''an act of domestic or international terrorism (as defined in section 2331)'' and inserting ''any Federal crime of terrorism (as defined in section 2332b(g)(5)'', to reflect the probable intent of Congress.

Subsec. (a)(i)(G)(iii). Pub. L. 109–177, § 120(3), which directed amendment of cl. (iii) by substituting ''Federal crime of terrorism (as defined in section 2332b(g)(5))'' for ''act of international or domestic terrorism (as defined in section 2331)'', was executed by making the substitution for ''act of domestic or international terrorism (as defined in section 2331)'', to reflect the probable intent of Congress.

Subsec. (a)(1)(G)(iv). Pub. L. 109–177, § 404, added cl. (iv).

Subsec. (k). Pub. L. 109–177, § 406(a)(3), substituted ''foreign financial institution (as defined in section 984(c)(2)(A) of this title)'' for ''foreign bank'' wherever appearing.

2002—Subsec. (a)(1)(H). Pub. L. 107–197 added subpar. (H).

Subsec. (d). Pub. L. 107–273 substituted ''proceeds from the sale of such property under this section'' for ''proceeds from the sale of this section''.

2001—Subsec. (a)(1)(A). Pub. L. 107–56, §§ 372(b)(1), 373(b), struck out ''of section 5313(a) or 5324(a) of title 31, or'' after ''transaction or attempted transaction in violation'', substituted '', 1957 or 1960'' for ''or 1957'', and struck out at end ''However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.''

Subsec. (a)(1)(B). Pub. L. 107–56, § 320, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.''

Subsec. (a)(1)(G). Pub. L. 107–56, § 806, added subpar. (G).

Subsec. (k). Pub. L. 107–56, § 319(a), added subsec. (k).

2000—Subsec. (a)(1). Pub. L. 106–185, §2(c)(1)(A), substituted ''The'' for ''Except as provided in paragraph (2), the'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 106–185, §20(a), substituted ''or any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.'' for ''or a violation of section 1341 or 1343 of such title affecting a financial institution.''

Subsec. (a)(2). Pub. L. 106–185, §§2(c)(1)(B), 20(b), added par. (2) and struck out former par. (2) which read as follows: ''No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.''

Subsec. (b). Pub. L. 106–185, §5(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b)(1) Any property—

''(A) subject to forfeiture to the United States under subparagraph (A) or (B) of subsection (a)(1) of this section—

''(i) may be seized by the Attorney General; or

''(ii) in the case of property involved in a violation of section 5313(a) or 5324 of title 31, United States Code, or section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the United States Postal Service, may be seized by the Secretary of the Treasury or the Postal Service; and

''(B) subject to forfeiture to the United States under subparagraph (C) of subsection (a)(1) of this section may be seized by the Attorney General, the Secretary of the Treasury, or the Postal Service.

''(2) Property shall be seized under paragraph (1) of this subsection upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

''(A) the seizure is pursuant to a lawful arrest or search; or

''(B) the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.''

Subsec. (e)(6). Pub. L. 106–185, §6, added par. (6) and struck out former par. (6) which read as follows: ''in the case of property referred to in subsection (a)(1)(C), restore forfeited property to any victim of an offense described in subsection (a)(1)(C); or''.

Subsec. (g). Pub. L. 106–185, §8(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The filing of an indictment or information alleging a violation of law, Federal, State, or local, which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.''

1994—Subsec. (e)(7). Pub. L. 103–322, §330011(s)(2), amended directory language of Pub. L. 101–647, §2525(a)(2). See 1990 Amendment note below.

Subsec. (i)(1)(C). Pub. L. 103–447, which directed substitution of ''section 490(a)(1) of the Foreign Assistance Act of 1961'' for ''paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961'', could not be executed because the words ''paragraph (1)(A) of'' do not appear in text.

1992—Subsec. (a)(1)(A). Pub. L. 102–550, §1525(c)(1), substituted ''5324(a)'' for ''5324''.

Subsec. (a)(1)(C). Pub. L. 102–393 inserted provisions relating to sections 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, and 1030 of this title.

Subsec. (a)(1)(F). Pub. L. 102–519 added subpar. (F).

Subsec. (e). Pub. L. 102–550, §1533, struck out penultimate sentence of concluding provisions which read as follows: ''The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited.''

1990—Subsec. (a)(1)(C). Pub. L. 101–647, §2524(1), inserted ''1032,'' after ''1014,'' and ''or a violation of section 1341 or 1343 of such title affecting a financial institution'' before period at end.

Subsec. (a)(1)(D), (E). Pub. L. 101–647, §2525(a)(1), added subpars. (D) and (E).

Subsec. (b). Pub. L. 101–647, §2524(2), added par. (1) and par. (2) introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (2), and struck out former introductory provisions which read as follows: ''Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 5313(a) or 5324 of title 31 or of section 1956 or 1957 of this title investigated by the Secretary of the Treasury or the Postal Service may be seized by the Secretary of the Treasury or the Postal Service, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—''.

Subsec. (d). Pub. L. 101–647, §3531, inserted a period at end.

Subsec. (e)(3), (4). Pub. L. 101–647, §2524(3), (4), struck out ''(if the affected financial institution is in receivership or liquidation)'' after ''subsection (a)(1)(C)''.

Subsec. (e)(6). Pub. L. 101–647, §2508, added par. (6).

Subsec. (e)(7). Pub. L. 101–647, §2525(a)(2), as amended by Pub. L. 103–322, §330011(s)(2), added par. (7).

Subsec. (i). Pub. L. 101–647, §103(1), struck out introductory provisions which read as follows: ''In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:''.

Subsec. (i)(1). Pub. L. 101–647, §103(3), substituted first sentence for ''Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country.''

Pub. L. 101–647, §103(2), (4), (5), inserted ''or the Secretary of the Treasury'' after ''Attorney General'' in two places, realigned margin, and struck out at end ''Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.''

Subsec. (i)(2) to (5). Pub. L. 101–647, §103(2), realigned margins.

1989—Subsec. (a)(1)(C). Pub. L. 101–73, §963(a), added subpar. (C).

Subsec. (e). Pub. L. 101–73, §963(b), substituted ''determine—'' for ''determine to—'' in introductory provisions, inserted ''The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.'' in closing provisions, added pars. (1) to (5), and struck out former pars. (1) and (2) which read as follows:

''(1) any other Federal agency; or

''(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.''

1988—Subsec. (a)(1)(A). Pub. L. 100–690, § 6463(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.''

Subsec. (a)(1)(B). Pub. L. 100–690, § 6470(b), inserted '', real or personal,'' after ''property'', substituted ''constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from'' for ''which represents the proceeds of'', ''such offense would'' for ''such offense or activity would'', and ''punishable under the laws of the United States by imprisonment'' for ''punishable by imprisonment'', and inserted ''constituting the offense against the foreign nation'' after ''such act or activity''.

Subsec. (a)(1)(C). Pub. L. 100–690, § 6463(a)(2), struck out subpar. (C) which read as follows: ''Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer, or employee thereof.''

Subsec. (a)(2). Pub. L. 100–690, § 6470(e), substituted ''omission'' for ''emission''.

Subsec. (b). Pub. L. 100–690, § 6463(b), which directed amendment of subsec. (b) by substituting ''involved in a violation of section 5313(a) or 5324 of title 31 or of section 1956 or 1957 of this title investigated by the Secretary of the Treasury'' for ''involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section'' was executed by substituting the new language for ''involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section'' in introductory provisions, to reflect the probable intent of Congress.

Pub. L. 100–690, § 6469(b)(1), inserted ''or the Postal Service'' after ''Secretary of the Treasury'' in two places in introductory provisions.

Subsec. (b)(2). Pub. L. 100–690, § 6469(b)(2), substituted ''the Attorney General, the Secretary of the Treasury, or the Postal Service'' for ''the Attorney General or the Secretary of the Treasury''.

Subsec. (c). Pub. L. 100–690, § 6469(b)(2), substituted ''the Attorney General, the Secretary of the Treasury, or the Postal Service'' for ''the Attorney General or the Secretary of the Treasury'' in two places.

Subsec. (d). Pub. L. 100–690, § 6469(b)(2), (3), substituted ''the Attorney General, the Secretary of the Treasury, or the Postal Service'' for ''the Attorney General or the Secretary of the Treasury'' and inserted provision that Attorney General have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

Subsec. (e). Pub. L. 100–690, § 6469(b)(2), which directed the substitution of ''the Attorney General, the Secretary of the Treasury, or the Postal Service'' for ''the Attorney General or the Secretary of the Treasury'' was executed to reflect the probable intent of Congress by making the substitution in four places without regard as to whether or not the initial article ''the'' was capitalized.

Pub. L. 100–690, § 6469(b)(4), inserted provision that the authority granted to the Secretary of the Treasury and the Postal Service apply only to property that has been administratively forfeited.

Subsec. (g). Pub. L. 100–690, § 6471(c), inserted '', Federal, State or local,'' after ''law''.

Subsec. (i)(1). Pub. L. 100–690, § 6470(f), substituted ''subsection'' for ''subchapter'' in fourth sentence.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(s)(2) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 2525(a)(2) of Pub. L. 101–647 took effect.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–185, § 1(a), Apr. 25, 2000, 114 Stat. 202, provided that: ''This Act [enacting sections 983 and 985 of this title and sections 2466 and 2467 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 982 to 984, 986, 2232, 2254, and 3322 of this title, section 1324 of Title 8, Aliens and Nationality, section 1621 of Title 19, Customs Duties, section 881 of Title 21, Food and Drugs, sections 524, 2461, 2465, and 2680 of Title 28, and section 2996f of Title 42, The Public Health and Welfare, repealing section 888 of Title 21, and enacting provisions set out as notes under section 1324 of Title 8, section 2466 of Title 28, and section 3724 of Title 31, Money and Finance] may be cited as the 'Civil Asset Forfeiture Reform Act of 2000'.''

SHORT TITLE OF 1988 AMENDMENT

Section 6181 of Pub. L. 100–690 provided that: ''This subtitle [subtitle E (§§ 6181–6187) of title VI of Pub. L. 100–690, enacting sections 5325 and 5326 of Title 31, Money and Finance, amending sections 1956 and 1957 of this title, sections 1730d, 1829b, 1953, 1955, 3403, 3412, 3413, 3417, and 3420 of Title 12, Banks and Banking, and sections 5312, 5318, and 5321 of Title 31] may be cited as the 'Money Laundering Prosecution Improvements Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1351 of Pub. L. 99–570 provided that: ''This subtitle [subtitle H (§§ 1351–1367) of title I of Pub. L. 99–570, enacting this section, sections 982, 1956, and 1957 of this title and section 5324 of Title 31, Money and Finance, amending sections 1952, 1961, and 2516 of this title, sections 1464, 1730, 1786, 1817, 1818, 3403, and 3413 of Title 12, Banks and Banking, and sections 5312, 5316 to 5318, 5321, and 5322 of Title 31, and enacting provisions set out as notes under this section, sections 1464 and 1730 of Title 12, and sections 5315 to 5317, 5321, and 5324 of Title 31] may be cited as the 'Money Laundering Control Act of 1986'.''

SEVERABILITY

Section 1367 of Pub. L. 99–570 provided that: ''If any provision of this subtitle [see Short Title of 1986 Amendment note above] or any amendment made by this Act [see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs], or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.''

§ 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order

that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 554, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period.

(Added Pub. L. 99–570, title I, § 1366(a), Oct. 27, 1986, 100 Stat. 3207–39; amended Pub. L. 100–690, title VI, §§ 6463(c), 6464, Nov. 18, 1988, 102 Stat. 4374, 4375; Pub. L. 101–73, title IX, § 963(c), Aug. 9, 1989, 103 Stat. 504; Pub. L. 101–647, title XIV, §§ 1401, 1403, title XXV, § 2525(b), Nov. 29, 1990, 104 Stat. 4835, 4874; Pub. L. 102–393, title VI, § 638(e), Oct. 6, 1992, 106 Stat. 1788; Pub. L. 102–519, title I, § 104(b), Oct. 25, 1992, 106 Stat. 3385; Pub. L. 102–550, title XV, § 1512(c), Oct. 28, 1992, 106 Stat. 4058; Pub. L. 103–322, title XXXIII, § 330011(s)(1), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 104–191, title II, § 249(a), (b), Aug. 21, 1996, 110 Stat. 2020; Pub. L. 104–208, div. C, title II, § 217, Sept. 30, 1996, 110 Stat. 3009–573; Pub. L. 105–184, § 2, June 23, 1998, 112 Stat. 520; Pub. L. 105–318, § 6(a), Oct. 30, 1998, 112 Stat. 3010; Pub. L. 106–185, § 18(b), Apr. 25, 2000, 114 Stat. 223; Pub. L. 107–56, title III, § 372(b)(2), Oct. 26, 2001, 115 Stat. 339; Pub. L. 107–273, div. B, title IV, § 4002(b)(10), Nov. 2, 2002, 116 Stat. 1808; Pub. L. 109–295, title V, § 551(c), Oct. 4, 2006, 120 Stat. 1390.)

REFERENCES IN TEXT

Sections 274 and 274A of the Immigration and Nationality Act, referred to in subsec. (a)(6)(A), are classified to sections 1324 and 1324a, respectively, of Title 8, Aliens and Nationality.

AMENDMENTS

2006—Subsec. (a)(6)(A). Pub. L. 109–295 inserted ''554,'' before ''1425,'' in introductory provisions.

2002—Subsec. (a)(8). Pub. L. 107–273 substituted ''court'' for ''Court''.

2001—Subsec. (a)(1). Pub. L. 107–56 struck out ''of section 5313(a), 5316, or 5324 of title 31, or'' before ''of section 1956, 1957, or 1960 of this title'' and struck out at end ''However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.''

2000—Subsec. (a)(6). Pub. L. 106–185, § 18(b)(2), (3), designated concluding provisions of subpar. (A) as subpar. (B), substituted ''The court, in imposing sentence on a person described in subparagraph (A)'' for ''The court, in imposing sentence on such person'' and ''that subparagraph'' for ''this subparagraph'', and struck out former subpar. (B), which read as follows: ''The criminal forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsections (a) and (d) of such section 413.''

Subsec. (a)(6)(A). Pub. L. 106–185, § 18(b)(1)(A), inserted ''section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or'' after ''a person convicted of a violation of, or conspiracy to violate,'' in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 106–185, § 18(b)(1)(B), substituted ''the offense of which the person is convicted'' for ''a violation of, or a conspiracy to violate, subsection (a)''.

Subsec. (a)(6)(A)(ii)(I), (II). Pub. L. 106–185, § 18(b)(1)(C), substituted ''the offense of which the person is convicted'' for ''a violation of, or a conspiracy to violate, subsection (a), section 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title''.

1998—Subsec. (a)(6), (7). Pub. L. 105–184, § 2(1)(A), which directed the amendment of subsec. (a) ''by redesignating the second paragraph designated as paragraph (6) as paragraph (7)'', was executed by redesignating par. (6), relating to forfeitures for Federal health care offenses, as (7), to reflect the probable intent of Congress.

Subsec. (a)(8). Pub. L. 105–184, § 2(1)(B), added par. (8).

Subsec. (b)(1). Pub. L. 105–318 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed—

''(A) in the case of a forfeiture under subsection (a)(1), (a)(6), or (a)(8) of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

''(B) in the case of a forfeiture under subsection (a)(2) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.''

Subsec. (b)(1)(A). Pub. L. 105–184, § 2(2), substituted ''(a)(1), (a)(6), or (a)(8)'' for ''(a)(1) or (a)(6)''.

1996—Subsec. (a)(6). Pub. L. 104–208 added par. (6) relating to criminal forfeiture for passport and visa related offenses.

Pub. L. 104–191, § 249(a), added par. (6) relating to forfeitures for Federal health care offenses.

Subsec. (b)(1)(A). Pub. L. 104–191, § 249(b), inserted ''or (a)(6)'' after ''(a)(1)''.

1994—Subsec. (a)(1). Pub. L. 103–322, § 330011(s)(1), amended directory language of Pub. L. 101–647, § 1401. See 1990 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–550 substituted '', 1957, or 1960'' for ''or 1957''.

Subsec. (a)(2). Pub. L. 102–393 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.''

Subsec. (a)(5). Pub. L. 102–519 added par. (5).

1990—Subsec. (a)(1). Pub. L. 101–647, § 1401, as amended by Pub. L. 103–322, § 330011(s)(1), inserted '', 5316,'' after ''5313(a)'', the first place appearing.

Subsec. (a)(3), (4). Pub. L. 101–647, § 2525(b), added pars. (3) and (4).

Subsec. (b)(2). Pub. L. 101–647, § 1403, inserted before period at end ''unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period''.

1989—Subsec. (a). Pub. L. 101–73, § 963(c)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–73, § 963(c)(2), struck out ''The provisions of subsections 413(c) and (e) through (p) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(c) and (e)–(p)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section. However, the'', added par. (1), and inserted ''(2) The'' before ''substitution of assets''.

1988—Subsec. (a). Pub. L. 100–690, § 6463(c), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.''

Subsec. (b). Pub. L. 100–690, § 6464, substituted ''(p)'' for ''(*o*)'' in two places and inserted at end ''However, the substitution of assets provisions of subsection 413(p) not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(s)(1) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 1401 of Pub. L. 101–647 took effect.

§ 983. General rules for civil forfeiture proceedings

(a) NOTICE; CLAIM; COMPLAINT.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

(i) identify the specific property being claimed;

(ii) state the claimant's interest in such property; and

(iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set

forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) REPRESENTATION.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) INNOCENT OWNER DEFENSE.—

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term ''innocent owner'' means an owner who—

(i) did not know of the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such

person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term ''innocent owner'' means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term ''owner''—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) MOTION TO SET ASIDE FORFEITURE.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set

aside a declaration of forfeiture under a civil forfeiture statute.

(f) RELEASE OF SEIZED PROPERTY.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met,

the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) PROPORTIONALITY.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) CIVIL FINE.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than $250 or greater than $5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event

shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term ''civil forfeiture statute''—

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include—

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.); or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(Added and amended Pub. L. 106–185, §§2(a), 9, Apr. 25, 2000, 114 Stat. 202, 216; Pub. L. 106–561, §3(a), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107–56, title III, §316(d), Oct. 26, 2001, 115 Stat. 310.)

REFERENCES IN TEXT

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsecs. (a)(3)(A), (4)(A) and (f)(7)(A)(ii), are set out as part of the Federal Rules of Civil Procedure in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (h)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Tariff Act of 1930, referred to in subsec. (i)(2)(A), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (i)(2)(B), is classified generally to Title 26, Internal Revenue Code.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (i)(2)(C), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Trading with the Enemy Act, referred to in subsec. (i)(2)(D), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in (i)(2)(D), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Federal Rules of Evidence, referred to in subsec. (j)(4), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2001—Subsec. (i)(2)(D). Pub. L. 107–56 inserted ''or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.)'' before semicolon.

2000—Subsec. (a)(2)(C)(ii). Pub. L. 106–561 struck out ''(and provide customary documentary evidence of such interest if available) and state that the claim is not frivolous'' after ''such property''.

Subsec. (j). Pub. L. 106–185, §9, added subsec. (j).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–561, §3(b), Dec. 21, 2000, 114 Stat. 2791, provided that: ''The amendment made by this section

[amending this section] shall take effect as if included in the amendment made by section 2(a) of Public Law 106–185.''

EFFECTIVE DATE

Section applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

ANTI-TERRORIST FORFEITURE PROTECTION

Pub. L. 107–56, title III, § 316(a)–(c), Oct. 26, 2001, 115 Stat. 309, which provided the procedure for an owner of property that had been confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists to contest such confiscation, was repealed and restated as section 987 of this title by Pub. L. 109–177, title IV, § 406(b)(1)(B), (2), Mar. 9, 2006, 120 Stat. 244, 245.

§ 984. Civil forfeiture of fungible property

(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals—

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—

(A) the term ''financial institution'' includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7))); [1] and

(B) the term ''interbank account'' means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

(Added Pub. L. 102–550, title XV, § 1522(a), Oct. 28, 1992, 106 Stat. 4063; amended Pub. L. 103–325, title IV, § 411(c)(2)(E), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 106–185, § 13(a), Apr. 25, 2000, 114 Stat. 218.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 1(b)(7) of the International Banking Act of 1978, referred to in subsec. (c)(2)(A), is classified to section 3101(7) of Title 12, Banks and Banking.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–185, § 13(a)(1), (2), redesignated subsec. (b) as (a), substituted ''or precious metals'' for ''or other fungible property'' in introductory provisions of par. (1) and ''subsection (b)'' for ''subsection (c)'' in par. (2), and struck out former subsec. (a) which read as follows: ''This section shall apply to any action for forfeiture brought by the Government in connection with any offense under section 1956, 1957, or 1960 of this title or section 5322 or 5324 of title 31, United States Code.''

Subsec. (b). Pub. L. 106–185, § 13(a)(1), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 106–185, § 13(a)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 106–185, § 13(a)(3)(A), added par. (1) and struck out former par. (1) which read as follows: ''No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds held by a financial institution in an interbank account, unless the financial institution holding the account knowingly engaged in the offense.''

Subsec. (c)(2). Pub. L. 106–185, § 13(a)(3)(B), substituted ''In this subsection—'' for ''As used in this section, the term'', added subpar. (A), and inserted ''(B) the term'' before ''interbank account' means''.

Subsec. (d). Pub. L. 106–185, § 13(a)(4), added subsec. (d). Former subsec. (d) redesignated (c).

1994—Subsec. (a). Pub. L. 103–325 substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

§ 985. Civil forfeiture of real property

(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

(b)(1) Except as provided in this section—

(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

(c)(1) The Government shall initiate a civil forfeiture action against real property by—

(A) filing a complaint for forfeiture;

(B) posting a notice of the complaint on the property; and

(C) serving notice on the property owner, along with a copy of the complaint.

(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

(A) is a fugitive;

(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—

(A) the Government notifies the court that it intends to seize the property before trial; and

(B) the court—

(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

(f) This section—

(1) applies only to civil forfeitures of real property and interests in real property;

(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

(3) shall not affect the authority of the court to enter a restraining order relating to real property.

(Added Pub. L. 106–185, §7(a), Apr. 25, 2000, 114 Stat. 214.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(2)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

§986. Subpoenas for bank records

(a) At any time after the commencement of any action for forfeiture in rem brought by the United States under section 1956, 1957, or 1960 of this title, section 5322 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985[1] of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

(1) IN GENERAL.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

(Added Pub. L. 102–550, title XV, §1523(a), Oct. 28, 1992, 106 Stat. 4063; amended Pub. L. 103–325, title IV, §411(c)(2)(E), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 106–185, §17, Apr. 25, 2000, 114 Stat. 221.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat.

[1] See References in Text note below.

1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

Section 985 of this title, referred to in subsec. (a), was enacted by Pub. L. 106–185, and relates to civil forfeitures of real property and not to procedures and limitations for subpoenas. The reference to section 985 was included in this section when it was enacted by Pub. L. 102–550, but at that time there was no section 985 of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–185 added subsec. (d).

1994—Subsec. (a). Pub. L. 103–325 substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

§ 987. Anti-terrorist forfeiture protection

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) CLARIFICATIONS.—

(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of Federal law from the definition of the term ''civil forfeiture statute'' in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the ''Administrative Procedure Act'').

(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(Added Pub. L. 109–177, title IV, § 406(b)(1)(B), Mar. 9, 2006, 120 Stat. 244.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Evidence, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 107–56, title III, § 316(a)–(c), Oct. 26, 2001, 115 Stat. 309, which was set out as a note under section 983 of this title, prior to repeal by Pub. L. 109–177, § 406(b)(2).

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
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1034. Civil penalties and injunctions for violations of section 1033.

[1] Section catchline amended by Pub. L. 108–21 without corresponding amendment of chapter analysis.

1035. False statements relating to health care matters.
1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.
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1038. False information and hoaxes.
1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity.

AMENDMENTS

2007—Pub. L. 109–476, § 3(b), Jan. 12, 2007, 120 Stat. 3571, added item 1039.

2006—Pub. L. 109–177, title III, § 302(b), Mar. 9, 2006, 120 Stat. 233, inserted ''or seaport'' at end of item 1036.

2004—Pub. L. 108–458, title VI, § 6702(b), Dec. 17, 2004, 118 Stat. 3766, added item 1038.

Pub. L. 108–275, § 2(b), July 15, 2004, 118 Stat. 832, added item 1028A.

2003—Pub. L. 108–187, § 4(a)(2), Dec. 16, 2003, 117 Stat. 2705, added item 1037.

2000—Pub. L. 106–547, § 2(b), Dec. 19, 2000, 114 Stat. 2739, added item 1036.

1998—Pub. L. 105–318, § 3(h)(2), Oct. 30, 1998, 112 Stat. 3009, inserted ''and information'' at end of item 1028.

1996—Pub. L. 104–294, title VI, § 601(f)(8), Oct. 11, 1996, 110 Stat. 3500, substituted ''veteran's facilities'' for ''veterans' facilities'' in item 1024.

Pub. L. 104–191, title II, § 244(b), Aug. 21, 1996, 110 Stat. 2017, added item 1035.

1994—Pub. L. 103–322, title XXXII, § 320603(b), Sept. 13, 1994, 108 Stat. 2118, added items 1033 and 1034.

1990—Pub. L. 101–647, title XXV, § 2501(b), title XXXV, § 3532, Nov. 29, 1990, 104 Stat. 4860, 4925, inserted a period after ''1031'' and added item 1032.

1989—Pub. L. 101–73, title IX, §§ 961(g)(2), 962(a)(4), Aug. 9, 1989, 103 Stat. 500, 502, struck out item 1008 ''Federal Savings and Loan Insurance Corporation transactions'' and item 1009 ''Rumors regarding Federal Savings and Loan Insurance Corporation''.

1988—Pub. L. 100–700, § 2(c), Nov. 19, 1988, 102 Stat. 4632, added item 1031.

1984—Pub. L. 98–473, title II, §§ 1602(b), 2102(b), Oct. 12, 1984, 98 Stat. 2184, 2192, added items 1029 and 1030.

1982—Pub. L. 97–398, § 3, Dec. 31, 1982, 96 Stat. 2010, added item 1028.

1974—Pub. L. 93–406, title I, § 111(a)(2)(B)(iii), Sept. 2, 1974, 88 Stat. 852, substituted ''Employee Retirement Income Security Act of 1974'' for ''Welfare and Pension Plans Disclosure Act'' in item 1027.

1967—Pub. L. 90–19, § 24(e), May 25, 1967, 81 Stat. 28, included ''Department of Housing and Urban Development'' in item 1010, and substituted the same for ''Public Housing Administration'' in item 1012.

1962—Pub. L. 87–420, § 17(d), Mar. 20, 1962, 76 Stat. 42, added item 1027.

1951—Act Oct. 31, 1951, ch. 655, § 25, 65 Stat. 720, substituted ''Public Housing Administration'' for ''United States Housing Authority'' in item 1012.

1949—Act May 24, 1949, ch. 139, §§ 18, 19, 63 Stat. 92, corrected spelling in item 1012 and substituted ''officers'' for ''offices'' in item 1019.

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

(June 25, 1948, ch. 645, 62 Stat. 749; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–292, § 2, Oct. 11, 1996, 110 Stat. 3459; Pub. L. 108–458, title VI, § 6703(a), Dec. 17, 2004, 118 Stat. 3766; Pub. L. 109–248, title I, § 141(c), July 27, 2006, 120 Stat. 603.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 80 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Section 80 of title 18, U.S.C., 1940 ed., was divided into two parts.

The provision relating to false claims was incorporated in section 287 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''or any corporation in which the United States of America is a stockholder'' in said section 80 were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

In addition to minor changes of phraseology, the maximum term of imprisonment was changed from 10 to 5 years to be consistent with comparable sections. (See reviser's note under section 287 of this title.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248 inserted last sentence in concluding provisions.

2004—Subsec. (a). Pub. L. 108–458 substituted ''be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both'' for ''be fined under this title or imprisoned not more than 5 years, or both'' in concluding provisions.

1996—Pub. L. 104–292 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or

fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–275, § 1, July 15, 2004, 118 Stat. 831, provided that: ''This Act [enacting section 1028A of this title, amending sections 641 and 1028 of this title, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Identity Theft Penalty Enhancement Act'.''

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–21, title VI, § 607(a), Apr. 30, 2003, 117 Stat. 689, provided that: ''This section [amending section 1028 of this title] may be cited as the 'Secure Authentication Feature and Enhanced Identification Defense Act of 2003' or 'SAFE ID Act'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–578, § 1, Dec. 28, 2000, 114 Stat. 3075, provided that: ''This Act [amending section 1028 of this title, repealing section 1738 of this title, and enacting provisions set out as notes under section 1028 of this title] may be cited as the 'Internet False Identification Prevention Act of 2000'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–318, § 1, Oct. 30, 1998, 112 Stat. 3007, provided that: ''This Act [amending sections 982, 1028, and 2516 of this title and section 105 of the Ethics in Government Act of 1978, Pub. L. 95–521, set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as notes under section 1028 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Identity Theft and Assumption Deterrence Act of 1998'.''

Pub. L. 105–172, § 1, Apr. 24, 1998, 112 Stat. 53, provided that: ''This Act [amending section 1029 of this title and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Wireless Telephone Protection Act'.''

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–292 provided that: ''This Act [amending this section, sections 1515 and 6005 of this title, and section 1365 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'False Statements Accountability Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Section 290001(a) of Pub. L. 103–322, as amended by Pub. L. 104–294, title VI, § 604(b)(34), Oct. 11, 1996, 110 Stat. 3508, provided that: ''This section [amending section 1030 of this title] may be cited as the 'Computer Abuse Amendments Act of 1994'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–647, title XXV, § 2500, Nov. 29, 1990, 104 Stat. 4859, provided that: ''This title [see Tables for classification] may be cited as the 'Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–123, § 1, Oct. 23, 1989, 103 Stat. 759, provided that: ''This Act [amending section 1031 of this title, repealing section 293 of this title, enacting provisions set out as notes under sections 293 and 1031 of this title, and repealing provisions set out as a note under section 293 of this title] may be cited as the 'Major Fraud Act Amendments of 1989'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–700, § 1, Nov. 19, 1988, 102 Stat. 4631, provided that: ''This Act [enacting sections 293 and 1031 of this title and section 256 of Title 41, Public Contracts, amending section 2324 of Title 10, Armed Forces, and section 3730 of Title 31, Money and Finance, enacting provisions set out as notes under sections 293 and 1031 of this title, section 2324 of Title 10, and section 522 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as a note under section 2324 of Title 10] may be cited as the 'Major Fraud Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–474, § 1, Oct. 16, 1986, 100 Stat. 1213, provided that: ''This Act [amending section 1030 of this title] may be cited as the 'Computer Fraud and Abuse Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–473, title II, § 1601, Oct. 12, 1984, 98 Stat. 2183, provided that: ''This chapter [chapter XVI (§§ 1601–1603) of title II of Pub. L. 98–473, enacting section 1029 of this title and provisions set out as a note under section 1029 of this title] may be cited as the 'Credit Card Fraud Act of 1984'.''

Pub. L. 98–473, title II, § 2101, Oct. 12, 1984, 98 Stat. 2190, provided that: ''This chapter [chapter XXI (§§ 2101–2103) of title II of Pub. L. 98–473, enacting section 1030 of this title and provisions set out as a note under section 1030 of this title] may be cited as the 'Counterfeit Access Device and Computer Fraud and Abuse Act of 1984'.''

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–398 provided: ''That this Act [enacting sections 1028 and 1738 of this title and amending section 3001 of Title 39, Postal Service] may be cited as the 'False Identification Crime Control Act of 1982'.''

§ 1002. Possession of false papers to defraud United States

Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 74 (Mar. 4, 1909, ch. 321, § 30, 35 Stat. 1094).

Words ''or any agency thereof'' after ''United States'' and word ''agency'' after ''any'' and before ''officer,'' were inserted to eliminate any possible ambiguity as to scope of section. (See definition of ''agency'' in section 6 of this title.)

The maximum fine of ''$10,000'' was substituted for ''$500'' in order to conform punishment provisions to those of comparable sections. (See section 1001 of this title.)

Minor verbal change was made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1003. Demands against the United States

Whoever knowingly and fraudulently demands or endeavors to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, wages, gratuity, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined under this title or imprisoned not more than five years, or both; but if the sum or value so obtained or attempted to be obtained does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 749; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 79 (Mar. 4, 1909, ch. 321, § 34, 35 Stat. 1095).

Words ''prize money'' were deleted on the ground that they are an anachronism and were so before 1909. (See reviser's note under section 915 of this title.)

Mandatory punishment provision was rephrased in the alternative.

The smaller punishment for an offense involving $100 or less was added. (See reviser's note to sections 641 and 645 of this title.)

The maximum term of ''five years'' was substituted for ''ten years'' and ''$10,000'' was substituted for ''$5,000'' as being more in harmony with punishment provision of similar sections. (See reviser's note under section 1001 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' after ''instrument, shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

§ 1004. Certification of checks

Whoever, being an officer, director, agent, or employee of any Federal Reserve bank, member bank of the Federal Reserve System, insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act), branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, certifies a check before the amount thereof has been regularly deposited in the bank, branch, agency, or organization, by the drawer thereof, or resorts to any device, or receives any fictitious obligation, directly or collaterally, in order to evade any of the provisions of law relating to certification of checks, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 749; Pub. L. 101–647, title XXV, § 2597(g), Nov. 29, 1990, 104 Stat. 4910; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

[1] See References in Text note below.

HISTORICAL AND REVISION NOTES

Based on section 591 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. § 5208; July 12, 1882, ch. 290, § 13, 22 Stat. 166; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Feb. 25, 1927, ch. 191, § 12, 44 Stat. 1231).

Words ''be deemed guilty of a misdemeanor and shall'' were omitted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Words ''on conviction thereof'' were omitted as surplusage, because punishment cannot be imposed until after conviction.

Words ''in any district court of the United States'' were omitted as unnecessary, because section 3231 of this title confers jurisdiction on Federal district courts of all crimes and offenses defined in this title.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 3(h) of the Federal Deposit Insurance Act, referred to in text, is classified to section 1813(h) of Title 12, Banks and Banking.

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12.

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1990—Pub. L. 101–647 substituted a comma for ''or'' after ''Federal Reserve bank'' and inserted ''insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act), branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' after ''Federal Reserve System,'' and '', branch, agency, or organization,'' after ''has been regularly deposited in the bank''.

§ 1005. Bank entries, reports and transactions

Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, without authority from the directors of such bank, branch, agency, or organization or company, issues or puts in circulation any notes of such bank, branch, agency, or organization or company; or

Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or

Whoever makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or ex-

[1] See References in Text note below.

aminer appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System; or

Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution—

Shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

As used in this section, the term ''national bank'' is synonymous with ''national banking association''; ''member bank'' means and includes any national bank, state bank, or bank or trust company, which has become a member of one of the Federal Reserve banks; ''insured bank'' includes any state bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation; and the term ''branch or agency of a foreign bank'' means a branch or agency described in section 20(9) of this title. For purposes of this section, the term ''depository institution holding company'' has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.

(June 25, 1948, ch. 645, 62 Stat. 750; Pub. L. 101–73, title IX, § 961(d), Aug. 9, 1989, 103 Stat. 499; Pub. L. 101–647, title XXV, §§ 2504(d), 2595(a)(3), 2597(h), Nov. 29, 1990, 104 Stat. 4861, 4907, 4910; Pub. L. 107–273, div. B, title IV, § 4003(a)(2), Nov. 2, 2002, 116 Stat. 1811.)

HISTORICAL AND REVISION NOTES

Based on sections 592, 597 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. § 5209; Dec. 23, 1913, ch. 6, § 22(i) as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; Sept. 26, 1918, ch. 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch. 614, § 316, 49 Stat. 712).

(See reviser's note under section 656 of this title for comprehensive statement of reasons for separating section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, into three revised sections, and section 597 thereof into two revised sections, with the consequent extensive changes in phraseology, style, and arrangement.)

In this section, national bank receivers and Federal reserve agents were not included in the initial enumeration of persons at whom the act is directed, since the provisions of this section, unlike section 656 of this title, are not directed at such receivers and agents.

No changes of meaning or substance were made, except that, like said section 656 of this title, the different punishment provisions were reconciled, and one uniform punishment provision was adopted.

The words ''shall be deemed guilty of a misdemeanor'' were omitted as unnecessary in view of the definition of a misdemeanor in section 1 of this title.

The words ''and upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Since section 3231 of this title gives the district court jurisdiction of criminal prosecutions, the words ''in any district court of the United States'' were omitted as unnecessary.

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 3(w)(1) of the Federal Deposit Insurance Act, referred to in text, is classified to section 1813(w)(1) of Title 12.

AMENDMENTS

2002—Pub. L. 107–273, in first par. substituted ''Act,'' for ''Act,,'' and in third par. inserted ''or'' at end.

1990—Pub. L. 101–647, §§ 2504(d), 2595(a)(3)(A), (B), 2597(h), in first par. substituted ''depository institution'' for ''bank or savings and loan'', ''national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' for ''national bank or insured bank'', and ''of such bank, branch, agency, or organization or company'' for ''of such bank'' in two places, in third par. substituted ''bank, company, branch, agency, or organization'' for ''bank or company'' in four places, and in fifth par. substituted ''30'' for ''20'' before ''years''.

Pub. L. 101–647, § 2597(h)(3)(A), in sixth par. struck out ''and'' after ''one of the Federal Reserve Banks;''.

Pub. L. 101–647, § 2597(h)(3)(B), which, in sixth par., directed insertion of ''; and the term 'branch or agency of a foreign bank' means a branch or agency described in section 20(9) of this title'' before the period, was inserted before period at end of first sentence to reflect the probable intent of Congress and intervening amendment by Pub. L. 101–647, § 2595(a)(3)(C). See below.

Pub. L. 101–647, § 2595(a)(3)(C), inserted ''For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3(w)(1) of the Federal Deposit Insurance Act.'' at end of sixth par.

1989—Pub. L. 101–73 in first par. inserted ''bank or savings and loan holding company,'' after ''member bank,'', in third par. inserted ''or company'' after ''bank'' wherever appearing and substituted a semicolon for the dash after ''Federal Reserve System'', added fourth par. reading: ''Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution—'', and, in fifth par. substituted ''$1,000,000'' for ''$5,000'' and ''20 years'' for ''five years''.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, were not included in transfer of functions of officers, agencies and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insur-

ance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 750; May 24, 1949, ch. 139, §20, 63 Stat. 92; July 28, 1956, ch. 773, §2, 70 Stat. 714; Pub. L. 85–699, title VII, §704, Aug. 21, 1958, 72 Stat. 698; Pub. L. 87–353, §3(s), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90–19, §24(a), May 25, 1967, 81 Stat. 27; Pub. L. 91–468, §6, Oct. 19, 1970, 84 Stat. 1016; Pub. L. 101–73, title IX, §§961(e), 962(a)(7), (8)(A), Aug. 9, 1989, 103 Stat. 500, 502; Pub. L. 101–624, title XXIII, §2303(e), Nov. 28, 1990, 104 Stat. 3981; Pub. L. 101–647, title XVI, §1603, title XXV, §§2504(e), 2595(a)(4), Nov. 29, 1990, 104 Stat. 4843, 4861, 4907; Pub. L. 103–322, title XXXIII, §330004(6), Sept. 13, 1994, 108 Stat. 2141; Pub. L. 106–78, title VII, §767, Oct. 22, 1999, 113 Stat. 1174.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(b) and 1514(c) of title 7, U.S.C., 1940 ed., Agriculture, sections 264(u), 984, 1121, 1138d(c), 1311, 1441(c), 1467(c) and 1731(c) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, §12B(u), as added June 16, 1933, ch. 89, §8, 48 Stat. 178; July 17, 1916, ch. 245, §31, fourth par., 39 Stat. 383; July 17, 1916, ch. 245, §211(a), as added Mar. 4, 1923, ch. 252, §2, 42 Stat. 1459; Mar. 4, 1923, ch. 252, title II, §216(a), 42 Stat. 1471; Jan. 22, 1932, ch. 8, §16(c), 47 Stat. 11; July 22, 1932, ch. 522, §21(c), 47 Stat. 738; Ex. Ord. No. 6084, Mar. 27, 1933; June 13, 1933, ch. 64, §8(c), 48 Stat. 135; June 16, 1933, ch. 98, §64(c), 48 Stat. 268; Jan. 31, 1934, ch. 7, §13, 48 Stat. 347; June 27, 1934, ch. 847, §512(c), 48 Stat. 1265; Aug. 23, 1935, ch. 614, §101, 49 Stat. 701; July 22, 1937, ch. 517, title IV, §52(b), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, §514(c), 52 Stat. 76; Aug. 14, 1946, ch. 964, §3, 60 Stat. 1064).

Each of the eleven sections from which this section was derived contained similar provisions relating to embezzlement, false entries, and fraudulent issuance or assignment of obligations with respect to one or more named agencies or corporations.

These were divided and the false entry and fraudulent issuance or assignment of obligation provisions of all, form the basis of this section. The remaining provisions of each section, relating to embezzlement and misapplication, form the basis for section 657 of this title. That portion of said section 616(c) of title 15, relating to disclosure of information, forms the basis for section 1904 of this title.

Each revised section condenses and simplifies the constituent provisions without change of substance except as herein indicated.

The punishment provisions in each section were the same except that in section 1026(b) of title 7, U.S.C., 1940 ed., and sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., the maximum fine was $5,000. This consolidated section adopts the $10,000 maximum fine provided by the seven other sections.

References to persons aiding or abetting contained in sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, as such persons are made principals by section 2 of this title.

The term ''receiver,'' used in sections 1121 and 1311 of title 12, U.S.C., 1940 ed., with reference to Federal intermediate credit banks and agricultural credit corporations, was omitted as this term is undoubtedly embraced in the phrase ''or connected in any capacity with.''

The term ''or of any department or agency of the United States'' was inserted in order to clarify the sweeping provisions against fraudulent acts and to eliminate any possible ambiguity as to scope of section. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Words ''shall be deemed guilty of a misdemeanor'', contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, in view of definition of misdemeanor in section 1 of this title.

Words ''and upon conviction'', contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as surplusage, because punishment cannot be imposed until after conviction.

Words ''in any district court of the United States'', contained in section 1311 of title 12, U.S.C., 1940 ed., were omitted as unnecessary, because section 3231 of this title confers jurisdiction on the Federal district courts of all crimes and offenses defined in this title.

The conspiracy provisions of section 1138d(f) of title 12, U.S.C., 1940 ed., Banks and Banking, were not added to this consolidated section for reasons stated in reviser's note under section 493 of this title. (See also reviser's note under section 371 of this title.)

1949 ACT

[Section 20] conforms section 1006 of title 18, U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Historical and Revision Notes under section 657 of this title]).

AMENDMENTS

1999—Pub. L. 106–78 inserted ''or successor agency'' after ''Farmers Home Administration'' and after ''Rural Development Administration''.

1994—Pub. L. 103–322 struck out ''Reconstruction Finance Corporation,'' after ''in any capacity with the'' and ''Farmers' Home Corporation,'' after ''Federal Crop Insurance Corporation,''.

1990—Pub. L. 101–647, §2595(a)(4), substituted ''Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation,'' for ''Home Owners' Loan Corporation,'', and directed substitution of ''institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation'', for ''institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation'' which was executed by making the substitution for ''institution the accounts of which are insured by the Federal Deposit Insurance Corporation'' to

reflect the probable intent of Congress and intervening amendment by Pub. L. 101–647, § 1603, see below.

Pub. L. 101–647, § 2504(e), substituted ''30'' for ''20'' before ''years''.

Pub. L. 101–647, § 1603, substituted ''Federal Deposit Insurance Corporation'' for ''Federal Savings and Loan Insurance Corporation''.

Pub. L. 101–624 substituted ''Farmers Home Administration, the Rural Development Administration'' for ''Farmers' Home Administration''.

1989—Pub. L. 101–73, § 962(a)(8)(A), substituted ''the Farm Credit System Insurance Corporation, a Farm Credit Bank, a'' for ''any land bank, intermediate credit bank,''.

Pub. L. 101–73, § 962(a)(7), substituted ''National Credit Union Administration Board'' for ''Administrator of the National Credit Union Administration''.

Pub. L. 101–73, § 961(e), substituted ''$1,000,000'' for ''$10,000'' and ''20 years'' for ''five years''.

1970—Pub. L. 91–468 added National Credit Union Administration and its Administrator to the enumeration of Federal Credit institutions and personnel.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Federal Housing Administration''.

1961—Pub. L. 87–353 struck out reference to Federal Farm Mortgage Corporation.

1958—Pub. L. 85–699 included officers, agents or employees of or connected in any capacity with small business investment companies.

1956—Act July 28, 1956, included officers, agents or employees of or connected in any capacity with any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

1949—Act May 24, 1949, inserted reference Secretary of Agriculture acting through the Farmers' Home Administration.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of Corporations of Department of Agriculture, boards of directors and officers of such corporations, Advisory Board of Commodity Credit Corporation, and Farm Credit Administration or any agency, officer or entity of, under, or subject to supervision of said Administration excepted from functions of officers, agencies, and employees transferred to Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL CREDIT UNION ADMINISTRATION

Establishment as independent agency, membership etc., see section 1752 et seq. of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084, set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

§ 1007. Federal Deposit Insurance Corporation transactions

Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 750; Pub. L. 101–73, title IX, § 961(f), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101–647, title XXV, § 2504(f), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103–322, title XXXIII, § 330002(c), Sept. 13, 1994, 108 Stat. 2140.)

HISTORICAL AND REVISION NOTES

Based on section 264(s) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 12B(s), as added June 16, 1933, ch. 89, § 8, 48 Stat. 177; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 700).

Words ''Federal Deposit Insurance'' were inserted before ''Corporation'' in three places, so as to identify said Corporation, and phrase ''under this section'' was omitted as no longer applicable, considering transfer of this section to this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''transactions'' for ''Transactions'' in section catchline.

1990—Pub. L. 101–647 substituted ''30'' for ''20'' before ''years''.

1989—Pub. L. 101–73 substituted ''Transactions'' for ''transactions'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Whoever, for the purpose of obtaining any loan from the Federal Deposit Insurance Corporation, or any extension or renewals thereof, or the acceptance, release, or substitution of security therefor, or for the purpose of inducing the Federal Deposit Insurance Corporation to purchase any assets, or for the purpose of obtaining the payment of any insured deposit or transferred deposit or the allowance, approval, or payment of any claim, or for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, makes any statement, knowing it to be false, or willfully overvalues any security, shall be fined not more than $5,000 or imprisoned not more than two years, or both.''

[§§ 1008, 1009. Repealed. Pub. L. 101–73, title IX, §§ 961(g)(1), 962(a)(3), Aug. 9, 1989, 103 Stat. 500, 502]

Section 1008, act June 25, 1948, ch. 645, 62 Stat. 751, provided for fine or imprisonment for certain prohibited actions taken to obtain insurance from, or to influence in any way, the Federal Savings and Loan Insurance Corporation.

Section 1009, act June 25, 1948, ch. 645, 62 Stat. 751, provided for fine or imprisonment for making certain statements or rumors, untrue in fact, which were derogatory or affected solvency or financial condition of the Federal Savings and Loan Insurance Corporation.

§ 1010. Department of Housing and Urban Development and Federal Housing Administration transactions

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 751; Pub. L. 90–19, § 24(c), May 25, 1967, 81 Stat. 28; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1731(a) of title 12, U.S.C., 1940 ed., Banks and Banking (June 27, 1934, ch. 847, § 512(a), 48 Stat. 1265; Feb. 3, 1938, ch. 13, § 9, 52 Stat. 24).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

''$5,000'' was substituted for ''$3,000'' to make this section more consistent in its punishment provisions with comparable sections. (See section 1008 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1967—Pub. L. 90–19 included reference to Department of Housing and Urban Development in section catchline and substituted in text ''Department of Housing and Urban Development'' for ''Federal Housing Administration'' and ''Department'' for ''Administration'' in two places, respectively.

§ 1011. Federal land bank mortgage transactions

Whoever, being a mortgagee, knowingly makes any false statement in any paper, proposal, or letter, relating to the sale of any mortgage, to any Federal land bank; or

Whoever, being an appraiser, willfully overvalues any land securing such mortgage—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 751; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 987 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31, seventh paragraph, as added June 16, 1933, ch. 98, § 78, 48 Stat. 272).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 1012. Department of Housing and Urban Development transactions

Whoever, with intent to defraud, makes any false entry in any book of the Department of Housing and Urban Development or makes any false report or statement to or for such Department; or

Whoever receives any compensation, rebate, or reward, with intent to defraud such Department or with intent unlawfully to defeat its purposes; or

Whoever induces or influences such Department to purchase or acquire any property or to enter into any contract and willfully fails to disclose any interest which he has in such property or in the property to which such contract relates, or any special benefit which he expects to receive as a result of such contract—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 752; Oct. 31, 1951, ch. 655, § 26, 65 Stat. 720; Pub. L. 90–19, § 24(d), May 25, 1967, 81 Stat. 28; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 1423–1425 of title 42, U.S.C., 1940 ed., The Public Health and Welfare (Sept. 1, 1937, ch. 896, §§ 23–25, 50 Stat. 899).

Three sections were consolidated with changes of phraseology and arrangement necessary to effect consolidation.

Words ''upon conviction thereof'', in each section were omitted as surplusage since punishment cannot be imposed until after conviction.

The provisions of section 1424 of title 42, U.S.C., 1940 ed., The Public Health and Welfare, relating to conspiracy were omitted as inconsistent with the general conspiracy statute, section 371 of this title, both as to punishment and allegation and proof of an overt act. (See reviser's note under section 493 of this title.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

1967—Pub. L. 90–19 substituted ''Department of Housing and Urban Development'' for ''Public Housing Administration'' in section catchline and text, and ''Department'' for ''Administration'' wherever appearing in text.

1951—Act Oct. 31, 1951, substituted ''Public Housing Administration'' for ''United States Housing Authority'' in section catchline and text, and ''Administration'' for ''Authority'', wherever appearing in text.

§ 1013. Farm loan bonds and credit bank debentures

Whoever deceives, defrauds, or imposes upon, or attempts to deceive, defraud, or impose upon any person, partnership, corporation, or association by making any false pretense or representation concerning the character, issue, security, contents, conditions, or terms of any farm loan bond, or coupon, issued by any Federal land bank or banks; or of any debenture, coupon, or other obligation, issued by any Federal intermediate credit bank or banks; or by falsely pretending or representing that any farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 752; Pub. L. 97–297, § 4(a), Oct. 12, 1982, 96 Stat. 1318; Pub. L. 103–322, title XXXIII, §§ 330004(8), 330016(1)(G), Sept. 13, 1994, 108 Stat. 2141, 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31, fifth paragraph, 39 Stat. 384; July 17, 1916, ch. 245, § 211(g), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1461; Mar. 4, 1923, ch. 252, title II, § 216(g), 42 Stat. 1473).

This section condenses and simplifies sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, each of which contained similar provisions and similar language. The punishment provisions of all three sections were the same.

References to ''chapter'' and ''subchapter'' were omitted and words describing the various types of banks or organizations to which said sections 985, 1127, and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, related, were inserted in lieu. This necessitated some rephrasing and transposition of phrases, but without change of meaning or substance.

Words ''upon conviction'' which were contained in sections 1127 and 1317 of title 12, U.S.C., 1940 ed., Banks and Banking, were omitted as surplusage, because punishment cannot be imposed until after conviction.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(G), substituted ''fined under this title'' for ''fined not more than $500''.

Pub. L. 103–322, § 330004(8), struck out '', or by any National Agricultural Credit Corporation'' after ''credit bank or banks''.

1982—Pub. L. 97–297 struck out '', or by any joint-stock land bank or banks'' after ''issued by any Federal land bank or banks''.

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both. The term ''State-chartered credit union'' includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 752; May 24, 1949, ch. 139, § 21, 63 Stat. 92; July 26, 1956, ch. 741, title I, § 109, 70 Stat. 667; Pub. L. 85–699, title VII, § 705, Aug. 21, 1958, 72 Stat. 699; Pub. L. 86–168, title I, § 104(h), Aug. 18, 1959, 73 Stat. 387; Pub. L. 87–353, § 3(t), Oct. 4, 1961, 75 Stat. 774; Pub. L. 88–353, § 5, July 2, 1964, 78 Stat. 269; Pub. L. 91–468, § 7, Oct. 19, 1970, 84 Stat. 1017; Pub. L. 91–609, title IX, § 915, Dec. 31, 1970, 84 Stat. 1815; Pub. L. 97–297, § 4(b), Oct. 12, 1982, 96 Stat. 1318; Pub. L. 101–73, title IX, §§ 961(h), 962(a)(7), (8)(B), Aug. 9, 1989, 103 Stat. 500, 502; Pub. L. 101–624, title XXIII, § 2303(e), Nov. 28, 1990, 104 Stat. 3981; Pub. L. 101–647, title XXV, §§ 2504(g), 2595(a)(5), 2597(i), Nov. 29, 1990, 104 Stat. 4861, 4907, 4910; Pub. L. 103–322, title XXXIII, §§ 330002(d), 330008(8), Sept. 13, 1994, 108 Stat. 2140, 2143; Pub. L. 103–354, title I, § 119(e), Oct. 13, 1994, 108 Stat. 3208; Pub. L. 104–294, title VI, §§ 602(b), 604(b)(22), 605(b), 607(d), Oct. 11, 1996, 110 Stat. 3503, 3508, 3509, 3511; Pub. L. 106–78, title VII, § 767, Oct. 22, 1999, 113 Stat. 1174; Pub. L. 107–100, § 4(a), Dec. 21, 2001, 115 Stat. 966.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(a) and 1514(a) of title 7, U.S.C., 1940 ed., Agriculture, sections 596, 981, 1122, 1123, 1138d(a), 1248, 1312, 1313, 1441(a), and 1467(a), of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(a) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, § 22(h), as added June 19, 1934, ch. 653, § 3, 48 Stat. 1107; July 17, 1916, ch. 245, § 31, first paragraph, 39 Stat. 382; July 17, 1916, ch. 245, § 211(b), (c), as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; Mar. 4, 1923, ch. 252, title II, §§ 209(h), 216(b), (c), 42 Stat. 1468, 1472; Jan. 22, 1932, ch. 8, § 16 (a), 47 Stat. 11; July 22, 1932, ch. 522, § 21(a), 47 Stat. 738; June 13, 1933, ch. 64, § 8(a), 48 Stat. 134; June 16, 1933, ch. 98, § 64(a), 48 Stat. 267; Jan. 31, 1934, ch. 7, § 13, 48 Stat. 347; June 3, 1935, ch. 164, § 21, 49 Stat. 319; July 22, 1937, ch. 517, title IV, § 52(a); 50 Stat. 531; Feb. 16, 1938, ch. 30, title V, § 514(a), 52 Stat. 76; Aug. 14, 1946, ch. 964, § 3, 60 Stat. 1064).

Each of the 13 sections from which this section was derived contained similar provisions either relating to false representations and statements, or overvaluation of security, with respect to one or more of the named banks, agencies, or corporations.

These were consolidated and the false statement and security overvaluation provisions of all, form the basis of this section. The provisions of section 981 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to acceptance of loans or gratuities by examiners, were consolidated with similar provisions from other sections to form section 218 [now section 213] of this title. The provisions of said section 981 of title 12, U.S.C., 1940 ed., Banks and Banking, prohibiting land bank and national farm loan association examiners from performing ''any other service for compensation for any bank or banking or loan association, or for any person connected therewith in any capacity'' were consolidated with similar provisions from other sections to form section 1909 of this title.

Eight of the consolidated sections contained identical punishment, each providing for a maximum fine of $5,000 and maximum imprisonment of 2 years. Two sections provided for a maximum fine of $10,000 and maximum imprisonment of 5 years. One section provided for maximum fine of $5,000 and maximum imprisonment of 5 years, one section provided for maximum fine of $2,000 and maximum imprisonment of 2 years, and one section provided for maximum fine of $5,000 and maximum imprisonment of 1 year.

The punishment by maximum fine of $5,000 or maximum imprisonment of 2 years, or both, provided in this consolidated section was adopted as most consistent with the greater number of comparable sections. (See sections 1008 and 1010 of this title.) This is a reasonable reconciliation of the conflicting punishment provisions and adequate for the offenses described.

The enumeration of ''application, advance, discount, purchase, purchase agreement, repurchase agreement,

[1] See References in Text note below.

commitment, or loan'' and the wording ''or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor'' does not occur in any one of the original sections, but such enumeration and such wording are adequate, and they represent a composite of terms and transactions mentioned in each.

In addition, changes were made in phraseology to secure uniformity of style, and some rephrasing was necessary, but the consolidation was without change of substance except as above indicated.

Section 1138d(f) of Title 12, U.S.C., 1940 ed., Banks and Banking, relating to conspiracy, was not added to this consolidated section for reasons given in reviser's note under section 493 of this title.

1949 ACT

[Section 21] conforms section 1014 of Title 18 U.S.C., to administrative practice which in turn was modified to comply with congressional policy. (See note to sec. 11 [of 1949 Act, set out in Historical and Revision note under section 657 of this title]).

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

AMENDMENTS

2001—Pub. L. 107–100 inserted '', as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act'' after ''small business investment company''.

1999—Pub. L. 106–78 inserted ''or successor agency'' after ''Farmers Home Administration'' and after ''Rural Development Administration''.

1996—Pub. L. 104–294, §§ 602(b), 607(d), struck out ''Reconstruction Finance Corporation,'' before ''Farm Credit Administration'', ''Farmers' Home Corporation,'' before ''the Secretary of Agriculture'', and ''of the National Agricultural Credit Corporation,'' before ''a Federal land bank'' and inserted at end ''The term 'State-chartered credit union' includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.''

Pub. L. 104–294, § 605(b), amended directory language of Pub. L. 101–73, § 961(h)(1). See 1989 Amendment note below.

Pub. L. 104–294, § 604(b)(22), amended directory language of Pub. L. 103–322, § 330002(d). See 1994 Amendment note below.

1994—Pub. L. 103–354 inserted ''or a company the Corporation reinsures'' after ''Federal Crop Insurance Corporation''.

Pub. L. 103–322, § 330008(8), inserted comma after ''National Credit Union Administration Board''.

Pub. L. 103–322, § 330002(d), as amended by Pub. L. 104–294, § 604(b)(22), struck out a comma after ''National Agricultural Credit Corporation,'' and after ''section 25(a) of the Federal Reserve Act,''.

1990—Pub. L. 101–647, § 2597(i), inserted ''a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' after ''or the National Credit Union Administration Board''.

Pub. L. 101–647, § 2595(a)(5), substituted ''the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board,'' for ''the Federal Home Loan Bank System,'' and inserted a comma after ''Resolution Trust Corporation''.

Pub. L. 101–647, § 2504(g), substituted ''30'' for ''20'' before ''years''.

Pub. L. 101–624 substituted ''Farmers Home Administration, the Rural Development Administration'' for ''Farmers' Home Administration''.

1989—Pub. L. 101–73, § 962(a)(8)(B)(i), substituted ''any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof'' for ''any Federal intermediate credit bank, or any division, officer, or employee thereof, or of any corporation organized under sections 1131–1134m of Title 12''.

Pub. L. 101–73, § 962(a)(8)(B)(ii), substituted ''Farm Credit System Insurance Corporation'' for ''Federal Savings and Loan Insurance Corporation''.

Pub. L. 101–73, § 962(a)(7), substituted ''National Credit Union Administration Board'' for ''Administrator of the National Credit Union Administration''.

Pub. L. 101–73, § 961(h)(2), (3), (5), (6), struck out ''the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by'' after ''the accounts of which are insured by'', struck out ''any member of'' before ''the Federal Home Loan Bank System'', and substituted ''$1,000,000'' for ''$5,000'' and ''20 years'' for ''two years''.

Pub. L. 101–73, § 961(h)(1), as amended by Pub. L. 104–294, § 605(b), struck out ''a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Savings and Loan Association'' after ''National Agricultural Credit Corporation,''.

Pub. L. 101–73, § 961(h)(4), which directed the insertion of ''the Resolution Trust Corporation'' after ''Federal Deposit Insurance Corporation,'' was executed by making the insertion after the second appearance of ''Federal Deposit Insurance Corporation,'' as the probable intent of Congress.

1982—Pub. L. 97–297 struck out ''a joint-stock land bank,'' after ''a Federal land bank,''.

1970—Pub. L. 91–609 extended criminal penalty for fraud or false statements to influence any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, any member of the Federal Home Loan Bank System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the Administrator of the National Credit Union Administration.

Pub. L. 91–468 substituted ''a Federal credit union, or an insured State-chartered credit union'' for ''or a Federal credit union''.

1964—Pub. L. 88–353 inserted reference to Federal credit unions.

1961—Pub. L. 87–353 struck out reference to Federal Farm Mortgage Corporation.

1959—Pub. L. 86–168 substituted ''Federal land bank association'' for ''National farm loan association''.

1958—Pub. L. 85–699 inserted reference to small business investment companies.

1956—Act July 26, 1956, struck out reference to corporations in which a Production Credit Corporation holds stock.

1949—Act May 24, 1949, inserted reference to Secretary of Agriculture acting through the Farmers' Home Administration.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(22) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

Section 605(b) of Pub. L. 104–294 provided that the amendment by that section to section 961(h) of Pub. L. 101–73 was effective on the date of enactment of Pub. L. 101–73, which was approved Aug. 9, 1989.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–354 effective Oct. 13, 1994, and applicable to provision of crop insurance under Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) beginning with 1995 crop year, with such Act, as in effect on the day before Oct. 13, 1994, to continue to apply with respect to 1994 crop year, see section 120 of Pub. L. 103–354, set out as a note under section 1502 of Title 7, Agriculture.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86–168.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective Jan. 1, 1957, see section 202(a) of that act, set out as an Effective Date note under section 1027 of Title 12, Banks and Banking.

FARM CREDIT ADMINISTRATION

Establishment of Farm Credit Administration as independent agency, and other changes in status, function, etc., see Ex. Ord. No. 6084 set out prec. section 2241 of Title 12, Banks and Banking. See also section 2001 et seq. of Title 12.

NATIONAL CREDIT UNION ADMINISTRATION

Establishment as independent agency, membership, etc., see section 1752 et seq. of Title 12, Banks and Banking.

§ 1015. Naturalization, citizenship or alien registry

(a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; or

(b) Whoever knowingly, with intent to avoid any duty or liability imposed or required by law, denies that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted; or

(c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; or

(d) Whoever knowingly makes any false certificate, acknowledgment or statement concerning the appearance before him or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens; or

(e) Whoever knowingly makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself, or any other person, any Federal or State benefit or service, or to engage unlawfully in employment in the United States; or

(f) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum)—

Shall be fined under this title or imprisoned not more than five years, or both. Subsection (f) does not apply to an alien if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.

(June 25, 1948, ch. 645, 62 Stat. 752; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 215, Sept. 30, 1996, 110 Stat. 3009–572; Pub. L. 106–395, title II, § 201(d)(2), Oct. 30, 2000, 114 Stat. 1635.)

HISTORICAL AND REVISION NOTES

Based on subsections (a), paragraphs (1), (16), (17), (19), (32), (b), (d), and (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (1), (16), (17), (19), (32), (b), (d), and (*l*), 45 Stat. 1163, 1165, 1167).

Section consolidates, with minor changes, subsection (a), paragraphs (1), (16), (17), (19), (32), and subsections (b), (d), and (*l*), of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

Such changes of arrangement and phraseology were made as were appropriate and necessary.

AMENDMENTS

2000—Pub. L. 106–395 inserted at end of concluding provisions ''Subsection (f) does not apply to an alien if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.''

1996—Subsecs. (e), (f). Pub. L. 104–208 added subsecs. (e) and (f).

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in concluding par.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–395 effective as if included in the enactment of section 215 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, div. C of Pub. L. 104–208, and applicable to an alien prosecuted on or after Sept. 30, 1996, except in the case of an alien whose criminal proceeding (including judicial review thereof) has been finally concluded before Oct. 30, 2000, see section 201(d)(3) of Pub. L. 106–395, set out as a note under section 611 of this title.

§ 1016. Acknowledgment of appearance or oath

Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, knowingly makes any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other

matter submitted to, made with, or taken on behalf of the United States or any department or agency thereof, concerning which an oath or affirmation is required by law or lawful regulation, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 75 (Mar. 4, 1909, ch. 321, § 31, 35 Stat. 1094).

Words ''or of any department or agency thereof'' were inserted after ''United States'' so as to remove any ambiguity as to scope of section. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1017. Government seals wrongfully used and instruments wrongfully sealed

Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate, instrument, commission, document, or paper or with knowledge of its fraudulent character, with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 130 (June 15, 1917, ch. 30, title X, § 1, 40 Stat. 227).

To clarify scope of section and in view of definition of department or agency in section 6 of this title, words ''department or agency'' were substituted for ''executive department, or of any bureau, commission, or office''.

Slight verbal changes were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1018. Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 195 (Mar. 4, 1909, ch. 321, § 106, 35 Stat. 1107).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1019. Certificates by consular officers

Whoever, being a consul, or vice consul, or other person employed in the consular service of the United States, knowingly certifies falsely to any invoice, or other paper, to which his certificate is authorized or required by law, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 127 (Mar. 4, 1909, ch. 321, § 70, 35 Stat. 1101).

Mandatory punishment provision was rephrased in the alternative.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1020. Highway projects

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753; Oct. 31, 1951, ch. 655, § 27, 65 Stat. 721; May 6, 1954, ch. 181, § 18, 68 Stat. 76; Pub. L. 89–670, § 10(f), Oct. 15, 1966, 80 Stat. 948; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 46 of title 23, U.S.C., 1940 ed., Highways (June 19, 1922, ch. 227, § 4, par. 6, 42 Stat. 661).

Words ''highway, or related,'' were inserted before ''project'' in two places for the purpose of description, in view of transfer from title 23.

Words ''upon conviction thereof'' were omitted as surplusage, because punishment cannot be imposed until a conviction is secured.

Changes in phraseology were made.

REFERENCES IN TEXT

The Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), referred to in text, is act July 11, 1916, ch. 241, 39 Stat. 355, as amended, which was repealed by Pub. L. 85–767, § 2(1), Aug. 27, 1958, 72 Stat. 919. See section 101 et seq. of Title 23, Highways.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

1966—Pub. L. 89–670 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1954—Act May 6, 1954, substituted in second par. ''with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction'' for ''for work or materials for the construction''; and in third par. substituted ''as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented'' for ''in any report required under Title 23, with intent to defraud the United States''.

1951—Act Oct. 31, 1951, substituted ''Secretary of Commerce'' for ''Secretary of Agriculture'' in first and second pars.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

TRANSFER OF FUNCTIONS

The Bureau of Public Roads, which is the principal road building agency of the Federal Government, and which was formerly under the Department of Agriculture, was redesignated the Public Roads Administration and, with its functions, transferred to the Federal Works Agency, and the functions of the Secretary of Agriculture, with respect thereto, were transferred to the Federal Works Administrator, by Reorg. Plan No. 1 of 1939, §§ 301, 302, eff. July 1, 1939, 4 F.R. 2727, 53 Stat. 1426, set out in the Appendix to Title 5, Government Organization and Employees. Act June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, (see Historical and Revision Notes under section 303(b) of Title 40, Public Buildings, Property, and Works), abolished the Federal Works Agency, transferred its functions, the functions of all agencies thereof, the functions of the Federal Works Administrator, and the functions of the Commissioner of Public Roads, to the Administrator of General Services, and transferred the Public Roads Administration, which it redesignated the Bureau of Public Roads, to the General Services Administration. Reorg. Plan No. 7 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070, set out in the Appendix to Title 5, Government Organization and Employees, transferred such bureau and its functions and personnel to the Department of Commerce, and transferred the functions of the Administrator of General Services, with respect thereto, to the Secretary of Commerce, to be performed by him or, subject to his direction and control, by such officers, employees and agencies of the Department of Commerce as he should designate. Reorg. Plan No. 5 of 1950, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, transferred, with certain exceptions not applicable to this section, all functions of all other officers of the Department of Commerce, and all functions of all agencies and employees of such Department, to the Secretary of Commerce, with power vested in him to authorize their performance, or the performance of any of his functions, by any of such other officers, or by any agency or employee of the Department of Commerce. Section 303(b) of Title 40 was amended generally by Pub. L. 109–313, § 2(a)(1), Oct. 6, 2006, 120 Stat. 1734, and, as so amended, no longer relates to the Federal Works Agency and Commissioner of Public Buildings. See 2006 Amendment note under section 303 of Title 40.

§ 1021. Title records

Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 194 (Mar. 4, 1909, ch. 321, § 105, 35 Stat. 1107).

Words ''five years'' were substituted for ''seven years'' as more in conformity with comparable sections of this chapter.

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 1022. Delivery of certificate, voucher, receipt for military or naval property

Whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property used or to be used in the military or naval service, makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any agency thereof, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 84 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Word ''agency'' was substituted for ''department'' so as to eliminate any possible ambiguity as to scope of section. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Words ''or any corporation in which the United States of America is a stockholder'' were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1023. Insufficient delivery of money or property for military or naval service

Whoever, having charge, possession, custody, or control of any money or other public property

used or to be used in the military or naval service, with intent to defraud the United States, or any agency thereof, or any corporation in which the United States has a proprietary interest, or intending to conceal such money or other property, delivers to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 85 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

Word ''agency'' was substituted for ''department'' so as to eliminate any possible ambiguity as to scope of section. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1024. Purchase or receipt of military, naval, or veteran's facilities property

Whoever purchases, or receives in pledge from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States under a clothing allowance or otherwise, to any member of the Armed Forces of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, or to any former member of such Armed Forces at or by any hospital, home, or facility maintained by the United States, having knowledge or reason to believe that the property has been taken from the possession of or furnished by the United States under such allowance, or otherwise, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 754; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 86 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197; Apr. 30, 1940, ch. 164, 54 Stat. 171).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1025. False pretenses on high seas and other waters

Whoever, upon any waters or vessel within the special maritime and territorial jurisdiction of the United States, by any fraud, or false pretense, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, endorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, or fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, endorser, or guarantor thereof to have been obtained by any false pretenses, shall be fined under this title or imprisoned not more than five years, or both; but if the amount, value or the face value of anything so obtained does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 755; May 24, 1949, ch. 139, § 22, 63 Stat. 92; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 467a (Mar. 4, 1909, ch. 321, § 288A, as added Aug. 5, 1939, ch. 434, 53 Stat. 1205).

Words ''upon any waters or vessel within the special maritime and territorial jurisdiction of the United States'' were substituted for ''upon the high seas or on any waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof or to any corporation created by or under the laws of the United States, or of any State, Territory, or District thereof'', near beginning of section. The deleted words are not necessary in view of definitive section 7 of this title.

Words ''whatsoever with intent to defraud'' were omitted as being included in the preceding term ''false pretenses''.

The punishment provision was revised to include a misdemeanor punishment (not more than $1,000 or one year, or both) where the offense involves $100 or less. (See reviser's notes under sections 641 and 645 of this title.)

1949 ACT

This section [section 22] corrects a typographical error in section 1025 of title 18, U.S.C.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' after ''pretenses, shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

1949—Act May 24, 1949, corrected spelling of ''pretense''.

§ 1026. Compromise, adjustment, or cancellation of farm indebtedness

Whoever knowingly makes any false statement for the purpose of influencing in any way the action of the Secretary of Agriculture, or of any person acting under his authority, in connection with any compromise, adjustment, or

cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 755; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1150c(a) of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 20, 1944, ch. 623, § 4(a), 58 Stat. 837).

Words ''of Agriculture'' were inserted after ''Secretary'' for reasons of identification.

Words ''upon conviction thereof'' were omitted as surplusage, since punishment can not be imposed until after conviction.

Other changes were made in phraseology without change of substance.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 1027. False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974

Whoever, in any document required by title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time) to be published, or kept as part of the records of any employee welfare benefit plan or employee pension benefit plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact the disclosure of which is required by such title or is necessary to verify, explain, clarify or check for accuracy and completeness any report required by such title to be published or any information required by such title to be certified, shall be fined under this title, or imprisoned not more than five years, or both.

(Added Pub. L. 87–420, § 17(c), Mar. 20, 1962, 76 Stat. 42; amended Pub. L. 93–406, title I, § 111(a)(2)(B)(i), (ii), Sept. 2, 1974, 88 Stat. 851; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1974—Pub. L. 93–406 substituted ''Employee Retirement Income Security Act of 1974'' for ''Welfare and Pension Plans Disclosure Act'' in section catchline, and ''title I of the Employee Retirement Income Security Act of 1974'' and ''title'' for ''the Welfare and Pension Plans Disclosure Act'' and ''Act'', respectively, in text.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031(b)(1) of Title 29.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 664 of this title.

§ 1028. Fraud and related activity in connection with identification documents, authentication features, and information

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;

(2) knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;

(5) knowingly produces, transfers, or possesses a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used in the production of a false identification document or another document-making implement or authentication feature which will be so used;

(6) knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States or a sponsoring entity of an event designated as a special event of national significance which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority;

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or

(8) knowingly traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification;

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is—

(A) the production or transfer of an identification document, authentication feature,

or false identification document that is or appears to be—

(i) an identification document or authentication feature issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents, authentication features, or false identification documents;

(C) an offense under paragraph (5) of such subsection; or

(D) an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating $1,000 or more during any 1-year period;

(2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 5 years, or both, if the offense is—

(A) any other production, transfer, or use of a means of identification, an identification document,,[1] authentication feature, or a false identification document; or

(B) an offense under paragraph (3) or (7) of such subsection;

(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed—

(A) to facilitate a drug trafficking crime (as defined in section 929(a)(2));

(B) in connection with a crime of violence (as defined in section 924(c)(3)); or

(C) after a prior conviction under this section becomes final;

(4) a fine under this title or imprisonment for not more than 30 years, or both, if the offense is committed to facilitate an act of domestic terrorism (as defined under section 2331(5) of this title) or an act of international terrorism (as defined in section 2331(1) of this title);

(5) in the case of any offense under subsection (a), forfeiture to the United States of any personal property used or intended to be used to commit the offense; and

(6) a fine under this title or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that—

(1) the identification document, authentication feature, or false identification document is or appears to be issued by or under the authority of the United States or a sponsoring entity of an event designated as a special event of national significance or the document-making implement is designed or suited for making such an identification document, authentication feature, or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) either—

(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; or

(B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

(d) In this section and section 1028A—

(1) the term ''authentication feature'' means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified;

(2) the term ''document-making implement'' means any implement, impression, template, computer file, computer disc, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement;

(3) the term ''identification document'' means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a sponsoring entity of an event designated as a special event of national significance, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(4) the term ''false identification document'' means a document of a type intended or commonly accepted for the purposes of identification of individuals that—

(A) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(B) appears to be issued by or under the authority of the United States Government, a State, a political subdivision of a State, a sponsoring entity of an event designated by the President as a special event of national significance, a foreign government, a political subdivision of a foreign government, or an international governmental or quasi-governmental organization;

(5) the term ''false authentication feature'' means an authentication feature that—

(A) is genuine in origin, but, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(B) is genuine, but has been distributed, or is intended for distribution, without the au-

[1] So in original.

thorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which such authentication feature is intended to be affixed or embedded by the respective issuing authority; or

(C) appears to be genuine, but is not;

(6) the term ''issuing authority''—

(A) means any governmental entity or agency that is authorized to issue identification documents, means of identification, or authentication features; and

(B) includes the United States Government, a State, a political subdivision of a State, a sponsoring entity of an event designated by the President as a special event of national significance, a foreign government, a political subdivision of a foreign government, or an international government or quasi-governmental organization;

(7) the term ''means of identification'' means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—

(A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device (as defined in section 1029(e));

(8) the term ''personal identification card'' means an identification document issued by a State or local government solely for the purpose of identification;

(9) the term ''produce'' includes alter, authenticate, or assemble;

(10) the term ''transfer'' includes selecting an identification document, false identification document, or document-making implement and placing or directing the placement of such identification document, false identification document, or document-making implement on an online location where it is available to others;

(11) the term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States; and

(12) the term ''traffic'' means—

(A) to transport, transfer, or otherwise dispose of, to another, as consideration for anything of value; or

(B) to make or obtain control of with intent to so transport, transfer, or otherwise dispose of.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

(f) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(g) FORFEITURE PROCEDURES.—The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(h) FORFEITURE; DISPOSITION.—In the circumstance in which any person is convicted of a violation of subsection (a), the court shall order, in addition to the penalty prescribed, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, document-making implements, or means of identification.

(i) RULE OF CONSTRUCTION.—For purpose of subsection (a)(7), a single identification document or false identification document that contains 1 or more means of identification shall be construed to be 1 means of identification.

(Added Pub. L. 97–398, § 2, Dec. 31, 1982, 96 Stat. 2009; amended Pub. L. 99–646, § 44(a), Nov. 10, 1986, 100 Stat. 3601; Pub. L. 100–690, title VII, § 7023, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101–647, title XII, § 1205(e), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (M), (O), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–208, div. C, title II, § 211(a)(1), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 104–294, title VI, § 601(a)(3), (p), Oct. 11, 1996, 110 Stat. 3498, 3502; Pub. L. 105–318, § 3(a)–(h)(1), Oct. 30, 1998, 112 Stat. 3007–3009; Pub. L. 106–578, § 3, Dec. 28, 2000, 114 Stat. 3076; Pub. L. 108–21, title VI, § 607(b), Apr. 30, 2003, 117 Stat. 689; Pub. L. 108–275, §§ 2(c), 3, July 15, 2004, 118 Stat. 832; Pub. L. 108–458, title VII, § 7216, Dec. 17, 2004, 118 Stat. 3833; Pub. L. 109–13, div. B, title II, § 203(a), May 11, 2005, 119 Stat. 315; Pub. L. 109–177, title VI, § 603, Mar. 9, 2006, 120 Stat. 253.)

AMENDMENTS

2006—Subsecs. (a)(6), (c)(1). Pub. L. 109–177, § 603(1), (2), inserted ''or a sponsoring entity of an event designated as a special event of national significance'' after ''United States''.

Subsec. (d)(3). Pub. L. 109–177, § 603(3), inserted ''a sponsoring entity of an event designated as a special event of national significance,'' after ''political subdivision of a State,''.

Subsec. (d)(4)(B), (6)(B). Pub. L. 109–177, § 603(4), inserted ''a sponsoring entity of an event designated by the President as a special event of national significance,'' after ''political subdivision of a State,''.

2005—Subsec. (a)(8). Pub. L. 109–13 substituted ''false or actual authentication features'' for ''false authentication features''.

2004—Subsec. (a)(7). Pub. L. 108–275, § 3(1), substituted ''transfers, possesses,'' for ''transfers'' and ''abet, or in connection with,'' for ''abet,''.

Subsec. (b)(1)(D). Pub. L. 108–275, § 3(2), substituted ''transfer, possession,'' for ''transfer''.

Subsec. (b)(2). Pub. L. 108–275, § 3(3), substituted ''5 years'' for ''three years'' in introductory provisions.

Subsec. (b)(4). Pub. L. 108–458 substituted ''30 years'' for ''25 years''.

Pub. L. 108–275, §3(4), inserted ''an act of domestic terrorism (as defined under section 2331(5) of this title) or'' after ''facilitate''.

Subsec. (d). Pub. L. 108–275, §2(c), inserted ''and section 1028A'' after ''In this section'' in introductory provisions.

2003—Pub. L. 108–21, §607(b)(6), inserted '', authentication features,'' after ''documents'' in section catchline.

Subsec. (a)(1). Pub. L. 108–21, §607(b)(1)(A), inserted '', authentication feature,'' after ''an identification document''.

Subsec. (a)(2). Pub. L. 108–21, §607(b)(1)(B), inserted '', authentication feature,'' after ''an identification document'' and ''or feature'' after ''such document''.

Subsec. (a)(3). Pub. L. 108–21, §607(b)(1)(C), inserted '', authentication features,'' after ''possessor)''.

Subsec. (a)(4). Pub. L. 108–21, §607(b)(1)(D), inserted '', authentication feature,'' after ''possessor)'' and ''or feature'' after ''such document''.

Subsec. (a)(5). Pub. L. 108–21, §607(b)(1)(E), inserted ''or authentication feature'' after ''implement'' wherever appearing.

Subsec. (a)(6). Pub. L. 108–21, §607(b)(1)(F), inserted ''or authentication feature'' before ''that is or appears'', ''or authentication feature'' before ''of the United States'' and ''or feature'' after ''such document'' and struck out ''or'' at end.

Subsec. (a)(7). Pub. L. 108–21, §607(b)(1)(G), inserted ''or'' after semicolon at end.

Subsec. (a)(8). Pub. L. 108–21, §607(b)(1)(H), added par. (8).

Subsec. (b)(1)(A). Pub. L. 108–21, §607(b)(2)(A)(i)(I), inserted '', authentication feature,'' before ''or false'' in introductory provisions.

Subsec. (b)(1)(A)(i). Pub. L. 108–21, §607(b)(2)(A)(i)(II), inserted ''or authentication feature'' after ''document''.

Subsec. (b)(1)(B). Pub. L. 108–21, §607(b)(2)(A)(ii), inserted '', authentication features,'' before ''or false''.

Subsec. (b)(2)(A). Pub. L. 108–21, §607(b)(2)(B), inserted '', authentication feature,'' before ''or a false''.

Subsec. (c)(1). Pub. L. 108–21, §607(b)(3), inserted '', authentication feature,'' before ''or false'' in two places.

Subsec. (d). Pub. L. 108–21, §607(b)(4), added pars. (1), (5), (6) and (12), redesignated former pars. (1), (2), (3), (4), (5), (6), (7), and (8) as pars. (2), (3), (4), (7), (8), (9), (10), and (11), respectively, and in par. (4)(A) inserted ''or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit'' after ''entity''.

Subsecs. (h), (i). Pub. L. 108–21, §607(b)(5), added subsec. (h) and redesignated former subsec. (h) as (i).

2000—Subsec. (c)(3)(A). Pub. L. 106–578, §3(1), inserted '', including the transfer of a document by electronic means'' after ''commerce''.

Subsec. (d)(1). Pub. L. 106–578, §3(2)(A), inserted ''template, computer file, computer disc,'' after ''impression,''.

Subsec. (d)(3) to (8). Pub. L. 106–578, §3(2)(B)–(F), added pars. (3) and (7) and redesignated former pars. (3), (4), (5), and (6) as (4), (5), (6), and (8), respectively.

1998—Pub. L. 105–318, §3(h)(1), inserted ''and information'' at end of section catchline.

Subsec. (a). Pub. L. 105–318, §3(a)(3), struck out ''or attempts to do so,'' before ''shall be punished'' in concluding provisions.

Subsec. (a)(7). Pub. L. 105–318, §3(a)(1), (2), (4), added par. (7).

Subsec. (b)(1)(D). Pub. L. 105–318, §3(b)(1), added subpar. (D).

Subsec. (b)(2)(A). Pub. L. 105–318, §3(b)(2)(A), substituted '', transfer, or use of a means of identification, an identification document, or a'' for ''or transfer of an identification document or''.

Subsec. (b)(2)(B). Pub. L. 105–318, §3(b)(2)(B), inserted ''or (7)'' after ''(3)''.

Subsec. (b)(3). Pub. L. 105–318, §3(b)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed to facilitate a drug trafficking crime (as defined in section 929(a)(2) of this title);''.

Subsec. (b)(5), (6). Pub. L. 105–318, §3(b)(4)–(6), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(3). Pub. L. 105–318, §3(c), added par. (3) and struck out former par. (3) which read as follows: ''the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.''

Subsec. (d). Pub. L. 105–318, §3(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) to (5) defining ''identification document'', ''produce'', ''document-making implement'', ''personal identification card'', and ''State'' as used in this section.

Subsec. (f). Pub. L. 105–318, §3(e), added subsec. (f).

Subsec. (g). Pub. L. 105–318, §3(f), added subsec. (g).

Subsec. (h). Pub. L. 105–318, §3(g), added subsec. (h).

1996—Subsec. (a)(4), (5). Pub. L. 104–294, §601(p), struck out ''or'' after semicolon in par. (4) and inserted ''or'' after semicolon in par. (5).

Subsec. (b). Pub. L. 104–294, §601(a)(3), substituted ''fine under this title'' for ''fine of under this title'' wherever appearing.

Subsec. (b)(1). Pub. L. 104–208, §211(a)(1)(A), in introductory provisions inserted ''except as provided in paragraphs (3) and (4),'' after ''(1)'' and substituted ''15 years'' for ''five years''.

Subsec. (b)(2). Pub. L. 104–208, §211(a)(1)(B), inserted ''except as provided in paragraphs (3) and (4),'' after ''(2)'' in introductory provisions and struck out ''and'' at end.

Subsec. (b)(3) to (5). Pub. L. 104–208, §211(a)(1)(C), (D), added pars. (3) and (4) and redesignated former par. (3) as (5).

1994—Subsec. (b)(1). Pub. L. 103–322, §330016(1)(O), substituted ''under this title'' for ''not more than $25,000''.

Subsec. (b)(2). Pub. L. 103–322, §330016(1)(M), substituted ''under this title'' for ''not more than $15,000''.

Subsec. (b)(3). Pub. L. 103–322, §330016(1)(K), substituted ''under this title'' for ''not more than $5,000''.

1990—Subsec. (d)(5). Pub. L. 101–647 inserted ''commonwealth,'' before ''possession or territory of the United States''.

1988—Subsec. (a)(6). Pub. L. 100–690 inserted ''knowingly'' before ''possesses'', ''lawful'' before first reference to ''authority'', and ''such'' before second reference to ''authority''.

1986—Subsec. (e). Pub. L. 99–646 substituted ''chapter 224 of this title'' for ''title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–578, §5, Dec. 28, 2000, 114 Stat. 3077, provided that: ''This Act [amending this section, repealing section 1738 of this title, and enacting provisions set out as a note below] and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act [Dec. 28, 2000].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 211(c) of div. C of Pub. L. 104–208 provided that: ''This section [amending this section and sections 1425 to 1427, 1541 to 1544, and 1546 of this title and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].''

COORDINATING COMMITTEE ON FALSE IDENTIFICATION

Pub. L. 106–578, §2, Dec. 28, 2000, 114 Stat. 3075, provided that:

''(a) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall establish a coordinating

committee to ensure, through existing interagency task forces or other means, that the creation and distribution of false identification documents (as defined in section 1028(d)(3) [now 1028(d)(4)] of title 18, United States Code, as added by section 3(2) of this Act) is vigorously investigated and prosecuted.

''(b) MEMBERSHIP.—The coordinating committee shall consist of the Director of the United States Secret Service, the Director of the Federal Bureau of Investigation, the Attorney General, the Commissioner of Social Security, and the Commissioner of Immigration and Naturalization, or their respective designees.

''(c) TERM.—The coordinating committee shall terminate 2 years after the effective date of this Act [see Effective Date of 2000 Amendment note above].

''(d) REPORT.—

''(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the committee, shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the activities of the committee.

''(2) CONTENTS.—The report referred to in paragraph (1) shall include—

''(A) the total number of indictments and informations, guilty pleas, convictions, and acquittals resulting from the investigation and prosecution of the creation and distribution of false identification documents during the preceding year;

''(B) identification of the Federal judicial districts in which the indictments and informations were filed, and in which the subsequent guilty pleas, convictions, and acquittals occurred;

''(C) specification of the Federal statutes utilized for prosecution;

''(D) a brief factual description of significant investigations and prosecutions;

''(E) specification of the sentence imposed as a result of each guilty plea and conviction; and

''(F) recommendations, if any, for legislative changes that could facilitate more effective investigation and prosecution of the creation and distribution of false identification documents.''

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

CONSTITUTIONAL AUTHORITY

Pub. L. 105–318, § 2, Oct. 30, 1998, 112 Stat. 3007, provided that: ''The constitutional authority upon which this Act [see Short Title of 1998 Amendments note set out under section 1001 of this title] rests is the power of Congress to regulate commerce with foreign nations and among the several States, and the authority to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States or in any department or officer thereof, as set forth in article I, section 8 of the United States Constitution.''

CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF IDENTITY THEFT

Pub. L. 105–318, § 5, Oct. 30, 1998, 112 Stat. 3010, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Oct. 30, 1998], the Federal Trade Commission shall establish procedures to—

''(1) log and acknowledge the receipt of complaints by individuals who certify that they have a reasonable belief that 1 or more of their means of identification (as defined in section 1028 of title 18, United States Code, as amended by this Act) have been assumed, stolen, or otherwise unlawfully acquired in violation of section 1028 of title 18, United States Code, as amended by this Act;

''(2) provide informational materials to individuals described in paragraph (1); and

''(3) refer complaints described in paragraph (1) to appropriate entities, which may include referral to—

''(A) the 3 major national consumer reporting agencies; and

''(B) appropriate law enforcement agencies for potential law enforcement action.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

FRAUD AND RELATED ACTIVITY IN CONNECTION WITH IDENTIFICATION DOCUMENTS

Pub. L. 98–473, title II, § 609L, Oct. 12, 1984, 98 Stat. 2103, provided that:

''(a) For purposes of section 1028 of title 18, United States Code, to the maximum extent feasible, personal descriptors or identifiers utilized in identification documents, as defined in such section, shall utilize common descriptive terms and formats designed to—

''(1) reduce the redundancy and duplication of identification systems by providing information which can be utilized by the maximum number of authorities, and

''(2) facilitate positive identification of bona fide holders of identification documents.

''(b) The President shall, no later than 3 years after the date of enactment of this Act [Oct. 12, 1984], and after consultation with Federal, State, local, and international issuing authorities, and concerned groups make recommnedations [recommendations] to the Congress for the enactment of comprehensive legislation on Federal identification systems. Such legislation shall—

''(1) give due consideration to protecting the privacy of persons who are the subject of any identification system,

''(2) recommend appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and

''(3) make recommendations providing for the exchange of personal identification information as authorized by Federal or State law or Executive order of the President or the chief executive officer of any of the several States.''

§ 1028A. Aggravated identity theft

(a) OFFENSES.—

(1) IN GENERAL.—Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

(2) TERRORISM OFFENSE.—Whoever, during and in relation to any felony violation enumerated in section 2332b(g)(5)(B), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person or a false identification document shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 5 years.

(b) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—

(1) a court shall not place on probation any person convicted of a violation of this section;

(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony during which the means of identification was transferred, possessed, or used;

(3) in determining any term of imprisonment to be imposed for the felony during which the means of identification was transferred, possessed, or used, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section; and

(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28.

(c) DEFINITION.—For purposes of this section, the term ''felony violation enumerated in subsection (c)'' means any offense that is a felony violation of—

(1) section 641 (relating to theft of public money, property, or rewards[1]), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), or section 664 (relating to theft from employee benefit plans);

(2) section 911 (relating to false personation of citizenship);

(3) section 922(a)(6) (relating to false statements in connection with the acquisition of a firearm);

(4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7);

(5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);

(6) any provision contained in chapter 69 (relating to nationality and citizenship);

(7) any provision contained in chapter 75 (relating to passports and visas);

(8) section 523 of the Gramm-Leach-Bliley Act (15 U.S.C. 6823) (relating to obtaining customer information by false pretenses);

(9) section 243 or 266 of the Immigration and Nationality Act (8 U.S.C. 1253 and 1306) (relating to willfully failing to leave the United States after deportation and creating a counterfeit alien registration card);

(10) any provision contained in chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) (relating to various immigration offenses); or

(11) section 208, 811, 1107(b), 1128B(a), or 1632 of the Social Security Act (42 U.S.C. 408, 1011, 1307(b), 1320a–7b(a), and 1383a) (relating to false statements relating to programs under the Act).

[1] So in original. Probably should be ''records''.

(Added Pub. L. 108–275, § 2(a), July 15, 2004, 118 Stat. 831.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (c)(10), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Chapter 8 of title II of the Act is classified generally to part VIII (§ 1321 et seq.) of subchapter II of chapter 12 of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Social Security Act, referred to in subsec. (c)(11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1029. Fraud and related activity in connection with access devices

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating $1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices;

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

(5) knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than $1,000;

(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

(A) offering an access device; or

(B) selling information regarding or an application to obtain an access device;

(7) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services;

(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or

(10) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, 1 or more evidences

or records of transactions made by an access device;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be subject to the same penalties as those prescribed for the offense attempted.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) PENALTIES.—

(1) GENERALLY.—The punishment for an offense under subsection (a) of this section is—

(A) in the case of an offense that does not occur after a conviction for another offense under this section—

(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

(ii) if the offense is under paragraph (4), (5), (8), or (9) of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

(2) FORFEITURE PROCEDURE.—The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act, except for subsection (d) of that section.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term ''access device'' means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term ''counterfeit access device'' means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term ''unauthorized access device'' means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) the term ''produce'' includes design, alter, authenticate, duplicate, or assemble;

(5) the term ''traffic'' means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of;

(6) the term ''device-making equipment'' means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

(7) the term ''credit card system member'' means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system;

(8) the term ''scanning receiver'' means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119 or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument;

(9) the term ''telecommunications service'' has the meaning given such term in section 3 of title I of the Communications Act of 1934 (47 U.S.C. 153);

(10) the term ''facilities-based carrier'' means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934; and

(11) the term ''telecommunication identifying information'' means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title. For purposes of this subsection, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(g)(1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for the purpose of protecting the property or legal rights of that carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.

(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.

(Added Pub. L. 98–473, title II, § 1602(a), Oct. 12, 1984, 98 Stat. 2183; amended Pub. L. 99–646, § 44(b), Nov. 10, 1986, 100 Stat. 3601; Pub. L. 101–647, title XII, § 1205(f), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103–322, title XXV, § 250007, title XXXIII, § 330016(2)(I), Sept. 13, 1994, 108 Stat. 2087, 2148; Pub. L. 103–414, title II, § 206, Oct. 25, 1994, 108 Stat. 4291; Pub. L. 104–294, title VI, § 601(*l*), Oct. 11, 1996, 110 Stat. 3501; Pub. L. 105–172, § 2(a)–(d), Apr. 24, 1998, 112 Stat. 53, 54; Pub. L. 107–56, title III, § 377, Oct. 26, 2001, 115 Stat. 342; Pub. L. 107–273, div. B, title IV, § 4002(b)(11), Nov. 2, 2002, 116 Stat. 1808.)

REFERENCES IN TEXT

Section 413 of the Controlled Substances Act, referred to in subsec. (c)(2), is classified to section 853 of Title 21, Food and Drugs.

The Communications Act of 1934, referred to in subsec. (e)(10), is act June 19, 1934, ch. 652, 48 Stat. 1964, as amended. Title III of the Act is classified generally to subchapter III (§ 301 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

2002—Subsec. (c)(1)(A)(ii). Pub. L. 107–273, § 4002(b)(11)(A), substituted ''(9)'' for ''(9),''.

Subsec. (e)(8). Pub. L. 107–273, § 4002(b)(11)(B), inserted semicolon at end.

2001—Subsec. (h). Pub. L. 107–56 added subsec. (h).

1998—Subsec. (a)(8) to (10). Pub. L. 105–172, § 2(a), added pars. (8) and (9), redesignated former par. (9) as (10), and struck out former par. (8) which read as follows: ''knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses—

''(A) a scanning receiver; or

''(B) hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services, or''.

Subsec. (b)(1). Pub. L. 105–172, § 2(b)(2), substituted ''subject to the same penalties as those prescribed for the offense attempted'' for ''punished as provided in subsection (c) of this section''.

Subsec. (c). Pub. L. 105–172, § 2(b)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The punishment for an offense under subsection (a) or (b)(1) of this section is—

''(1) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (3), (5), (6), (7), (8), or (9) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph;

''(2) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection (a)(1), (4), (5), (6), (7), or (8) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and

''(3) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph.''

Subsec. (e)(8). Pub. L. 105–172, § 2(c), inserted ''or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument'' before the period at end.

Subsec. (e)(9) to (11). Pub. L. 105–172, § 2(d)(2), added pars. (9) to (11).

Subsec. (g). Pub. L. 105–172, § 2(d)(1), added subsec. (g).

1996—Subsec. (a)(5). Pub. L. 104–294, § 601(*l*)(1)(A), redesignated par. (5), relating to instruments that have been modified or altered to obtain unauthorized access to telecommunications services, as (7).

Subsec. (a)(6). Pub. L. 104–294, § 601(*l*)(1)(C), in par. (6) relating to solicitations, struck out ''or'' at end.

Pub. L. 104–294, § 601(*l*)(1)(A), redesignated par. (6), relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services, as (8).

Subsec. (a)(7). Pub. L. 104–294, § 601(*l*)(1)(A), (C), redesignated par. (5), relating to instruments that have been modified or altered to obtain unauthorized access to telecommunications services, as (7), and struck out ''or'' at end. Par. transferred to appear in numerical order to reflect probable intent of Congress. Former par. (7) redesignated (9).

Pub. L. 104–294, § 601(*l*)(1)(B), redesignated par. (7) as (9).

Subsec. (a)(8). Pub. L. 104–294, § 601(*l*)(1)(A), (D), redesignated par. (6), relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services, as (8) and inserted ''or'' at end. Par. transferred to appear in numerical order to reflect probable intent of Congress.

Subsec. (a)(9). Pub. L. 104–294, § 601(*l*)(1)(B), redesignated par. (7) as (9).

Subsec. (c)(1). Pub. L. 104–294, § 601(*l*)(3)(A), substituted ''(7), (8), or (9)'' for ''or (7)''.

Subsec. (c)(2). Pub. L. 104–294, § 601(*l*)(3)(B), substituted ''(6), (7), or (8)'' for ''or (6)''.

Subsec. (e)(7), (8). Pub. L. 104–294, § 601(*l*)(2), redesignated par. (7), defining ''scanning receiver'', as (8).

1994—Subsec. (a)(3). Pub. L. 103–322, § 250007(1)(A), and Pub. L. 103–414, § 206(a)(1), amended par. (3) identically, striking ''or'' at end.

Subsec. (a)(5). Pub. L. 103–414, § 206(a)(2), added par. (5) relating to instruments that have been modified or altered to obtain unauthorized use of telecommunications services.

Pub. L. 103–322, § 250007(1)(B), added par. (5) relating to transactions involving use of access devices issued to persons other than user.

Subsec. (a)(6). Pub. L. 103–414, § 206(a)(2), added par. (6) relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services.

Pub. L. 103–322, § 250007(1)(B), added par. (6) relating to solicitations which offer access devices or information regarding access devices.

Subsec. (a)(7). Pub. L. 103–322, § 250007(1)(B), added par. (7).

Subsec. (c)(1). Pub. L. 103–322, § 330016(2)(I), substituted ''fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment'' for ''fine of not more than the greater of $10,000 or twice the value obtained by the offense or imprisonment''.

Pub. L. 103–322, § 250007(2), substituted ''(a)(2), (3), (5), (6), or (7)'' for ''(a)(2) or (a)(3)''.

Subsec. (c)(2). Pub. L. 103–414, § 206(b), substituted ''(a)(1), (4), (5), or (6)'' for ''(a)(1) or (a)(4)''.

Pub. L. 103–322, § 330016(2)(I), substituted ''fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment'' for ''fine of not more than the greater of $50,000 or twice the value obtained by the offense or imprisonment''.

Subsec. (c)(3). Pub. L. 103–322, § 330016(2)(I), substituted ''fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment'' for ''fine of not more than the greater of $100,000 or twice the value obtained by the offense or imprisonment''.

Subsec. (e)(1). Pub. L. 103–414, § 206(c)(1), inserted ''electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier,'' after ''account number,''.

Subsec. (e)(5), (6). Pub. L. 103–322, § 250007(3)(A), (B), and Pub. L. 103–414, § 206(c)(2), (3), amended subsec. (e) identically, striking ''and'' at end of par. (5) and substituting ''; and'' for period at end of par. (6).

Subsec. (e)(7). Pub. L. 103–414, § 206(c)(4), added par. (7) defining ''scanning receiver''.

Pub. L. 103–322, § 250007(3)(C), added par. (7) defining ''credit card system member''.

1990—Subsec. (f). Pub. L. 101–647 inserted at end ''For purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''

1986—Subsec. (f). Pub. L. 99–646 which directed that subsec. (f) be amended by substituting ''chapter 224 of this title'' for ''title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)'' was executed by making the substitution for ''title V of the Organized Crime Control Act of 1970) 18 U.S.C. note prec. 3481)'' to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT TO CONGRESS

Section 1603 of Pub. L. 98–473 directed Attorney General to report to Congress annually, during first three years following Oct. 12, 1984, concerning prosecutions under this section.

§ 1030. Fraud and related activity in connection with computers

(a) Whoever—

(1) having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y. of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

(2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—

(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(B) information from any department or agency of the United States; or

(C) information from any protected computer if the conduct involved an interstate or foreign communication;

(3) intentionally, without authorization to access any nonpublic computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects that use by or for the Government of the United States;

(4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than $5,000 in any 1-year period;

(5)(A)(i) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

(ii) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

(iii) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage; and

(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused)—

(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value;

(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(iii) physical injury to any person;

(iv) a threat to public health or safety; or

(v) damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security;

(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

(A) such trafficking affects interstate or foreign commerce; or

(B) such computer is used by or for the Government of the United States;[1]

(7) with intent to extort from any person any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to cause damage to a protected computer;

shall be punished as provided in subsection (c) of this section.

(b) Whoever attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

(c) The punishment for an offense under subsection (a) or (b) of this section is—

(1)(A) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a)(1) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(2)(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2), (a)(3), (a)(5)(A)(iii), or (a)(6) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), or an attempt to commit an offense punishable under this subparagraph, if—

(i) the offense was committed for purposes of commercial advantage or private financial gain;

(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

(iii) the value of the information obtained exceeds $5,000; and

(C) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (a)(3) or (a)(6) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4), (a)(5)(A)(iii), or (a)(7) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(4)(A) except as provided in paragraph (5), a fine under this title, imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(5)(A)(i), or an attempt to commit an offense punishable under that subsection;

(B) a fine under this title, imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(5)(A)(ii), or an attempt to commit an offense punishable under that subsection;

(C) except as provided in paragraph (5), a fine under this title, imprisonment for not more than 20 years, or both, in the case of an offense under subsection (a)(5)(A)(i) or (a)(5)(A)(ii), or an attempt to commit an offense punishable under either subsection, that occurs after a conviction for another offense under this section; and

(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.

(d)(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056(a) of this title.

(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term ''computer'' means an electronic, magnetic, optical, electrochemical, or

[1] So in original. Probably should be followed by ''or''.

other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

(2) the term ''protected computer'' means a computer—

(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects that use by or for the financial institution or the Government; or

(B) which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States;

(3) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession or territory of the United States;

(4) the term ''financial institution'' means—

(A) an institution, with deposits insured by the Federal Deposit Insurance Corporation;

(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

(C) a credit union with accounts insured by the National Credit Union Administration;

(D) a member of the Federal home loan bank system and any home loan bank;

(E) any institution of the Farm Credit System under the Farm Credit Act of 1971;

(F) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

(G) the Securities Investor Protection Corporation;

(H) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978); and

(I) an organization operating under section 25 or section 25(a)[2] of the Federal Reserve Act;

(5) the term ''financial record'' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(6) the term ''exceeds authorized access'' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter;

(7) the term ''department of the United States'' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5;

(8) the term ''damage'' means any impairment to the integrity or availability of data, a program, a system, or information;

(9) the term ''government entity'' includes the Government of the United States, any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country;

(10) the term ''conviction'' shall include a conviction under the law of any State for a crime punishable by imprisonment for more than 1 year, an element of which is unauthorized access, or exceeding authorized access, to a computer;

(11) the term ''loss'' means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service; and

(12) the term ''person'' means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(g) Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in clause (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage. No action may be brought under this subsection for the negligent design or manufacture of computer hardware, computer software, or firmware.

(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under subsection (a)(5).

(Added Pub. L. 98–473, title II, § 2102(a), Oct. 12, 1984, 98 Stat. 2190; amended Pub. L. 99–474, § 2, Oct. 16, 1986, 100 Stat. 1213; Pub. L. 100–690, title VII, § 7065, Nov. 18, 1988, 102 Stat. 4404; Pub. L. 101–73, title IX, § 962(a)(5), Aug. 9, 1989, 103 Stat. 502; Pub. L. 101–647, title XII, § 1205(e), title XXV, § 2597(j), title XXXV, § 3533, Nov. 29, 1990, 104 Stat. 4831, 4910, 4925; Pub. L. 103–322, title XXIX, § 290001(b)–(f), Sept. 13, 1994, 108 Stat. 2097–2099; Pub. L. 104–294, title II, § 201, title VI, § 604(b)(36), Oct. 11, 1996, 110 Stat. 3491, 3508; Pub. L. 107–56, title V, § 506(a), title VIII, § 814(a)–(e), Oct. 26, 2001, 115 Stat. 366, 382–384; Pub. L. 107–273, div. B,

[2] See References in Text note below.

title IV, §§4002(b)(1), (12), 4005(a)(3), (d)(3), Nov. 2, 2002, 116 Stat. 1807, 1808, 1812, 1813; Pub. L. 107–296, title II, §225(g), Nov. 25, 2002, 116 Stat. 2158.)

REFERENCES IN TEXT

Section 11 of the Atomic Energy Act of 1954, referred to in subsec. (a)(1), is classified to section 2014 of Title 42, The Public Health and Welfare.

The Fair Credit Reporting Act, referred to in subsec. (a)(2)(A), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (e)(4)(E), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

Section 15 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4)(F), is classified to section 78*o* of Title 15, Commerce and Trade.

Section 1(b) of the International Banking Act of 1978, referred to in subsec. (e)(4)(H), is classified to section 3101 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in subsec. (e)(4)(I), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 103–322, which was approved Sept. 13, 1994.

AMENDMENTS

2002—Subsec. (a)(5)(B). Pub. L. 107–273, §4005(a)(3), realigned margins.

Subsec. (c)(2)(B). Pub. L. 107–273, §4002(b)(1), realigned margins.

Subsec. (c)(2)(B)(iii). Pub. L. 107–273, §4002(b)(12)(A), inserted ''and'' at end.

Subsec. (c)(3)(B). Pub. L. 107–273, §4005(d)(3), inserted comma after ''(a)(4)''.

Subsec. (c)(4)(A), (C). Pub. L. 107–296, §225(g)(2), inserted ''except as provided in paragraph (5),'' before ''a fine under this title''.

Subsec. (c)(5). Pub. L. 107–296, §225(g)(1), (3), (4), added par. (5).

Subsec. (e)(4)(I). Pub. L. 107–273, §4002(b)(12)(B), substituted semicolon for period at end.

2001—Subsec. (a)(5)(A). Pub. L. 107–56, §814(a)(1)–(3), designated existing provisions as cl. (i), redesignated subpars. (B) and (C) as cls. (ii) and (iii), respectively, of subpar. (A), and inserted ''and'' at end of cl. (iii).

Subsec. (a)(5)(B). Pub. L. 107–56, §814(a)(4), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (a)(5)(C). Pub. L. 107–56, §814(a)(2), redesignated subpar. (C) as cl. (iii) of subpar. (A).

Subsec. (a)(7). Pub. L. 107–56, §814(b), struck out '', firm, association, educational institution, financial institution, government entity, or other legal entity,'' before ''any money or other thing of value''.

Subsec. (c)(2)(A). Pub. L. 107–56, §814(c)(1)(A), inserted ''except as provided in subparagraph (B),'' before ''a fine'', substituted ''(a)(5)(A)(iii)'' for ''(a)(5)(C)'', and struck out ''and'' at end.

Subsec. (c)(2)(B). Pub. L. 107–56, §814(c)(1)(B), inserted ''or an attempt to commit an offense punishable under this subparagraph,'' after ''subsection (a)(2),'' in introductory provisions.

Subsec. (c)(2)(C). Pub. L. 107–56, §814(c)(1)(C), struck out ''and'' at end.

Subsec. (c)(3). Pub. L. 107–56, §814(c)(2), struck out '', (a)(5)(A), (a)(5)(B),'' after ''subsection (a)(4)'' in subpars. (A) and (B) and substituted ''(a)(5)(A)(iii)'' for ''(a)(5)(C)'' in subpar. (B).

Subsec. (c)(4). Pub. L. 107–56, §814(c)(3), added par. (4).

Subsec. (d). Pub. L. 107–56, §506(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.''

Subsec. (e)(2)(B). Pub. L. 107–56, §814(d)(1), inserted '', including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States'' before semicolon.

Subsec. (e)(7). Pub. L. 107–56, §814(d)(2), struck out ''and'' at end.

Subsec. (e)(8). Pub. L. 107–56, §814(d)(3), added par. (8) and struck out former par. (8) which read as follows: ''the term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information, that—

''(A) causes loss aggregating at least $5,000 in value during any 1-year period to one or more individuals;

''(B) modifies or impairs, or potentially modifies or impairs, the medical examination, diagnosis, treatment, or care of one or more individuals;

''(C) causes physical injury to any person; or

''(D) threatens public health or safety; and''.

Subsec. (e)(10) to (12). Pub. L. 107–56, §814(d)(4), (5), added pars. (10) to (12).

Subsec. (g). Pub. L. 107–56, §814(e), substituted ''A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in clause (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages.'' for ''Damages for violations involving damage as defined in subsection (e)(8)(A) are limited to economic damages.'' and inserted at end ''No action may be brought under this subsection for the negligent design or manufacture of computer hardware, computer software, or firmware.''

1996—Subsec. (a)(1). Pub. L. 104–294, §201(1)(A), substituted ''having knowingly accessed'' for ''knowingly accesses'', ''exceeding authorized access'' for ''exceeds authorized access'', ''such conduct having obtained information'' for ''such conduct obtains information'', and ''could be used to the injury of the United States'' for ''is to be used to the injury of the United States'', struck out ''the intent or'' before ''reason to believe'', and inserted before semicolon at end ''willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it''.

Subsec. (a)(2). Pub. L. 104–294, §201(1)(B), inserted dash after ''thereby obtains'', redesignated remainder of par. (2) as subpar. (A), and added subpars. (B) and (C).

Subsec. (a)(3). Pub. L. 104–294, §201(1)(C), inserted ''nonpublic'' before ''computer of a department or agency'', struck out ''adversely'' after ''and such conduct'', and substituted ''that use by or for the Government of the United States'' for ''the use of the Government's operation of such computer''.

Subsec. (a)(4). Pub. L. 104–294, §201(1)(D), substituted ''protected computer'' for ''Federal interest computer'' and inserted ''and the value of such use is not more than $5,000 in any 1-year period'' before semicolon at end.

Subsec. (a)(5). Pub. L. 104–294, §201(1)(E), inserted par. (5) and struck out former par. (5) which related to fraud

in connection with computers in causing transmission of program, information, code, or command to a computer or computer system in interstate or foreign commerce which damages such system, program, information, or code, or causes a withholding or denial of use of hardware or software, or transmits viruses which causes damage in excess of $1,000 or more during any one-year period, or modifies or impairs medical examination, diagnosis, treatment or care of individuals.

Subsec. (a)(5)(B)(ii)(II)(bb). Pub. L. 104–294, § 604(b)(36)(A), which directed insertion of ''or'' at end of subsec., could not be executed because no subsec. (a)(5)(B)(ii)(II)(bb) existed subsequent to amendment by Pub. L. 104–294, § 201(1)(E). See above.

Subsec. (a)(7). Pub. L. 104–294, § 201(1)(F), added par. (7).

Subsec. (c)(1). Pub. L. 104–294, § 201(2)(A), substituted ''under this section'' for ''under such subsection'' in subpars. (A) and (B).

Subsec. (c)(1)(B). Pub. L. 104–294, § 604(b)(36)(B), struck out ''and'' after semicolon at end.

Subsec. (c)(2)(A). Pub. L. 104–294, § 201(2)(B)(i), inserted '', (a)(5)(C),'' after ''(a)(3)'' and substituted ''under this section'' for ''under such subsection''.

Subsec. (c)(2)(B). Pub. L. 104–294, § 201(2)(B)(iii), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(C). Pub. L. 104–294, § 201(2)(B)(iv), substituted ''under this section'' for ''under such subsection'' and inserted ''and'' at end.

Pub. L. 104–294, § 201(2)(B)(ii), redesignated subpar. (B) as (C).

Subsec. (c)(3)(A). Pub. L. 104–294, § 201(2)(C)(i), substituted ''(a)(4), (a)(5)(A), (a)(5)(B), or (a)(7)'' for ''(a)(4) or (a)(5)(A)'' and ''under this section'' for ''under such subsection''.

Subsec. (c)(3)(B). Pub. L. 104–294, § 201(2)(C)(ii), substituted ''(a)(4), (a)(5)(A), (a)(5)(B), (a)(5)(C), or (a)(7)'' for ''(a)(4) or (a)(5)'' and ''under this section'' for ''under such subsection''.

Subsec. (c)(4). Pub. L. 104–294, § 201(2)(D), struck out par. (4) which read as follows: ''a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).''

Subsec. (d). Pub. L. 104–294, § 201(3), inserted ''subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of'' before ''this section'' in first sentence.

Subsec. (e)(2). Pub. L. 104–294, § 201(4)(A)(i), substituted ''protected'' for ''Federal interest'' in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 104–294, § 201(4)(A)(ii), substituted ''that use by or for the financial institution or the Government'' for ''the use of the financial institution's operation or the Government's operation of such computer''.

Subsec. (e)(2)(B). Pub. L. 104–294, § 201(4)(A)(iii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''which is one of two or more computers used in committing the offense, not all of which are located in the same State;''.

Subsec. (e)(8), (9). Pub. L. 104–294, § 201(4)(B)–(D), added pars. (8) and (9).

Subsec. (g). Pub. L. 104–294, § 604(b)(36)(C), substituted ''violation of this section'' for ''violation of the section''.

Pub. L. 104–294, § 201(5), struck out '', other than a violation of subsection (a)(5)(B),'' before ''may maintain a civil action'' and substituted ''involving damage as defined in subsection (e)(8)(A)'' for ''of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb)''.

Subsec. (h). Pub. L. 104–294, § 604(b)(36)(D), substituted ''subsection (a)(5)'' for ''section 1030(a)(5) of title 18, United States Code'' before period at end.

1994—Subsec. (a)(3). Pub. L. 103–322, § 290001(f), inserted ''adversely'' before ''affects the use of the Government's''.

Subsec. (a)(5). Pub. L. 103–322, § 290001(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

''(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

''(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or''.

Subsec. (c)(3)(A). Pub. L. 103–322, § 290001(c)(2), inserted ''(A)'' after ''(a)(5)''.

Subsec. (c)(4). Pub. L. 103–322, § 290001(c)(1), (3), (4), added par. (4).

Subsec. (g). Pub. L. 103–322, § 290001(d), added subsec. (g).

Subsec. (h). Pub. L. 103–322, § 290001(e), added subsec. (h).

1990—Subsec. (a)(1). Pub. L. 101–647, § 3533, substituted ''paragraph y'' for ''paragraph r''.

Subsec. (e)(3). Pub. L. 101–647, § 1205(e), inserted ''commonwealth,'' before ''possession or territory of the United States''.

Subsec. (e)(4)(G). Pub. L. 101–647, § 2597(j)(2), which directed substitution of a semicolon for a period at end of subpar. (G), could not be executed because it ended with a semicolon.

Subsec. (e)(4)(H), (I). Pub. L. 101–647, § 2597(j), added subpars. (H) and (I).

1989—Subsec. (e)(4)(A). Pub. L. 101–73, § 962(a)(5)(A), substituted ''an institution,'' for ''a bank''.

Subsec. (e)(4)(C) to (H). Pub. L. 101–73, § 962(a)(5)(B), (C), redesignated subpars. (D) to (H) as (C) to (G), respectively, and struck out former subpar. (C) which read as follows: ''an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;''.

1988—Subsec. (a)(2). Pub. L. 100–690 inserted a comma after ''financial institution'' and struck out the comma that followed a comma after ''title 15''.

1986—Subsec. (a). Pub. L. 99–474, § 2(b)(2), struck out last sentence which read as follows: ''It is not an offense under paragraph (2) or (3) of this subsection in the case of a person having accessed a computer with authorization and using the opportunity such access provides for purposes to which such access does not extend, if the using of such opportunity consists only of the use of the computer.''

Subsec. (a)(1). Pub. L. 99–474, § 2(c), substituted ''or exceeds authorized access'' for '', or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend''.

Subsec. (a)(2). Pub. L. 99–474, § 2(a), (c), substituted ''intentionally'' for ''knowingly'', substituted ''or exceeds authorized access'' for '', or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend'', struck out ''as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),'' after ''financial institution,'', inserted ''or of a card issuer as defined in section 1602(n) of title 15,'' and struck out ''or'' appearing at end.

Subsec. (a)(3). Pub. L. 99–474, § 2(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend, and by means of such conduct knowingly uses, modifies, destroys, or discloses information in, or prevents authorized use of, such computer, if such computer is operated for or on behalf of the Government of the United States and such conduct affects such operation;''.

Subsec. (a)(4) to (6). Pub. L. 99–474, § 2(d), added pars. (4) to (6).

Subsec. (b). Pub. L. 99–474, § 2(e), struck out par. (1) designation and par. (2) which provided a penalty for persons conspiring to commit an offense under subsec. (a).

Subsec. (c). Pub. L. 99–474, § 2(f)(9), substituted ''(b)'' for ''(b)(1)'' in introductory text.

Subsec. (c)(1)(A). Pub. L. 99–474, § 2(f)(1), substituted ''under this title'' for ''of not more than the greater of $10,000 or twice the value obtained by the offense''.

Subsec. (c)(1)(B). Pub. L. 99–474, § 2(f)(2), substituted ''under this title'' for ''of not more than the greater of $100,000 or twice the value obtained by the offense''.

Subsec. (c)(2)(A). Pub. L. 99–474, § 2(f)(3), (4), substituted ''under this title'' for ''of not more than the greater of $5,000 or twice the value obtained or loss created by the offense'' and inserted reference to subsec. (a)(6).

Subsec. (c)(2)(B). Pub. L. 99–474, § 2(f)(3), (5)–(7), substituted ''under this title'' for ''of not more than the greater of $10,000 or twice the value obtained or loss created by the offense'', ''not more than'' for ''not than'', inserted reference to subsec. (a)(6), and substituted ''; and'' for the period at end of subpar. (B).

Subsec. (c)(3). Pub. L. 99–474, § 2(f)(8), added par. (3).

Subsec. (e). Pub. L. 99–474, § 2(g), substituted a dash for the comma after ''As used in this section'', realigned remaining portion of subsection, inserted ''(1)'' before ''the term'', substituted a semicolon for the period at the end, and added pars. (2) to (7).

Subsec. (f). Pub. L. 99–474, § 2(h), added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORTS TO CONGRESS

Section 2103 of Pub. L. 98–473 directed Attorney General to report to Congress annually, during first three years following Oct. 12, 1984, concerning prosecutions under this section.

§ 1031. Major fraud against the United States

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

(1) to defraud the United States; or

(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises,

in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is $1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.

(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed $5,000,000 and—

(1) the gross loss to the Government or the gross gain to a defendant is $500,000 or greater; or

(2) the offense involves a conscious or reckless risk of serious personal injury.

(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed $10,000,000.

(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).

(e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including—

(1) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the defendant;

(2) whether the defendant previously has been fined for a similar offense; and

(3) any other pertinent equitable considerations.

(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.

(g)(1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed $250,000. Upon application by the Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.

(2) An individual is not eligible for such a payment if—

(A) that individual is an officer or employee of a Government agency who furnishes information or renders service in the performance of official duties;

(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;

(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, ''original source'' means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or

(D) that individual participated in the violation of this section with respect to which such payment would be made.

(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.

(h) Any individual who—

(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and

(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(Added Pub. L. 100–700, § 2(a), Nov. 19, 1988, 102 Stat. 4631; amended Pub. L. 101–123, § 2(a), Oct. 23, 1989, 103 Stat. 759; Pub. L. 103–322, title XXXIII, § 330002(a), (f), Sept. 13, 1994, 108 Stat. 2140.)

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–322, § 330002(f), redesignated second subsec. (g) as (h).

Subsec. (g)(2)(A). Pub. L. 103–322, § 330002(a), substituted ''a Government'' for ''a government''.

Subsec. (h). Pub. L. 103–322, § 330002(f), redesignated second subsec. (g) as (h).

1989—Subsec. (g). Pub. L. 101–123 added, after subsec. (f), subsec. (g) relating to payments by the Attorney General.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2(b) of Pub. L. 101–123 provided that: ''The amendment made by this section [amending this section] shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 23, 1989].''

§ 1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution

Whoever—

(1) knowingly conceals or endeavors to conceal an asset or property from the Federal Deposit Insurance Corporation, acting as conservator or receiver or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13 of the Federal Deposit Insurance Act, the Resolution Trust Corporation, any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board, acting as conservator or liquidating agent;

(2) corruptly impedes or endeavors to impede the functions of such Corporation, Board, or conservator; or

(3) corruptly places or endeavors to place an asset or property beyond the reach of such Corporation, Board, or conservator,

shall be fined under this title or imprisoned not more than 5 years, or both.

(Added Pub. L. 101–647, title XXV, § 2501(a), Nov. 29, 1990, 104 Stat. 4859; amended Pub. L. 107–273, div. B, title IV, § 4002(b)(13), Nov. 2, 2002, 116 Stat. 1808.)

REFERENCES IN TEXT

Sections 11, 12, and 13 of the Federal Deposit Insurance Act, referred to in par. (1), are classified to sections 1821, 1822, and 1823, respectively, of Title 12, Banks and Banking.

AMENDMENTS

2002—Par. (1). Pub. L. 107–273 substituted ''13'' for ''13,''.

§ 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and knowingly, with the intent to deceive, makes any false material statement or report or willfully and materially overvalues any land, property or security—

(A) in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court.

(b)(1) Whoever—

(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed $5,000, whoever violates

paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to deceive any person, including any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person, about the financial condition or solvency of such business shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years.

(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

(e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

(f) As used in this section—

(1) the term ''business of insurance'' means—

(A) the writing of insurance, or

(B) the reinsuring of risks,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

(2) the term ''insurer'' means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

(3) the term ''interstate commerce'' means—

(A) commerce within the District of Columbia, or any territory or possession of the United States;

(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

(C) all commerce between points within the same State through any place outside such State; or

(D) all other commerce over which the United States has jurisdiction; and

(4) the term ''State'' includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(Added Pub. L. 103–322, title XXXII, § 320603(a), Sept. 13, 1994, 108 Stat. 2115.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1034. Civil penalties and injunctions for violations of section 1033

(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which

is available by law to the United States or any other person.

(Added Pub. L. 103–322, title XXXII, § 320603(a), Sept. 13, 1994, 108 Stat. 2118.)

§ 1035. False statements relating to health care matters

(a) Whoever, in any matter involving a health care benefit program, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or

(2) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,

in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section, the term ''health care benefit program'' has the meaning given such term in section 24(b) of this title.

(Added Pub. L. 104–191, title II, § 244(a), Aug. 21, 1996, 110 Stat. 2017.)

§ 1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport

(a) Whoever, by any fraud or false pretense, enters or attempts to enter—

(1) any real property belonging in whole or in part to, or leased by, the United States;

(2) any vessel or aircraft belonging in whole or in part to, or leased by, the United States;

(3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70103 of title 46, United States Code, and the rules and regulations promulgated under that section; or

(4) any secure area of any airport,

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) a fine under this title or imprisonment for not more than 10 years, or both, if the offense is committed with the intent to commit a felony; or

(2) a fine under this title or imprisonment for not more than 6 months, or both, in any other case.

(c) As used in this section—

(1) the term ''secure area'' means an area access to which is restricted by the airport authority, captain of the seaport, or a public agency; and

(2) the term ''airport'' has the meaning given such term in section 47102 of title 49.

(Added Pub. L. 106–547, § 2(a), Dec. 19, 2000, 114 Stat. 2738; amended Pub. L. 109–177, title III, § 302(a), Mar. 9, 2006, 120 Stat. 233.)

AMENDMENTS

2006—Pub. L. 109–177, § 302(a)(4), substituted ''any airport or seaport'' for ''any airport'' in section catchline.

Subsec. (a)(3), (4). Pub. L. 109–177, § 302(a)(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 109–177, § 302(a)(2), substituted ''10 years'' for ''5 years''.

Subsec. (c)(1). Pub. L. 109–177, § 302(a)(3), inserted '', captain of the seaport,'' after ''airport authority''.

§ 1037. Fraud and related activity in connection with electronic mail

(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

(4) registers, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

(b) PENALTIES.—The punishment for an offense under subsection (a) is—

(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

(A) the offense is an offense under subsection (a)(1);

(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

(D) the offense caused loss to one or more persons aggregating $5,000 or more in value during any 1-year period;

(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

(F) the offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

(c) FORFEITURE.—

(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

(d) DEFINITIONS.—In this section:

(1) LOSS.—The term ''loss'' has the meaning given that term in section 1030(e) of this title.

(2) MATERIALLY.—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(3) MULTIPLE.—The term ''multiple'' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

(4) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.''.

(Added Pub. L. 108–187, § 4(a)(1), Dec. 16, 2003, 117 Stat. 2703.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

Section 3 of the CAN-SPAM Act of 2003, referred to in subsec. (d)(4), is classified to section 7702 of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of Title 15, Commerce and Trade.

§ 1038. False information and hoaxes

(a) CRIMINAL VIOLATION.—

(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall—

(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

(2) ARMED FORCES.—Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged—

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.

(b) CIVIL ACTION.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) REIMBURSEMENT.—

(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

(d) ACTIVITIES OF LAW ENFORCEMENT.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

(Added Pub. L. 108–458, title VI, § 6702(a), Dec. 17, 2004, 118 Stat. 3764.)

§ 1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity

(a) CRIMINAL VIOLATION.—Whoever, in interstate or foreign commerce, knowingly and intentionally obtains, or attempts to obtain, confidential phone records information of a covered entity, by—

(1) making false or fraudulent statements or representations to an employee of a covered entity;

(2) making such false or fraudulent statements or representations to a customer of a covered entity;

(3) providing a document to a covered entity knowing that such document is false or fraudulent; or

(4) accessing customer accounts of a covered entity via the Internet, or by means of conduct that violates section 1030 of this title, without prior authorization from the customer to whom such confidential phone records information relates;

shall be fined under this title, imprisoned for not more than 10 years, or both.

(b) PROHIBITION ON SALE OR TRANSFER OF CONFIDENTIAL PHONE RECORDS INFORMATION.—

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally sells or transfers, or attempts to sell or transfer, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

(c) PROHIBITION ON PURCHASE OR RECEIPT OF CONFIDENTIAL PHONE RECORDS INFORMATION.—

(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally purchases or receives, or attempts to purchase or receive, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

(d) ENHANCED PENALTIES FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, subsection (a), (b), or (c) while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000, or more than 50 customers of a covered entity, in a 12-month period shall, in addition to the penalties provided for in such subsection, be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of this title, imprisoned for not more than 5 years, or both.

(e) ENHANCED PENALTIES FOR USE OF INFORMATION IN FURTHERANCE OF CERTAIN CRIMINAL OFFENSES.—

(1) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense described in section 2261, 2261A, 2262, or any other crime of violence shall, in addition to the penalties provided for in such subsection, be fined under this title and imprisoned not more than 5 years.

(2) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense under section 111, 115, 1114, 1503, 1512, 1513, or to intimidate, threaten, harass, injure, or kill any Federal, State, or local law enforcement officer shall, in addition to the penalties provided for in such subsection, be fined under this title and imprisoned not more than 5 years.

(f) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial jurisdiction over an offense under this section.

(g) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

(h) DEFINITIONS.—In this section:

(1) CONFIDENTIAL PHONE RECORDS INFORMATION.—The term ''confidential phone records information'' means information that—

(A) relates to the quantity, technical configuration, type, destination, location, or amount of use of a service offered by a covered entity, subscribed to by any customer of that covered entity, and kept by or on behalf of that covered entity solely by virtue of the relationship between that covered entity and the customer;

(B) is made available to a covered entity by a customer solely by virtue of the relationship between that covered entity and the customer; or

(C) is contained in any bill, itemization, or account statement provided to a customer by or on behalf of a covered entity solely by virtue of the relationship between that covered entity and the customer.

(2) COVERED ENTITY.—The term ''covered entity''—

(A) has the same meaning given the term ''telecommunications carrier'' in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

(B) includes any provider of IP-enabled voice service.

(3) CUSTOMER.—The term ''customer'' means, with respect to a covered entity, any individual, partnership, association, joint stock company, trust, or corporation, or authorized representative of such customer, to whom the covered entity provides a product or service.

(4) IP-ENABLED VOICE SERVICE.—The term ''IP-enabled voice service'' means the provision of real-time voice communications offered to the public, or such class of users as to be effectively available to the public, transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol, (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network, or a successor network.

(Added Pub. L. 109–476, § 3(a), Jan. 12, 2007, 120 Stat. 3569.)

REFERENCES IN TEXT

Section 222(d) of the Communications Act of 1934, referred to in subsecs. (b)(2) and (c)(2), is classified to section 222(d) of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

FINDINGS

Pub. L. 109–476, § 2, Jan. 12, 2007, 120 Stat. 3568, provided that: ''Congress finds that—

''(1) telephone records can be of great use to criminals because the information contained in call logs may include a wealth of personal data;

''(2) call logs may reveal the names of telephone users' doctors, public and private relationships, business associates, and more;

''(3) call logs are typically maintained for the exclusive use of phone companies, their authorized agents, and authorized consumers;

''(4) telephone records have been obtained without the knowledge or consent of consumers through the use of a number of fraudulent methods and devices that include—

''(A) telephone company employees selling data to unauthorized data brokers;

''(B) 'pretexting', whereby a data broker or other person represents that they are an authorized consumer and convinces an agent of the telephone company to release the data; or

''(C) gaining unauthorized Internet access to account data by improperly activating a consumer's account management features on a phone company's webpage or contracting with an Internet-based data broker who trafficks in such records; and

''(5) the unauthorized disclosure of telephone records not only assaults individual privacy but, in some instances, may further acts of domestic violence or stalking, compromise the personal safety of law enforcement officers, their families, victims of crime, witnesses, or confidential informants, and undermine the integrity of law enforcement investigations.''

CHAPTER 49—FUGITIVES FROM JUSTICE

Sec.
1071. Concealing person from arrest.
1072. Concealing escaped prisoner.
1073. Flight to avoid prosecution or giving testimony.
1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property.

AMENDMENTS

1960—Pub. L. 86–449, title II, § 202, May 6, 1960, 74 Stat. 87, added item 1074.

§ 1071. Concealing person from arrest

Whoever harbors or conceals any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be fined under this title or imprisoned not more than one year, or both; except that if the warrant or process issued on a charge of felony, or after conviction of such person of any offense, the punishment shall be a fine under this title, or imprisonment for not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 755; Aug. 20, 1954, ch. 771, 68 Stat. 747; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–273, div. B, title IV, § 4003(a)(3), Nov. 2, 2002, 116 Stat. 1811.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 246 (Mar. 4, 1909, ch. 321, § 141, 35 Stat. 1114).

Section 246 of title 18, U.S.C., 1940 ed., was divided. Part is in this section and the remainder is incorporated in section 752 of this title.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''fine under this title'' for ''fine of under this title''.

1994—Pub. L. 103–322 substituted ''under this title'' for ''not more than $1,000'' after ''person, shall be fined'' and for ''not more than $5,000'' after ''shall be a fine of''.

1954—Act Aug. 20, 1954, increased the penalty from 6 months to 1 year where the violator harbored a person for whom process has been issued on a misdemeanor charge and inserted the penalty provision where the violation occurred after a person has been convicted of any offense or where a process has been issued for a felony.

§ 1072. Concealing escaped prisoner

Whoever willfully harbors or conceals any prisoner after his escape from the custody of the Attorney General or from a Federal penal or correctional institution, shall be imprisoned not more than three years.

(June 25, 1948, ch. 645, 62 Stat. 755.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753i, 910 (May 14, 1930, ch. 274, § 10, 46 Stat. 327; May 27, 1930, ch. 339, § 10, 46 Stat. 390).

Section consolidates similar language of said sections of title 18, U.S.C., 1940 ed. Remaining provisions are in section 752 of this title.

Words ''willfully harbors'' were added in conformity with section 1071 of this title. Punishment for harbor-

ing violators of the Espionage laws is provided in section 792 of this title. Punishment for harboring deserters from the armed forces is provided in section 1381 of this title.

Minor changes were made in phraseology.

§ 1073. Flight to avoid prosecution or giving testimony

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined under this title or imprisoned not more than five years, or both. For the purposes of clause (3) of this paragraph, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

(June 25, 1948, ch. 645, 62 Stat. 755; Apr. 6, 1956, ch. 177, § 1, 70 Stat. 100; Pub. L. 87–368, Oct. 4, 1961, 75 Stat. 795; Pub. L. 91–452, title III, § 302, Oct. 15, 1970, 84 Stat. 932; Pub. L. 100–690, title VII, § 7020(b), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title XXXIII, §§ 330004(19), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2142, 2147; Pub. L. 104–294, title VI, § 607(e), Oct. 11, 1996, 110 Stat. 3511.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 408e (May 18, 1934, ch. 302, 48 Stat. 782; Aug. 2, 1946, ch. 735, 60 Stat. 789).

Said section 408e was rewritten and the phrase ''offenses as they are defined either at common law or by the laws of the place from which the fugitive flees'' were inserted to remove the ambiguity discussed in the opinion of the Circuit Court of Appeals, Third Circuit, in *Brandenburg* v. *U.S.*, decided September 6, 1944, not yet reported [144 F2d 656], reversing the conviction of the appellant. The court held that Congress intended the enumerated offenses to mean those as defined at common law. The effect of the rewritten section is to make the statute applicable whether the offense committed is one defined at common law or by the law of the state from which the fugitive flees.

The words ''offense punishable by imprisonment in a penitentiary'' were substituted for ''felony'' to make the statute uniformly applicable and to include crimes of the grade of felony even where, as in New Jersey, they are denominated as misdemeanor, high misdemeanor or otherwise.

Words ''from any State, Territory, or possession of the United States or the District of Columbia'' were omitted in view of definitive section 10 of this title.

Words ''upon conviction thereof'' were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

Amendments

1996—Pub. L. 104–294 inserted at end of first par. ''For the purposes of clause (3) of this paragraph, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''

1994—Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Pub. L. 103–322, § 330004(19), struck out ''or which, in the case of New Jersey, is a high misdemeanor under the laws of said State,'' before ''or (2) to avoid'' and ''or which in the case of New Jersey, is a high misdemeanor under the laws of said State,'' before ''is charged, or (3)''.

1988—Pub. L. 100–690 inserted '', the Deputy Attorney General, the Associate Attorney General,'' after ''the Attorney General''.

1970—Pub. L. 91–452 inserted cl. (3) and '', or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed,'' after ''in custody or confinement''.

1961—Pub. L. 87–368 substituted ''a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State'' for ''murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing offenses as they are defined either at common law or by the laws of the place from which the fugitive flees'', ''death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State,'' for ''imprisonment in a penitentiary'', and required that prosecutions must be upon the formal written approval of the Attorney General or an Assistant Attorney General, which function may not be delegated.

1956—Act Apr. 6, 1956, inserted '', arson punishable as a felony'' after ''assault with a dangerous weapon''.

Effective Date of 1956 Amendment

Section 2 of act Apr. 6, 1956, provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on the thirtieth day after the date of enactment of this Act [April 6, 1956].''

Parental Kidnaping and Interstate or International Flight To Avoid Prosecution Under Applicable State Felony Statutes

Pub. L. 96–611, § 10, Dec. 28, 1980, 94 Stat. 3573, provided that:

''(a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302 [probably means section 7 of Pub. L. 96–611, set out as a note under section 1738A of Title 28, Judiciary and Judicial Procedure], the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable State felony statutes.

''(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section [Dec. 28, 1980] (and once every 6 months

during the 3-year period following such 120-day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include—

''(1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code in cases involving parental kidnaping;

''(2) data relating to the number of complaints issued in such cases; and

''(3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent.''

§ 1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property

(a) Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or (2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined under this title or imprisoned not more than five years, or both.

(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: *Provided, however*, That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any jurisdiction over any offense over which they would have jurisdiction in the absence of such section.

(Added Pub. L. 86–449, title II, § 201, May 6, 1960, 74 Stat. 86; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

CHAPTER 50—GAMBLING

Sec.
1081. Definitions.
1082. Gambling ships.
1083. Transportation between shore and ship; penalties.
1084. Transmission of wagering information; penalties.

HISTORICAL AND REVISION NOTES

This section [section 23 of act May 24, 1949] inserts a new chapter 50 (secs. 1081–1083) in title 18, U.S.C., incorporating, with slight changes in phraseology, most of the provisions of act of April 27, 1948 (ch. 235, 62 Stat. 200), which was not incorporated in title 18 when the revision was enacted. Subsection (e) of section 1 of such act, defining ''United States'', when used in a geographical sense, was omitted as covered by section 5 of such title 18. Section 4 of such act, which provided that nothing in such act ''shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof, or to preclude action, otherwise valid, by any State or Territory with respect to the navigable waters within the boundaries of such State or Territory'', was omitted as surplusage and unnecessary.

AMENDMENTS

1961—Pub. L. 87–216, § 3, Sept. 13, 1961, 75 Stat. 491, added item 1084.

1949—Act May 24, 1949, ch. 139, § 23, 63 Stat. 92, added chapter 50 and items 1081 to 1083.

§ 1081. Definitions

As used in this chapter:

The term ''gambling ship'' means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

The term ''gambling establishment'' means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

The term ''vessel'' includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

The term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

The term ''wire communication facility'' means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92; amended Pub. L. 87–216, § 1, Sept. 13, 1961, 75 Stat. 491; Pub. L. 103–322, title XXXII, § 320501, Sept. 13, 1994, 108 Stat. 2114.)

REFERENCES IN TEXT

Section 4472 of the Internal Revenue Code of 1986, referred to in text, is classified to section 4472 of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Pub. L. 103–322, in definition of ''gambling ship'', inserted at end ''Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).''

1961—Pub. L. 87–216 inserted definition of ''wire communication facility''.

§ 1082. Gambling ships

(a) It shall be unlawful for any citizen or resident of the United States, or any other person who is on an American vessel or is otherwise under or within the jurisdiction of the United States, directly or indirectly—

(1) to set up, operate, or own or hold any interest in any gambling ship or any gambling establishment on any gambling ship; or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any person to bet or play at any such establishment,

if such gambling ship is on the high seas, or is an American vessel or otherwise under or within the jurisdiction of the United States, and is not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined under this title or imprisoned not more than two years, or both.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, shall use, or knowingly permit the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1083. Transportation between shore and ship; penalties

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions.

For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of $200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of $300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

(Added May 24, 1949, ch. 139, § 23, 63 Stat. 92.)

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

(Added Pub. L. 87–216, § 2, Sept. 13, 1961, 75 Stat. 491; amended Pub. L. 100–690, title VII, § 7024, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101–647, title XII, § 1205(g), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1990—Subsec. (e). Pub. L. 101–647 inserted ''commonwealth,'' before ''territory or possession of the United States''.

1988—Subsec. (b). Pub. L. 100–690, § 7024(a), inserted ''or foreign country'' after ''State'' in two places.

Subsec. (c). Pub. L. 100–690, § 7024(b)(2), struck out '', Commonwealth of Puerto Rico, territory, possession, or the District of Columbia'' after ''State''.

Subsec. (e). Pub. L. 100–690, § 7024(b)(1), added subsec. (e).

CHAPTER 50A—GENOCIDE

Sec.
1091. Genocide.
1092. Exclusive remedies.
1093. Definitions.

§ 1091. Genocide

(a) BASIC OFFENSE.—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an offense under subsection (a) is—

(1) in the case of an offense under subsection (a)(1), where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) INCITEMENT OFFENSE.—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance referred to in subsections (a) and (c) is that—

(1) the offense is committed within the United States; or

(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(e) NONAPPLICABILITY OF CERTAIN LIMITATIONS.—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

(Added Pub. L. 100–606, § 2(a), Nov. 4, 1988, 102 Stat. 3045; amended Pub. L. 103–322, title VI, § 60003(a)(13), Sept. 13, 1994, 108 Stat. 1970; Pub. L. 107–273, div. B, title IV, § 4002(a)(4), (b)(7), Nov. 2, 2002, 116 Stat. 1806, 1808.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–273, § 4002(b)(7), substituted ''subsection (a)(1),'' for ''subsection (a)(1),,''.

Pub. L. 107–273, § 4002(a)(4), made technical correction to directory language of Pub. L. 103–322. See 1994 Amendment note below.

1994—Subsec. (b)(1). Pub. L. 103–322, as amended by Pub. L. 107–273, § 4002(a)(4), substituted '', where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both;'' for ''a fine of not more than $1,000,000 and imprisonment for life,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(a)(4), Nov. 2, 2002, 116 Stat. 1806, provided that the amendment made by section 4002(a)(4) is effective Sept. 13, 1994.

SHORT TITLE

Section 1 of Pub. L. 100–606 provided that: ''This Act [enacting this chapter] may be cited as the 'Genocide Convention Implementation Act of 1987 (the Proxmire Act)'.''

§ 1092. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

(Added Pub. L. 100–606, § 2(a), Nov. 4, 1988, 102 Stat. 3046.)

§ 1093. Definitions

As used in this chapter—

(1) the term ''children'' means the plural and means individuals who have not attained the age of eighteen years;

(2) the term ''ethnic group'' means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

(3) the term ''incites'' means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

(4) the term ''members'' means the plural;

(5) the term ''national group'' means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

(6) the term ''racial group'' means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

(7) the term ''religious group'' means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

(8) the term ''substantial part'' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.

(Added Pub. L. 100–606, § 2(a), Nov. 4, 1988, 102 Stat. 3046.)

CHAPTER 51—HOMICIDE

Sec.
1111. Murder.
1112. Manslaughter.
1113. Attempt to commit murder or manslaughter.
1114. Protection of officers and employees of the United States.
1115. Misconduct or neglect of ship officers.
1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons.
1117. Conspiracy to murder.
1118. Murder by a Federal prisoner.
1119. Foreign murder of United States nationals.
1120. Murder by escaped prisoners.
1121. Killing persons aiding Federal investigations or State correctional officers.
1122. Protection against the human immunodeficiency virus.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 601(a)(6), Oct. 11, 1996, 110 Stat. 3498, added item 1122.

1994—Pub. L. 103–322, title VI, §§ 60005(b), 60009(b)(2), 60012(b), 60015(b), Sept. 13, 1994, 108 Stat. 1970, 1972–1974, added items 1118 to 1121.

1976—Pub. L. 94–467, § 3, Oct. 8, 1976, 90 Stat. 1998, substituted ''official guests, or internationally protected persons'' for ''or official guests'' in item 1116.

1972—Pub. L. 92–539, title I, § 102, Oct. 24, 1972, 86 Stat. 1071, added items 1116 and 1117.

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section—

(1) the term ''assault'' has the same meaning as given that term in section 113;

(2) the term ''child'' means a person who has not attained the age of 18 years and is—

(A) under the perpetrator's care or control; or

(B) at least six years younger than the perpetrator;

(3) the term ''child abuse'' means intentionally or knowingly causing death or serious bodily injury to a child;

(4) the term ''pattern or practice of assault or torture'' means assault or torture engaged in on at least two occasions;

(5) the term ''serious bodily injury'' has the meaning set forth in section 1365; and

(6) the term ''torture'' means conduct, whether or not committed under the color of law, that otherwise satisfies the definition set forth in section 2340(1).

(June 25, 1948, ch. 645, 62 Stat. 756; Pub. L. 98–473, title II, § 1004, Oct. 12, 1984, 98 Stat. 2138; Pub. L. 99–646, § 87(c)(4), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(a)(4), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–690, title VII, § 7025, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103–322, title VI, § 60003(a)(4), Sept. 13, 1994, 108 Stat. 1969; Pub. L. 108–21, title I, § 102, Apr. 30, 2003, 117 Stat. 652.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 452, 454, 567 (Mar. 4, 1909, ch. 321, §§ 273, 275, 330, 35 Stat. 1143, 1152).

Section consolidates the punishment provision of sections 454 and 567 of title 18, U.S.C., 1940 ed., with section 452 of title 18, U.S.C., 1940 ed.

The provision of said section 454 for the death penalty for first degree murder was consolidated with section 567 of said title 18, by adding the words ''unless the jury qualifies its verdict by adding thereto 'without capital punishment' in which event he shall be sentenced to imprisonment for life''.

The punishment for second degree murder was changed and the phrase ''for any term of years or for life'' was substituted for the words ''not less than ten years and may be imprisoned for life''. This change conforms to a uniform policy of omitting the minimum punishment.

Said section 567 was not included in section 2031 of this title since the rewritten punishment provision for rape removes the necessity for a qualified verdict.

The special maritime and territorial jurisdiction provision was added in view of definitive section 7 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–21, § 102(1), inserted ''child abuse,'' after ''or sexual abuse,'' and ''or perpetrated as part of a pattern or practice of assault or torture against a child or children;'' after ''robbery;''.

Subsec. (c). Pub. L. 108–21, § 102(2), added subsec. (c).

1994—Subsec. (b). Pub. L. 103–322 amended second par. generally. Prior to amendment, second par. read as follows: ''Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment', in which event he shall be sentenced to imprisonment for life;''.

1988—Subsec. (a). Pub. L. 100–690 inserted a comma after ''arson''.

1986—Subsec. (a). Pub. L. 99–646 and Pub. L. 99–654 amended subsec. (a) identically, substituting ''aggravated sexual abuse or sexual abuse'' for '', rape''.

1984—Subsec. (a). Pub. L. 98–473 inserted ''escape, murder, kidnapping, treason, espionage, sabotage,'' after ''arson''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

§ 1112. Manslaughter

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary—Upon a sudden quarrel or heat of passion.

Involuntary—In the commission of an unlawful act not amounting to a felony, or in the com-

mission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than ten years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than six years, or both.

(June 25, 1948, ch. 645, 62 Stat. 756; Pub. L. 103–322, title XXXII, § 320102, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2109, 2147; Pub. L. 104–294, title VI, § 604(b)(13), Oct. 11, 1996, 110 Stat. 3507.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 453, 454 (Mar. 4, 1909, ch. 321, §§ 274, 275, 35 Stat. 1143).

Section consolidates punishment provisions of sections 453 and 454 of title 18, U.S.C., 1940 ed.

The special maritime and territorial jurisdiction provision was added in view of definitive section 7 this title.

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 repealed Pub. L. 103–322, § 320102(2). See 1994 Amendment note below.

1994—Subsec. (b). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

Pub. L. 103–322, § 320102(3), substituted ''six years'' for ''three years'' in last par.

Pub. L. 103–322, § 320102(2), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(13).

Pub. L. 103–322, § 320102(1)(B), which directed the amendment of subsec. (b) by inserting '', or both'' after ''years'', was executed by inserting the material after ''years'' in second par., which was the first place the word appeared in text, to reflect the probable intent of Congress.

Pub. L. 103–322, § 320102(1)(A), inserted ''fined under this title or'' after ''shall be'' in second par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 1113. Attempt to commit murder or manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than seven years or fined under this title, or both.

(June 25, 1948, ch. 645, 62 Stat. 756; Pub. L. 100–690, title VII, § 7058(c), Nov. 18, 1988, 102 Stat. 4403; Pub. L. 101–647, title XXXV, § 3534, Nov. 29, 1990, 104 Stat. 4925; Pub. L. 104–132, title VII, § 705(a)(5), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 456 (Mar. 4, 1909, ch. 321, § 277, 35 Stat. 1143).

Words ''within the special maritime and territorial jurisdiction of the United States'' were added in view of definitive section 7 of this title, and section was rearranged to more clearly express intent of existing law.

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''seven years'' for ''three years''.

1990—Pub. L. 101–647 struck out final period at end.

1988—Pub. L. 100–690 substituted ''shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than three years or fined under this title, or both.'' for ''shall be fined not more than $1,000 or imprisoned not more than three years, or both''.

§ 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

(1) in the case of murder, as provided under section 1111;

(2) in the case of manslaughter, as provided under section 1112; or

(3) in the case of attempted murder or manslaughter, as provided in section 1113.

(June 25, 1948, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, § 402(c), 66 Stat. 276; Pub. L. 85–568, title III, § 304(d), July 29, 1958, 72 Stat. 434; Pub. L. 87–518, § 10, July 2, 1962, 76 Stat. 132; Pub. L. 88–493, § 3, Aug. 27, 1964, 78 Stat. 610; Pub. L. 89–74, § 8(b), July 15, 1965, 79 Stat. 234; Pub. L. 90–449, § 2, Aug. 2, 1968, 82 Stat. 611; Pub. L. 91–375, § 6(j)(9), Aug. 12, 1970, 84 Stat. 777; Pub. L. 91–513, title II, § 701(i)(1), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 91–596, § 17(h)(1), Dec. 29, 1970, 84 Stat. 1607; Pub. L. 93–481, § 5, Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–284, § 18, May 11, 1976, 90 Stat. 514; Pub. L. 94–582, § 16, Oct. 21, 1976, 90 Stat. 2883; Pub. L. 95–87, title VII, § 704, Aug. 3, 1977, 91 Stat. 520; Pub. L. 95–616, § 3(j)(2), Nov. 8, 1978, 92 Stat. 3112; Pub. L. 95–630, title III, § 307, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 96–296, § 26(c), July 1, 1980, 94 Stat. 819; Pub. L. 96–466, title VII, § 704, Oct. 17, 1980, 94 Stat. 2216; Pub. L. 97–143, § 1(b), Dec. 29, 1981, 95 Stat. 1724; Pub. L. 97–259, title I, § 128, Sept. 13, 1982, 96 Stat. 1099; Pub. L. 97–365, § 6, Oct. 25, 1982, 96 Stat. 1752; Pub. L. 97–452, § 2(b), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–63, title I, § 101, July 30, 1983, 97 Stat. 313; Pub. L. 98–473, title II, § 1012, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 98–557, § 17(c), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 100–690, title VII, § 7026, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101–73, title IX, § 962(a)(6), Aug. 9, 1989, 103 Stat. 502; Pub. L. 101–647, title XII, § 1205(h), title XVI, § 1606, title XXXV, § 3535, Nov. 29, 1990, 104 Stat. 4831, 4843, 4925; Pub. L. 102–54, § 13(f)(2), June 13, 1991, 105 Stat. 275; Pub. L. 102–365, § 6, Sept. 3, 1992, 106 Stat. 975; Pub. L.

103–322, title VI, § 60007, title XXXIII, §§ 330009(c), 330011(g), Sept. 13, 1994, 108 Stat. 1971, 2143, 2145; Pub. L. 104–132, title VII, § 727(a), Apr. 24, 1996, 110 Stat. 1302; Pub. L. 104–294, title VI, § 601(f)(2), Oct. 11, 1996, 110 Stat. 3499; Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 253 (May 18, 1934, ch. 299, § 1, 48 Stat. 780; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, § 3, 49 Stat. 1940; Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391).

The section was extended to include United States judges, attorneys and their assistants, and officers of Federal, penal and correctional institutions in view of the obvious desirability of such protective legislation.

Employees of the Bureau of Animal Industry have been included in this section to complete the revision of section 118 of title 18, U.S.C., 1940 ed., which was consolidated with the assault provisions of section 254 of said title 18 and is now section 111 of this title. There seemed no sound reason for including such officers in the protection against assaults but excluding them from the homicide sections.

For like reasons the section was broadened to include officers or employees of the Secret Service or of the Bureau of Narcotics.

Changes in phraseology were made.

1949 ACT

This section [section 24] amends section 1114 of title 18, U.S.C., to conform more closely with the original statute from which it was derived.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 repealed amendment by Pub. L. 104–294. See 1996 Amendment note below.

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally, restructuring provisions by inserting par. designations and substituting reference to section 1113 of this title and general reference to killing or attempting to kill any officer or employee of any agency in any branch of United States Government for more specific references to killing or attempting to kill certain enumerated officers and employees of United States.

Subsec. (b). Pub. L. 104–294, which directed substitution in text of ''1112,'' for ''1112.'' and could not be executed, was repealed by Pub. L. 107–273. See above.

1994—Pub. L. 103–322, § 330011(g), repealed Pub. L. 101–647, § 1606. See 1990 Amendment notes below.

Pub. L. 103–322, § 330009(c), substituted ''or any other officer or employee of the United States or any agency thereof'' for ''or any other officer, agency, or employee of the United States''.

Pub. L. 103–322, § 60007, substituted ''punished, in the case of murder, as provided under section 1111, or, in the case of manslaughter, as provided under section 1112.'' for ''punished as provided under sections 1111 and 1112 of this title,''.

1992—Pub. L. 102–365 inserted ''any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions,'' after ''any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions,''.

1991—Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Pub. L. 101–647, § 3535(3), which directed amendment of section by striking out ''the Federal Savings and Loan Insurance Corporation,'' could not be executed because that language had been struck out by Pub. L. 101–73. See 1989 Amendment note below.

Pub. L. 101–647, § 1606(3), which amended this section identically to amendment by Pub. L. 101–647, § 3535(3), was repealed by Pub. L. 103–322, § 330011(g). See above.

Pub. L. 101–647, § 3535(1), (2), substituted ''Secret Service'' for ''secret service'' and ''any officer or employee of the Department of Education, the Department of Health and Human Services,'' for ''any officer or employee of the Department of Health, Education, and Welfare,''.

Pub. L. 101–647, § 1606(1), (2), which amended this section identically to amendment by Pub. L. 101–647, § 3535(1), (2), was repealed by Pub. L. 103–322, § 330011(g). See above.

Pub. L. 101–647, § 1205(h), inserted ''or any other commonwealth, territory, or possession'' after ''the Virgin Islands''.

1989—Pub. L. 101–73 struck out ''the Federal Savings and Loan Insurance Corporation,'' after ''Federal Deposit Insurance Corporation,'' and substituted ''the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation'' for ''the Federal Home Loan Bank Board''.

1988—Pub. L. 100–690 struck out second comma after ''terms of this section''.

1984—Pub. L. 98–557 substituted reference to Coast Guard member, and Coast Guard employee assigned to perform investigative, inspection or law enforcement functions, for reference to any officer or enlisted man of the Coast Guard.

Pub. L. 98–473 inserted ''or attempts to kill'' after ''Whoever kills'', substituted ''or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section,'' for ''while engaged in the performance of his official duties or on account of the performance of his official duties'', inserted '', or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General'', and inserted '', except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years''.

1983—Pub. L. 98–63 inserted ''any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions,'' after ''National Park Service,''.

1983—Pub. L. 97–452 substituted ''sections 3711 and 3716–3718 of title 31'' for ''the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.)''.

1982—Pub. L. 97–365 struck out ''or'' before ''any attorney, liquidator, examiner, claim agent'' and inserted '', or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.) or other statutory authority'' before ''shall be punished''.

Pub. L. 97–259 inserted ''or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions,'' after ''or law enforcement functions,''.

1981—Pub. L. 97–143 inserted ''any officer or member of the United States Capitol Police,'' after ''Drug Enforcement Administration,''.

1980—Pub. L. 96–466 inserted ''or any officer or employee of the Veterans' Administration assigned to perform investigative or law enforcement functions,'' after ''of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions,''.

Pub. L. 96–296 inserted ''Interstate Commerce Commission,'' after ''Consumer Product Safety Commission,''.

1978—Pub. L. 95–630 inserted ''or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National

Credit Union Administration engaged in or on account of the performance of his official duties'' before ''shall be punished''.

Pub. L. 95–616 inserted ''the Department of Commerce,''.

1977—Pub. L. 95–87 inserted ''or of the Department of the Interior'' after ''or of the Department of Labor''.

1976—Pub. L. 94–582 struck out ''any employee of the Bureau of Animal Industry of the Department of Agriculture,'' after ''the field service of the Bureau of Land Management,'' and inserted ''or of the Department of Agriculture'' after ''or of the Department of Labor''.

Pub. L. 94–284 inserted '', the Consumer Product Safety Commission,'' after ''Department of Health, Education, and Welfare''.

1974—Pub. L. 93–481 substituted ''Drug Enforcement Administration'' for ''Bureau of Narcotics and Dangerous Drugs''.

1970—Pub. L. 91–596 substituted ''or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions'', for ''designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act''.

Pub. L. 91–513 substituted ''Bureau of Narcotics and Dangerous Drugs'' for ''Bureau of Narcotics''.

Pub. L. 91–375 substituted ''officer or employee of the Postal Service'', for ''postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department'' after ''Department of Justice,''.

1968—Pub. L. 90–449 substituted ''any postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department'' for ''any post-office inspector''.

1965—Pub. L. 89–74 included any officer or employee of the Department of Health, Education, and Welfare designated by the Secretary of Health, Education, and Welfare to conduct investigations or inspections under the Federal Food, Drug, and Cosmetic Act.

1964—Pub. L. 88–493 inserted ''or any security officer of the Department of State or the Foreign Service''.

1962—Pub. L. 87–518 included employees of the Department of Agriculture performing any function connected with any Federal or State program, or program of Puerto Rico, Guam, the Virgin Islands, or the District of Columbia, for control, eradication, or prevention of animal diseases.

1958—Pub. L. 85–568 included officers and employees of the National Aeronautics and Space Administration.

1952—Act June 27, 1952, substituted ''any immigration officers'' for ''any immigrant inspector or any immigration patrol inspector''.

1951—Act Oct. 31, 1951, substituted ''the field service of the Bureau of Land Management'' for ''the field service of the Division of Grazing of the Department of the Interior''.

1949—Act May 24, 1949, inserted ''any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(g) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 802(g)(3) of Pub. L. 96–466 provided in part that the amendment made by section 704 of Pub. L. 96–466 is effective Oct. 17, 1980.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–582 effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94–582, as amended, set out as a note under section 74 of Title 7, Agriculture.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–74 effective July 15, 1965, see section 11 of Pub. L. 89–74.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under section 321 of Title 21, Food and Drugs.

LIFE IMPRISONMENT OR LESSER TERM FOR KILLING PERSON IN PERFORMANCE OF INVESTIGATIVE, INSPECTION, OR LAW ENFORCEMENT FUNCTIONS

Section 17(h)(2) of Pub. L. 91–596 provided that: ''Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111 shall be punished by imprisonment for any term of years or for life.''

IMMUNITY FROM CRIMINAL PROSECUTION

Section 5 of Pub. L. 88–493 which provided that nothing in Pub. L. 88–493, which amended this section and section 112 of this title, and enacted former section 170e-1 of Title 5, Government Organization and Employees, shall create immunity from criminal prosecution under the laws of any State, territory, possession, Puerto Rico, or the District of Columbia, is set out as a note under section 112 of this title.

§ 1115. Misconduct or neglect of ship officers

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually

charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 757; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 461 (Mar. 4, 1909, ch. 321, § 282, 35 Stat. 1144).

Section restores the intent of the original enactments, R.S. § 5344, and act Mar. 3, 1905, ch. 1454, § 5, 33 Stat. 1025, and makes this section one of general application. In the Criminal Code of 1909, by placing it in chapter 11, limited to places within the special maritime and territorial jurisdiction of the United States, such original intent was inadvertently lost as indicated by the entire absence of report or comment on such limitation.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in two places.

§ 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title.

(b) For the purposes of this section:

(1) ''Family'' includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) ''Foreign government'' means the government of a foreign country, irrespective of recognition by the United States.

(3) ''Foreign official'' means—

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) ''Internationally protected person'' means—

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

(5) ''International organization'' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(6) ''Official guest'' means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(7) ''National of the United States'' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(c) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(Added Pub. L. 92–539, title I, § 101, Oct. 24, 1972, 86 Stat. 1071; amended Pub. L. 94–467, § 2, Oct. 8, 1976, 90 Stat. 1997; Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 97–351, § 3, Oct. 18, 1982, 96 Stat. 1666; Pub. L. 103–272, § 5(e)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title VI, § 60003(a)(5), title XXXIII, § 330006, Sept. 13, 1994, 108 Stat. 1969, 2142; Pub. L. 104–132, title VII, § 721(c), Apr. 24, 1996, 110 Stat. 1298; Pub. L. 104–294, title VI, § 601(g)(2), Oct. 11, 1996, 110 Stat. 3500.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 struck out '', except that'' at end.

Subsec. (b)(7). Pub. L. 104–132, § 721(c)(1), added par. (7).

Subsec. (c). Pub. L. 104–132, § 721(c)(2), inserted first sentence and struck out former first sentence which read as follows: ''If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the of-

fense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.''

1994—Subsec. (a). Pub. L. 103–322, § 330006, which directed the striking of '', and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years'' before period at end, was executed by striking text which did not include '', and'', to reflect the probable intent of Congress and the prior amendment by Pub. L. 103–322, § 60003(a)(5). See below.

Pub. L. 103–322, § 60003(a)(5), struck out ''any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and'' after ''title, except that''.

Subsec. (c). Pub. L. 103–272 substituted ''section 46501(2) of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))''.

1982—Subsec. (b)(5). Pub. L. 97–351 inserted provision relating to a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of foreign affairs.

1978—Subsec. (c). Pub. L. 95–504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (c). Pub. L. 95–163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

1976—Catchline. Pub. L. 94–467 substituted ''official guests, or internationally protected persons'' for ''or official guests''.

Subsec. (a). Pub. L. 94–467 inserted reference to internationally protected persons, section 1113 of this title, and the punishment for a person convicted of attempted murder.

Subsec. (b). Pub. L. 94–467 designated existing provision, relating to definition of ''foreign official'' as par. (3)(A), (B), and added pars. (1), (2), (4), (5) and (6).

Subsec. (c). Pub. L. 94–467 substituted provision permitting the United States to exercise jurisdiction over an offense if the victim is an internationally protected person and the alleged offender is present within the United States for provision which defined ''foreign government'', ''international organization'', ''family'', and ''official guest''.

Subsec. (d). Pub. L. 94–467 added subsec. (d).

§ 1117. Conspiracy to murder

If two or more persons conspire to violate section 1111, 1114, 1116, or 1119 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(Added Pub. L. 92–539, title I, § 101, Oct. 24, 1972, 86 Stat. 1071; amended Pub. L. 103–322, title VI, § 60009(b)(1), Sept. 13, 1994, 108 Stat. 1972.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''1116, or 1119'' for ''or 1116''.

§ 1118. Murder by a Federal prisoner

(a) OFFENSE.—A person who, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, commits the murder of another shall be punished by death or by life imprisonment.

(b) DEFINITIONS.—In this section—

''Federal correctional institution'' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house.

''murder'' means a first degree or second degree murder (as defined in section 1111).

''term of life imprisonment'' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death.

(Added Pub. L. 103–322, title VI, § 60005(a), Sept. 13, 1994, 108 Stat. 1970.)

PRIOR PROVISIONS

Another section 1118 was renumbered section 1122 of this title.

§ 1119. Foreign murder of United States nationals

(a) DEFINITION.—In this section, ''national of the United States'' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(b) OFFENSE.—A person who, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113.

(c) LIMITATIONS ON PROSECUTION.—(1) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same conduct.

(2) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the conduct took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this paragraph is not subject to judicial review.

(Added Pub. L. 103–322, title VI, § 60009(a), Sept. 13, 1994, 108 Stat. 1972.)

§ 1120. Murder by escaped prisoners

(a) DEFINITION.—In this section, ''Federal correctional institution'' and ''term of life imprisonment'' have the meanings stated in section 1118.

(b) OFFENSE AND PENALTY.—A person, having escaped from a Federal correctional institution where the person was confined under a sentence for a term of life imprisonment, kills another shall be punished as provided in sections 1111 and 1112.

(Added Pub. L. 103–322, title VI, § 60012(a), Sept. 13, 1994, 108 Stat. 1973; amended Pub. L. 104–294, title VI, § 601(c)(2), Oct. 11, 1996, 110 Stat. 3499.)

AMENDMENTS

1996—Subsecs. (a), (b). Pub. L. 104–294 substituted ''Federal correctional institution'' for ''Federal prison''.

§ 1121. Killing persons aiding Federal investigations or State correctional officers

(a) Whoever intentionally kills—

(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation—

(A) while the victim is engaged in the performance of official duties;

(B) because of the performance of the victim's official duties; or

(C) because of the victim's status as a public servant; or

(2) any person assisting a Federal criminal investigation, while that assistance is being rendered and because of it,

shall be sentenced according to the terms of section 1111, including by sentence of death or by imprisonment for life.

(b)(1) Whoever, in a circumstance described in paragraph (3) of this subsection, while incarcerated, intentionally kills any State correctional officer engaged in, or on account of the performance of such officer's official duties, shall be sentenced to a term of imprisonment which shall not be less than 20 years, and may be sentenced to life imprisonment or death.

(2) As used in this section, the term, ''State correctional officer'' includes any officer or employee of any prison, jail, or other detention facility, operated by, or under contract to, either a State or local governmental agency, whose job responsibilities include providing for the custody of incarcerated individuals.

(3) The circumstance referred to in paragraph (1) is that—

(A) the correctional officer is engaged in transporting the incarcerated person interstate; or

(B) the incarcerated person is incarcerated pursuant to a conviction for an offense against the United States.

(c) For the purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 103–322, title VI, § 60015(a), Sept. 13, 1994, 108 Stat. 1974; amended Pub. L. 104–294, title VI, § 607(k), Oct. 11, 1996, 110 Stat. 3512.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–294 added subsec. (c).

§ 1122. Protection against the human immunodeficiency virus

(a) IN GENERAL.—Whoever, after testing positive for the Human Immunodeficiency Virus (HIV) and receiving actual notice of that fact, knowingly donates or sells, or knowingly attempts to donate or sell, blood, semen, tissues, organs, or other bodily fluids for use by another, except as determined necessary for medical research or testing, shall be fined or imprisoned in accordance with subsection (c).

(b) TRANSMISSION NOT REQUIRED.—Transmission of the Human Immunodeficiency Virus does not have to occur for a person to be convicted of a violation of this section.

(c) PENALTY.—Any person convicted of violating the provisions of subsection (a) shall be subject to a fine under this title of not less than $10,000, imprisoned for not less than 1 year nor more than 10 years, or both.

(Added Pub. L. 103–333, title V, § 514, Sept. 30, 1994, 108 Stat. 2574, § 1118; renumbered § 1122 and amended Pub. L. 104–294, title VI, § 601(a)(5), Oct. 11, 1996, 110 Stat. 3498.)

AMENDMENTS

1996—Pub. L. 104–294, § 601(a)(5)(A), renumbered section 1118, relating to protection against human immunodeficiency virus, as this section.

Subsec. (c). Pub. L. 104–294, § 601(a)(5)(B), inserted ''under this title'' after ''fine'' and struck out ''nor more than $20,000'' after ''$10,000''.

CHAPTER 53—INDIANS

Sec.
1151. Indian country defined.
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1169. Reporting of child abuse.
1170. Illegal trafficking in Native American human remains and cultural items.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(b)(26), Oct. 11, 1996, 110 Stat. 3508, directed that item 1169 be transferred to appear after item 1168.

Pub. L. 104–294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, amended directory language of Pub. L. 103–322, § 330011(d), which amended Pub. L. 101–630, § 404(a)(2). See 1990 Amendment note below.

1994—Pub. L. 103–322, title XXXIII, § 330010(5), Sept. 13, 1994, 108 Stat. 2143, substituted ''Illegal trafficking in Native American human remains and cultural items'' for ''Illegal Trafficking in Native American Human Remains and Cultural Items'' in item 1170.

1990—Pub. L. 101–647, title XXXV, § 3536, Nov. 29, 1990, 104 Stat. 4925, struck out item 1157 ''Livestock sold or removed''.

Pub. L. 101–644, title I, § 104(b), Nov. 29, 1990, 104 Stat. 4663, substituted ''Misrepresentation of Indian produced goods and products'' for ''Misrepresentation in sale of products'' in item 1159.

Pub. L. 101–630, title IV, § 404(a)(2), Nov. 28, 1990, 104 Stat. 4548, as amended, effective on the date section 404(a)(2) of Pub. L. 101–630 took effect, by Pub. L. 103–322, title XXXIII, § 330011(d), Sept. 13, 1994, 108 Stat. 2144, as amended by Pub. L. 104–294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, added item 1169.

Pub. L. 101–601, § 4(b), Nov. 16, 1990, 104 Stat. 3052, added item 1170.

1988—Pub. L. 100–497, § 24, Oct. 17, 1988, 102 Stat. 2488, added items 1166, 1167, and 1168.

1960—Pub. L. 86–634, § 3, July 12, 1960, 74 Stat. 469, added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, § 1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, § 1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, § 1, 67 Stat. 588, added item 1162.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term ''Indian country'', as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§ 2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§ 2145, 2146 (U.S.C., title 25, §§ 217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S. v. McBratney*, 104 U.S. 622 and *Draper v. U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, ''Indian country'' was defined but once. (See act June 30, 1834, ch. 161, § 1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v. McGowan*, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser's note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase ''except as otherwise provided in sections 1154 and 1156 of this title'', incorporates in this section the limitations of the term ''Indian country'' which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of term ''Indian country'' which are contained in sections 1154 and 1156 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–297, § 1, May 29, 1976, 90 Stat. 585, provided: ''That this Act [amending sections 113, 1153, and 3242 of this title] may be cited as the 'Indian Crimes Act of 1976'.''

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§ 1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser's note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, § 26, 63 Stat. 94; Pub. L. 89–707, § 1, Nov. 2, 1966, 80 Stat. 1100; Pub. L. 90–284, title V, § 501, Apr. 11, 1968, 82 Stat. 80; Pub. L. 94–297, § 2, May 29, 1976, 90 Stat. 585; Pub. L. 98–473, title II, § 1009, Oct. 12, 1984, 98 Stat. 2141; Pub. L. 99–303, May 15,

1986, 100 Stat. 438; Pub. L. 99–646, § 87(c)(5), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(a)(5), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–690, title VII, § 7027, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103–322, title XVII, § 170201(e), title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2043, 2150; Pub. L. 109–248, title II, § 215, July 27, 2006, 120 Stat. 617.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 548, 549 (Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

Section consolidates said sections 548 and 549 of title 18, U.S.C., 1940 ed. Section 548 of said title covered 10 crimes. Section 549 of said title covered the same except robbery and incest.

The 1932 amendment of section 548 of title 18, U.S.C., 1940 ed., constituting the last paragraph of the section, is omitted and section 549 of said title to which it applied likewise is omitted. The revised section therefore suffices to cover prosecution of the specific offenses committed on all reservations as intended by Congress.

Words ''Indian country'' were substituted for language relating to jurisdiction extending to reservations and rights-of-way, in view of definitive section 1151 of this title.

Paul W. Hyatt, president, board of commissioners, Idaho State Bar, recommended that said section 548 be considered with other sections in title 25, Indians, U.S.C., 1940 ed., and revised to insure certainty as to questions of jurisdiction, and punishment on conviction. Insofar as the recommendation came within the scope of this revision, it was followed.

The proviso in said section 548 of title 18, U.S.C., 1940 ed., which provided that rape should be defined in accordance with the laws of the State in which the offense was committed, was changed to include burglary so as to clarify the punishment for that offense.

Venue provisions of said section 548 of title 18, U.S.C., 1940 ed., are incorporated in section 3242 of this title.

Section 549 of title 18, U.S.C., 1940 ed., conferred special jurisdiction on the United States District Court for South Dakota of all crimes of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny committed within the limits of any Indian reservation within the State, whether by or against Indians or non-Indians. The Act of February 2, 1903, 32 Stat. 793, from which said section 549 was derived, accepted the cession by South Dakota of such jurisdiction.

The effect of revised sections 1151, 1152, and 1153 of this title is to deprive the United States District Court for the District of South Dakota of jurisdiction of offenses on Indian reservations committed by non-Indians against non-Indians and to restore such jurisdiction to the courts of the State of South Dakota as in other States. This reflects the views of the United States attorney, George Philip, of the district of South Dakota.

Minor changes were made in translation and phraseology.

1949 ACT

This section [section 26] removes an ambiguity in section 1153 of title 18, U.S.C., by eliminating the provision that the crime of rape in the Indian country is to be punished in accordance with the law of the State where the offense was committed, leaving the definition of the offense to be determined by State law, but providing that punishment of rape of an Indian by an Indian is to be by imprisonment at the discretion of the court. The offense of rape, other than rape of an Indian by an Indian within the Indian country, is covered by section 2031 of title 18, U.S.C., and the offense of burglary by sections 1152 and 3242 of such title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248 inserted ''felony child abuse or neglect,'' after ''years,''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''kidnapping'' for ''kidnaping'' and inserted ''(as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years'' after ''serious bodily injury''.

1988—Subsec. (a). Pub. L. 100–690 substituted ''maiming, a felony under chapter 109A, incest'' for '' 'maiming' and all that follows through 'incest' '', thus clarifying execution of amendment by Pub. L. 99–646 and Pub. L. 99–654 but resulting in no change in text. See 1986 Amendment note below.

1986—Pub. L. 99–646 and Pub. L. 99–654 which directed that section be amended identically by substituting in first par. ''a felony under chapter 109A,'' for ''rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape,'' and by striking out in second and third pars. '', involuntary sodomy,'' was executed by making the substitution in subsec. (a) for ''rape, involuntary sodomy, felonious sexual molestation of a minor, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape,'' to reflect the probable intent of Congress in view of prior amendment of this section by Pub. L. 99–303, but amendment to second and third pars. could not be executed because such pars. were struck out by Pub. L. 99–303.

Pub. L. 99–303 inserted section catchline which had been eliminated by general amendment by section 1009 of Pub. L. 98–473, designated first par. as subsec. (a) and inserted ''felonious sexual molestation of a minor,'', struck out second par. which provided that, as used in this section, the offenses of burglary, involuntary sodomy, and incest be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense, and struck out third par. and restated the provisions thereof in a new subsec. (b), substituting ''Any offense referred to in subsection (a) of this section that is'' for ''In addition to the offenses of burglary, involuntary sodomy, and incest, any other of the above offenses which are''.

1984—Pub. L. 98–473 amended section generally, inserting offenses of maiming, involuntary sodomy and a felony committed under section 661 of this title and striking out reference to larceny in first par., and inserting '', involuntary sodomy,'' after ''burglary'' in third par.

1976—Pub. L. 94–297 made changes in phraseology, added offense of kidnapping to the enumerated list of offenses subjecting any Indian to the same laws and penalties as all other persons, struck out applicability to assault with a dangerous weapon and assault resulting in serious bodily injury from paragraph covering the offenses of burglary and incest only, and substituted paragraph, relating to offenses in addition to offenses of burglary and incest, for paragraph relating to offenses of rape and assault with intent to commit rape.

1968—Pub. L. 90–284 inserted offense of assault resulting in serious bodily injury.

1966—Pub. L. 89–707 inserted offenses of carnal knowledge and assault with intent to commit rape, defined and proscribed the punishment for assault with intent to commit rape in accordance with the laws of the State in which the offense was committed, and required assault with a dangerous weapon and incest to be defined and punished in accordance with the laws of the State in which the offense was committed.

1949—Act May 24, 1949, struck out provision that the crime of rape is to be punished in accordance with the law of the State where the offense was committed and in lieu inserted provision leaving punishment up to the discretion of the court.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective, respectively, 30 days after Nov. 10, 1986, and 30

days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

§1154. Intoxicants dispensed in Indian country

(a) Whoever sells, gives away, disposes of, exchanges, or barters any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who barters, donates, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

(c) The term ''Indian country'' as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 758; May 24, 1949, ch. 139, §27, 63 Stat. 94; Pub. L. 103–322, title XXXIII, §330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147.)

Historical and Revision Notes

1948 Act

Based on sections 241, 242, 244a, 249, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. §2139; Feb. 27, 1877, ch. 69, §1, 19 Stat. 244; July 4, 1884, ch. 180, §1, 23 Stat. 94; July 23, 1892, ch. 234, 27 Stat. 260; Mar. 2, 1917, ch. 146, §17, 39 Stat. 983; June 13, 1932, ch. 245, 47 Stat. 302; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, §1, 52 Stat. 696).

Section consolidates sections 241, 242, 244a, and 249 of title 25, U.S.C., 1940 ed., Indians. The portion of section 241 of said title which defined the substantive offense became subsection (a); the portion relating to the scope of the term ''Indian country'' was omitted as unnecessary in view of definition of ''Indian country'' in section 1151 of this title; the portion of section 241 of said title excepting liquors introduced by the War Department became subsection (c), as limited by section 249 of said title; the portion respecting making complaint in county of offense, and with reference to arraignment, was omitted as covered by rule 5 of the Federal Rules of Criminal Procedure; and the remainder of section 241 of said title was incorporated in section 1156 of this title.

Section 254 of title 25, U.S.C., 1940 ed., Indians, was omitted as covered by this section and section 1156 of this title. That section was enacted in 1934 and excluded from the Indian liquor laws lands outside reservations where the land was no longer held by Indians under a trust patent or a deed or patent containing restrictions against alienation. Such enactment was prior to the June 15, 1938, amendment of section 241 of title 25, U.S.C., 1940 ed., Indians, in which the term ''Indian country'' was defined as including allotments where the title was held in trust by the Government or where it was inalienable without the consent of the United States. This provision, by implication, excluded cases where there was no trust or restriction on alienation and thereby achieved the same result as section 254 of title 25, U.S.C., 1940 ed., Indians. That amendment also repealed the act of Jan. 30, 1897, referred to in section 254 of title 25, U.S.C., 1940 ed., Indians. Insofar as the reference in section 254 of said title to ''special Indian liquor laws'' included section 244 of title 25, U.S.C., 1940 ed., Indians, the definition of Indian country in section 1151 of this title covers section 254 of title 25, U.S.C., 1940 ed., Indians.

Words ''or agent'' were deleted as there have been no Indian agents since 1908. See section 64 of title 25, U.S.C., 1940 ed., Indians, and note thereunder.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for nonpayment of fine was deleted. This change was also recommended by United States District Judge T. Blake Kennedy on the ground that, otherwise, section would be practically meaningless since, in most cases, offenders cannot pay a fine.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 Act

Subsection (a) of this section [section 27(a)] substitutes ''Department of the Army'' for ''War Department'', in subsection (b) of section 1154 of title 18, U.S.C., to conform to such redesignation by act July 26, 1947 (ch. 343, title 11, §205(a), 61 Stat. 501 (5 U.S.C., 1946 ed., §181–1)). Subsection (b) of this section [section 27(b)] adds subsection (c) to such section 1154 in order to conform it and section 1156 more closely to the laws relating to intoxicating liquor in the Indian country as they have heretofore been construed.

Amendments

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' after ''first offense, be'' and for ''fined not more than $2,000'' after ''subsequent offense, be''.

1949—Subsec. (b). Act May 24, 1949, §27(a), substituted ''Department of the Army'' for ''War Department''.

Subsec. (c). Act May 24, 1949, §27(b), added subsec. (c).

Transfer of Functions

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1155. Intoxicants dispensed on school site

Whoever, on any tract of land in the former Indian country upon which is located any Indian school maintained by or under the supervision of the United States, manufactures, sells, gives away, or in any manner, or by any means furnishes to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, whether medicated or not, or who carries, or in any manner has carried, into such area any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into such area any of such liquors or drinks, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 758; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 241a, 244a, of title 25, U.S.C., 1940 ed., Indians (Mar. 1, 1895, ch. 145, § 8, 28 Stat. 697; Mar. 5, 1934, ch. 43, 48 Stat. 396.)

Section consolidates sections 241a and 244a of title 25, U.S.C., 1940 ed., Indians. The effect of section 244a of said title in repealing section 241a of said title, except as to lands upon which Indian schools are maintained, was to continue prohibiting the dispensing of liquor in such areas.

The words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The minimum punishment provision was omitted to conform to the policy adopted in revision of the 1909 Criminal Code.

Mandatory punishment provision was rephrased in the alternative.

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1156. Intoxicants possessed unlawfully

Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

The term ''Indian country'' as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, § 28, 63 Stat. 94; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 241, 244, 244a, 254 of title 25, U.S.C., 1940 ed., Indians (R.S. 2139; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244; July 23, 1892, ch. 234, 27 Stat. 260; May 25, 1918, ch. 86, § 1, 40 Stat. 563; June 30, 1919, ch. 4, § 1, 41 Stat. 4; Mar. 5, 1934, ch. 43, 48 Stat. 396; June 27, 1934, ch. 846, 48 Stat. 1245; June 15, 1938, ch. 435, § 1, 52 Stat. 696).

The revision of section 244 of title 25, U.S.C., 1940 ed., Indians, conforms with the effect thereon of sections 241, 244a, and 254 of said title.

The provisions relating to scope of term ''Indian country'' were omitted as unnecessary in view of definition of ''Indian country'' in section 1151 of this title.

Mandatory punishment provisions were rephrased in the alternative and provision for commitment for nonpayment of fine was deleted. Such change was also recommended by United States District Judge T. Blake Kennedy. (See reviser's note under section 1154 of this title.)

The exception of intoxicating liquor for scientific, sacramental, medicinal or mechanical purposes was inserted for the same reason that makes this exception appropriate to section 1262 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 28] adds to section 1156 of title 18, U.S.C., a paragraph to conform this section and section 1154 of such title more closely to the laws relating to intoxicating liquors in the Indian country as they have been heretofore construed.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' after ''first offense, be'' and for ''fined not more than $2,000'' after ''subsequent offense, be'' in first par.

1949—Act May 24, 1949, inserted last par.

[§ 1157. Repealed. Pub. L. 85–86, July 10, 1957, 71 Stat. 277]

Section, acts June 25, 1948, ch. 645, 62 Stat. 759; May 24, 1949, ch. 139, § 29, 63 Stat. 94; Aug. 15, 1953, ch. 506, § 2(a), 67 Stat. 590, prohibited purchase of Indian-owned livestock subject to unpaid loans from Federal revolving fund or from tribal loan funds.

§ 1158. Counterfeiting Indian Arts and Crafts Board trade mark

Whoever counterfeits or colorably imitates any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior as provided in section 305a of Title 25, or, except as authorized by the Board, affixes any such Government trade mark, or knowingly, willfully, and corruptly affixes any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products; or

Whoever knowingly makes any false statement for the purpose of obtaining the use of any such Government trade mark—

Shall (1) in the case of a first violation, if an individual, be fined under this title or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than

$5,000,000; and (3) shall be enjoined from further carrying on the act or acts complained of.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 101–644, title I, § 106, Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103–322, title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on section 305d of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, § 5, 49 Stat. 892).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Maximum fine was changed from $2,000 to $500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser's note under section 1157 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250,000'' in third par.

1990—Pub. L. 101–644, in third par., added cls. (1) and (2), struck out ''be fined not more than $500 or imprisoned not more than six months, or both; and'' after ''Shall'', and designated remaining provision at end as cl. (3).

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department, with two exceptions, transferred to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950 §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1159. Misrepresentation of Indian produced goods and products

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

(b) Whoever knowingly violates subsection (a) shall—

(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and

(2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000.

(c) As used in this section—

(1) the term ''Indian'' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms ''Indian product'' and ''product of a particular Indian tribe or Indian arts and crafts organization'' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term ''Indian tribe'' means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term ''Indian arts and crafts organization'' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 101–644, title I, § 104(a), Nov. 29, 1990, 104 Stat. 4663.)

HISTORICAL AND REVISION NOTES

Based on section 305e of title 25, U.S.C., 1940 ed., Indians (Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of misdemeanor in section 1 of this title.

The last paragraph of section 305e of title 25, U.S.C., 1940 ed., relating to duty of district attorney to prosecute violations of such section, will be incorporated in title 28, U.S. Code.

Maximum fine of $2,000 was changed to $500 to bring the offense within the category of petty offenses defined by section 1 of this title. (See reviser's note under section 1157 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1990—Pub. L. 101–644 substituted ''Misrepresentation of Indian produced goods and products'' for ''Misrepresentation in sale of products'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Whoever willfully offers or displays for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska, when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than $500 or imprisoned not more than six months, or both.''

CERTIFICATION OF INDIAN ARTISANS

For purposes of this section, an Indian tribe may not impose fee to certify individual as Indian artisan, with ''Indian tribe'' having same meaning as in subsec. (c)(3) of this section, see section 107 of Pub. L. 101–644, set out as a note under section 305e of Title 25, Indians.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 1160. Property damaged in committing offense

Whenever a non-Indian, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly In-

dian the judgment of conviction shall include a sentence that the defendant pay to the Indian owner a sum equal to twice the just value of the property so taken, injured, or destroyed.

If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

(June 25, 1948, ch. 645, 62 Stat. 759; Pub. L. 103–322, title XXXIII, § 330004(9), Sept. 13, 1994, 108 Stat. 2141.)

HISTORICAL AND REVISION NOTES

Based on sections 227, 228 of title 25, U.S.C., 1940 ed., Indians (R.S. 2154, 2155).

Section consolidates said sections 227 and 228 of title 25, U.S.C., 1940 ed., Indians, with such changes in phraseology as were necessary to effect consolidation.

The phrase ''or whose person was injured,'' which followed the words ''friendly Indian to whom the property may belong,'' was deleted as meaningless.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''non-Indian'' for ''white person'' in first par.

§ 1161. Application of Indian liquor laws

The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

(Added Aug. 15, 1953, ch. 502, § 2, 67 Stat. 586; amended Pub. L. 98–473, title II, § 223(b), Oct. 12, 1984, 98 Stat. 2028.)

AMENDMENTS

1984—Pub. L. 98–473 substituted ''3669'' for ''3618''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, ch. 505, § 2, 67 Stat. 588; amended Aug. 24, 1954, ch. 910, § 1, 68 Stat. 795; Pub. L. 85–615, § 1, Aug. 8, 1958, 72 Stat. 545; Pub. L. 91–523, §§ 1, 2, Nov. 25, 1970, 84 Stat. 1358.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–523, § 1, substituted provisions relating to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, and certain excepted areas, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub. L. 91–523, § 2, inserted ''as areas over which the several States have exclusive jurisdiction'' after ''subsection (a) of this section''.

1958—Subsec. (a). Pub. L. 85–615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan.

3, 1959 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

§ 1163. Embezzlement and theft from Indian tribal organizations

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

As used in this section, the term ''Indian tribal organization'' means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

(Added Aug. 1, 1956, ch. 822, § 2, 70 Stat. 792; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in third par.

1994—Pub. L. 103–322, in third par., substituted ''fined under this title'' for ''fined not more than $5,000'' after ''Shall be'' and for ''fined not more than $1,000'' after ''he shall be''.

§ 1164. Destroying boundary and warning signs

Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a Government agency (1) to indicate the boundary of an Indian reservation or of any Indian country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 86–634, § 1, July 12, 1960, 74 Stat. 469; amended Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

§ 1165. Hunting, trapping, or fishing on Indian land

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined under this title or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(Added Pub. L. 86–634, § 2, July 12, 1960, 74 Stat. 469; amended Pub. L. 103–322, title XXXIII, § 330016(1)(D), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $200''.

§ 1166. Gambling in Indian country

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term ''gambling'' does not include—

(1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or

(2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

(Added Pub. L. 100–497, § 23, Oct. 17, 1988, 102 Stat. 2487.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (c), is Pub. L. 100–497, Oct. 17, 1988, 102 Stat. 2467, which enacted sections 1166 to 1168 of this title and chapter 25 (§ 2701 et seq.) of Title 25, Indians. Section 11(d)(8) of such Act is classified to section 2710(d)(8) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 25 and Tables.

§ 1167. Theft from gaming establishments on Indian lands

(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of $1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title or be imprisoned for not more than one year, or both.

(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title, or imprisoned for not more than ten years, or both.

(Added Pub. L. 100–497, § 23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 103–322, title XXXIII, § 330016(1)(S), (U), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(S), substituted ''fined under this title'' for ''fined not more than $100,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(U), substituted ''fined under this title'' for ''fined not more than $250,000''.

§ 1168. Theft by officers or employees of gaming establishments on Indian lands

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years, or both.

(Added Pub. L. 100–497, § 23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 101–647, title XXXV, § 3537, Nov. 29, 1990, 104 Stat. 4925.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 substituted ''or imprisoned'' for ''and be imprisoned for''.

§ 1169. Reporting of child abuse

(a) Any person who—

(1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

(2) knows, or has reasonable suspicion, that—

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined under this title or imprisoned for not more than 6 months or both.

(b) Any person who—

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined under this title or imprisoned for not more than 6 months or both.

(c) For purposes of this section, the term—

(1) ''abuse'' includes—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(2) ''child'' means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) ''local child protective services agency'' means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection

on any Indian reservation or within any community in Indian country; and

(4) ''local law enforcement agency'' means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

(Added Pub. L. 101–630, title IV, § 404(a)(1), Nov. 28, 1990, 104 Stat. 4547; amended Pub. L. 103–322, title XXXIII, §§ 330011(d), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2144, 2147; Pub. L. 104–294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508.)

AMENDMENTS

1996—Pub. L. 104–294 amended directory language of Pub. L. 103–322, § 330011(d). See 1994 Amendment note below.

1994—Pub. L. 103–322, § 330011(d), as amended by Pub. L. 104–294, amended directory language of Pub. L. 101–630, § 404(a)(1), which enacted this section.

Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in concluding provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(d) of Pub. L. 103–322, as amended by Pub. L. 104–294, § 604(b)(25), provided that the amendment made by that section is effective on the date section 404(a) of Pub. L. 101–630 took effect.

§ 1170. Illegal trafficking in Native American human remains and cultural items

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 101–601, § 4(a), Nov. 16, 1990, 104 Stat. 3052; amended Pub. L. 103–322, title XXXIII, § 330010(4), Sept. 13, 1994, 108 Stat. 2143.)

REFERENCES IN TEXT

The Native American Graves Protection and Repatriation Act, referred to in text, is Pub. L. 101–601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§ 3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''Illegal trafficking in Native American human remains and cultural items'' for ''Illegal Trafficking in Native American Human Remains and Cultural Items'' in section catchline.

CHAPTER 55—KIDNAPPING

Sec.
1201. Kidnapping.
1202. Ransom money.
1203. Hostage taking.
1204. International parental kidnapping.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title by ''striking 'kidnaping' each place it appears and inserting 'kidnapping' '', was executed by substituting ''KIDNAPPING'' for ''KIDNAPING'' in chapter heading and ''Kidnapping'' for ''Kidnaping'' in item 1201, to reflect the probable intent of Congress.

1993—Pub. L. 103–173, § 2(c), Dec. 2, 1993, 107 Stat. 1999, added item 1204.

1984—Pub. L. 98–473, title II, § 2002(b), Oct. 12, 1984, 98 Stat. 2186, added item 1203.

1972—Pub. L. 92–539, title II, § 202, Oct. 24, 1972, 86 Stat. 1072, substituted ''Kidnaping'' for ''Transportation'' in item 1201.

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-

four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49. For purposes of this subsection, the term ''national of the United States'' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) SPECIAL RULE FOR CERTAIN OFFENSES INVOLVING CHILDREN.—

(1) TO WHOM APPLICABLE.—If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 20 years.

[(2) Repealed. Pub. L. 108–21, title I, § 104(b), Apr. 30, 2003, 117 Stat. 653.]

(h) As used in this section, the term ''parent'' does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order.

(June 25, 1948, ch. 645, 62 Stat. 760; Aug. 6, 1956, ch. 971, 70 Stat. 1043; Pub. L. 92–539, title II, § 201, Oct. 24, 1972, 86 Stat. 1072; Pub. L. 94–467, § 4, Oct. 8, 1976, 90 Stat. 1998; Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 98–473, title II, § 1007, Oct. 12, 1984, 98 Stat. 2139; Pub. L. 99–646, §§ 36, 37(b), Nov. 10, 1986, 100 Stat. 3599; Pub. L. 101–647, title IV, § 401, title XXXV, § 3538, Nov. 29, 1990, 104 Stat. 4819, 4925; Pub. L. 103–272, § 5(e)(2), (8), July 5, 1994, 108 Stat. 1373, 1374; Pub. L. 103–322, title VI, § 60003(a)(6), title XXXII, §§ 320903(b), 320924, title XXXIII, § 330021, Sept. 13, 1994, 108 Stat. 1969, 2124, 2131, 2150; Pub. L. 104–132, title VII, § 721(f), Apr. 24, 1996, 110 Stat. 1299; Pub. L. 105–314, title VII, § 702, Oct. 30, 1998, 112 Stat. 2987; Pub. L. 108–21, title I, § 104(b), Apr. 30, 2003, 117 Stat. 653; Pub. L. 109–248, title II, § 213, July 27, 2006, 120 Stat. 616.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 408a, 408c (June 22, 1932, ch. 271, §§ 1, 3, 47 Stat. 326; May 18, 1934, ch. 301, 48 Stat. 781, 782).

Section consolidates sections 408a and 408c of title 18 U.S.C., 1940 ed.

Reference to persons aiding, abetting or causing was omitted as unnecessary because such persons are made principals by section 22 of this title.

Words ''upon conviction'' were omitted as surplusage, because punishment cannot be imposed until a conviction is secured.

Direction as to confinement ''in the penitentiary'' was omitted because of section 4082 of this title which commits all prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

The phrase ''for any term of years or for life'' was substituted for the words ''for such term of years as the court in its discretion shall determine'' which appeared in said section 408a of Title 18, U.S.C., 1940 ed. This change was made in order to remove all doubt as to whether ''term of years'' includes life imprisonment.

Minor changes were made in phraseology.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–248, § 213(1), substituted '', or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense'' for ''if the person was alive when the transportation began''.

Subsec. (b). Pub. L. 109–248, § 213(2), substituted ''in interstate'' for ''to interstate''.

2003—Subsec. (g). Pub. L. 108–21 substituted ''shall include imprisonment for not less than 20 years.'' for ''shall be subject to paragraph (2) of this subsection.'' in concluding provisions of par. (1) and struck out par. (2) which read as follows:

''(2) GUIDELINES.—The United States Sentencing Commission is directed to amend the existing guidelines for the offense of 'kidnapping, abduction, or unlawful restraint,' by including the following additional specific offense characteristics: If the victim was intentionally maltreated (i.e., denied either food or medical care) to a life-threatening degree, increase by 4 levels; if the victim was sexually exploited (i.e., abused, used involuntarily for pornographic purposes) increase by 3 levels; if the victim was placed in the care or custody of another person who does not have a legal right to such care or custody of the child either in exchange for money or other consideration, increase by 3 levels; if the defendant allowed the child to be subjected to any of the conduct specified in this section by another person, then increase by 2 levels.''

1998—Subsec. (a)(1). Pub. L. 105–314, § 702(a), inserted '', regardless of whether the person was alive when

transported across a State boundary if the person was alive when the transportation began'' before semicolon at end.

Subsec. (a)(5). Pub. L. 105–314, § 702(b), substituted ''described'' for ''designated''.

Subsec. (b). Pub. L. 105–314, § 702(c), inserted at end ''Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.''

1996—Subsec. (e). Pub. L. 104–132 substituted ''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.'' for ''If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.'' and inserted at end ''For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''

1994—Pub. L. 103–322, § 330021(1), which directed the amendment of this title ''by striking 'kidnaping' each place it appears and inserting 'kidnapping' '', was executed by substituting ''Kidnapping'' for ''Kidnaping'' as section catchline, to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 103–322, § 60003(a)(6), in concluding provisions, inserted ''and, if the death of any person results, shall be punished by death or life imprisonment'' after ''or for life''.

Subsec. (a)(3). Pub. L. 103–272, § 5(e)(8), substituted ''section 46501 of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958''.

Subsec. (b). Pub. L. 103–322, § 330021(2), substituted ''kidnapped'' for ''kidnaped''.

Subsec. (d). Pub. L. 103–322, § 320903(b), substituted ''(a)'' for ''(a)(4) or (a)(5)''.

Subsec. (e). Pub. L. 103–272, § 5(e)(2), substituted ''section 46501(2) of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))''.

Subsec. (h). Pub. L. 103–322, § 320924, added subsec. (h).

1990—Subsec. (a)(3). Pub. L. 101–647, § 3538, substituted ''101(38)'' for ''101(36)'' and struck out '', as amended (49 U.S.C. 1301(36))'' after ''Federal Aviation Act of 1958''.

Subsec. (g). Pub. L. 101–647, § 401, added subsec. (g).

1986—Subsec. (a). Pub. L. 99–646, § 36, substituted ''when—'' for ''when:'' in introductory text, substituted ''the person'' for ''The person'' and ''official duties'' for ''his official duties'' in par. (5), and aligned the margin of par. (5) with the margins of pars. (1) to (4).

Subsec. (d). Pub. L. 99–646, § 37(b), inserted ''or (a)(5)'' after ''subsection (a)(4)''.

1984—Subsec. (a)(5). Pub. L. 98–473 added par. (5).

1978—Subsec. (a)(3). Pub. L. 95–504 substituted reference to section 101(36) of the Federal Aviation Act of 1958 for reference to section 101(33) of such Act. See References in Text note above.

Subsec. (e). Pub. L. 95–504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for section 101(35) of such Act.

1977—Subsec. (a)(3). Pub. L. 95–163 substituted reference to section 101(33) of the Federal Aviation Act of 1958 for reference to section 101(32) of such Act. See References in Text note above.

Subsec. (e). Pub. L. 95–163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

1976—Subsec. (a)(4). Pub. L. 94–467, § 4(a), substituted provision which includes acts committed against an internationally protected person and an official guest as defined in section 1116(b) of this title for provision which included acts committed against an official guest as defined in section 1116(c) of this title.

Subsecs. (d) to (f). Pub. L. 94–467, § 4(b), added subsecs. (d) to (f).

1972—Subsec. (a). Pub. L. 92–539 substituted ''Kidnaping'' for ''Transportation'' in section catchline and, in subsec. (a), extended the jurisdictional base to include acts committed within the special maritime, territorial, and aircraft jurisdiction of the United States, and to include acts committed against foreign officials and official guests, and struck out provisions relating to death penalty.

Subsec. (b). Pub. L. 92–539 inserted reference to subsec. (a)(1).

Subsec. (c). Pub. L. 92–539 substituted ''by imprisonment for any term of years or for life'' for ''as provided in subsection (a)''.

1956—Subsec. (b). Act Aug. 6, 1956, substituted ''twenty-four hours'' for ''seven days''.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–173, § 1, Dec. 2, 1993, 107 Stat. 1998, provided that: ''This Act [enacting section 1204 of this title and provisions set out as a note under section 1204 of this title] may be cited as the 'International Parental Kidnapping Crime Act of 1993'.''

SHORT TITLE OF 1984 AMENDMENT

Section 2001 of part A (§§ 2001–2003) of chapter XX of title II of Pub. L. 98–473 provided that: ''This part [enacting section 1203 of this title and provisions set out as a note under section 1203 of this title] may be cited as the 'Act for the Prevention and Punishment of the Crime of Hostage-Taking'.''

§ 1202. Ransom money

(a) Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined under this title or imprisoned not more than ten years, or both.

(b) A person who transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than 1 year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than 10 years, fined under this title, or both.

(c) For purposes of this section, the term ''State'' has the meaning set forth in section 245(d) of this title.

(June 25, 1948, ch. 645, 62 Stat. 760; Pub. L. 103–322, title XXXII, § 320601(b), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2115, 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408c–1 (June 22, 1932, ch. 271, § 4, as added Jan. 24, 1936, ch. 29, 49 Stat. 1099).

Words ''in the penitentiary'' after ''imprisoned'' were omitted in view of section 4082 of this title committing prisoners to the custody of the Attorney General. (See reviser's note under section 1 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 320601(b), designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Subsec. (a). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1203. Hostage taking

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b)(1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless—

(A) the offender or the person seized or detained is a national of the United States;

(B) the offender is found in the United States; or

(C) the governmental organization sought to be compelled is the Government of the United States.

(2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

(c) As used in this section, the term ''national of the United States'' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(Added Pub. L. 98–473, title II, § 2002(a), Oct. 12, 1984, 98 Stat. 2186; amended Pub. L. 100–690, title VII, § 7028, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 103–322, title VI, § 60003(a)(10), Sept. 13, 1994, 108 Stat. 1969; Pub. L. 104–132, title VII, § 723(a)(1), Apr. 24, 1996, 110 Stat. 1300.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132 inserted ''or conspires'' after ''attempts''.

1994—Subsec. (a). Pub. L. 103–322 inserted before period at end ''and, if the death of any person results, shall be punished by death or life imprisonment''.

1988—Subsec. (c). Pub. L. 100–690 substituted ''(c) As'' for ''(C) As''.

EFFECTIVE DATE

Section 2003 of part A (§§ 2001–2003) of chapter XX of title II of Pub. L. 98–473 provided that: ''This part and the amendments made by this part [enacting this section and provisions set out as a note under section 1201 of this title] shall take effect on the later of—

''(1) the date of the enactment of this joint resolution [Oct. 12, 1984]; or

''(2) the date the International Convention Against the Taking of Hostages has come into force and the United States has become a party to that convention [the convention entered into force June 6, 1983; and entered into force for the United States Jan. 6, 1985].''

§ 1204. International parental kidnapping

(a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

(b) As used in this section—

(1) the term ''child'' means a person who has not attained the age of 16 years; and

(2) the term ''parental rights'', with respect to a child, means the right to physical custody of the child—

(A) whether joint or sole (and includes visiting rights); and

(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

(c) It shall be an affirmative defense under this section that—

(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;

(2) the defendant was fleeing an incidence or pattern of domestic violence; or

(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

(Added Pub. L. 103–173, § 2(a), Dec. 2, 1993, 107 Stat. 1998; amended Pub. L. 108–21, title I, § 107, Apr. 30, 2003, 117 Stat. 655.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–21, § 107(1), inserted '', or attempts to do so,'' before ''or retains''.

Subsec. (c)(1). Pub. L. 108–21, § 107(2)(A), inserted ''or the Uniform Child Custody Jurisdiction and Enforcement Act'' before ''and was''.

Subsec. (c)(2). Pub. L. 108–21, § 107(2)(B), inserted ''or'' after semicolon at end.

SENSE OF CONGRESS REGARDING USE OF PROCEDURES UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL PARENTAL CHILD ABDUCTION

Section 2(b) of Pub. L. 103–173 provided that: ''It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.''

CHAPTER 57—LABOR

Sec.
1231. Transportation of strikebreakers.

Sec.
[1232. Repealed.]

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3539, Nov. 29, 1990, 104 Stat. 4925, struck out item 1232 ''Enticement of workman from armory or arsenal''.

§ 1231. Transportation of strikebreakers

Whoever willfully transports in interstate or foreign commerce any person who is employed or is to be employed for the purpose of obstructing or interfering by force or threats with (1) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor, or (2) the exercise by employees of any of the rights of self-organization or collective bargaining; or

Whoever is knowingly transported or travels in interstate or foreign commerce for any of the purposes enumerated in this section—

Shall be fined under this title or imprisoned not more than two years, or both.

This section shall not apply to common carriers.

(June 25, 1948, ch. 645, 62 Stat. 760; May 24, 1949, ch. 139, § 30, 63 Stat. 94; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 407a (June 24, 1936, ch. 746, 49 Stat. 1899; June 29, 1938, ch. 813, 52 Stat. 1242).

Language designating offense as felony was omitted in uniformity with definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Words ''and shall, upon conviction'' were omitted as surplusage since punishment cannot be imposed until a conviction is secured.

Reference to persons aiding, abetting or causing was omitted as such persons are made principals by section 2 of this title.

Changes were made in phraseology and arrangement, but without change of substance.

1949 ACT

This section [section 30] corrects a typographical error in section 1231 of title 18, U.S.C.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in third par.

1949—Act May 24, 1949, substituted ''or travels in'' for ''in or travels'' in second par.

[§ 1232. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641]

Section, act June 25, 1948, ch. 645, 62 Stat. 761, prohibited enticement of workman from armory or arsenal.

CHAPTER 59—LIQUOR TRAFFIC

Sec.
1261. Enforcement, regulations, and scope.
1262. Transportation into State prohibiting sale.
1263. Marks and labels on packages.
1264. Delivery to consignee.
1265. C.O.D. shipments prohibited.

§ 1261. Enforcement, regulations, and scope

(a)[1] The Attorney General—

(1) shall enforce the provisions of this chapter; and

(2) has the authority to issue regulations to carry out the provisions of this chapter.

(June 25, 1948, ch. 645, 62 Stat. 761; May 24, 1949, ch. 139, § 31, 63 Stat. 94; Pub. L. 107–273, div. B, title IV, § 4004(b), Nov. 2, 2002, 116 Stat. 1812; Pub. L. 107–296, title XI, § 1112(g), Nov. 25, 2002, 116 Stat. 2276.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 222, 223(b), 225 and 226 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 5, 10, 49 Stat. 1929, 1930).

Changes were made in phraseology and arrangement.

1949 ACT

This section [section 31] corrects a typographical error in section 1261 of title 18, U.S.C.

AMENDMENTS

2002—Pub. L. 107–296, which directed amendment of subsec. (a) generally, was executed by amending text of section generally to reflect the probable intent of Congress and the amendment by Pub. L. 107–273, see below. Prior to amendment, text read as follows: ''The Secretary of the Treasury shall enforce the provisions of this chapter. Regulations to carry out its provisions shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.''

Pub. L. 107–273 struck out subsec. (a) designation and subsec. (b) which read as follows: ''This chapter shall not apply to the Canal Zone.''.

1949—Subsec. (b). Act May 24, 1949, substituted subsection designation ''(b)'' for ''(d)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 1262. Transportation into State prohibiting sale

Whoever imports, brings, or transports any intoxicating liquor into any State, Territory, District, or Possession in which all sales, except for scientific, sacramental, medicinal, or mechanical purposes, of intoxicating liquor containing more than 4 per centum of alcohol by volume or 3.2 per centum of alcohol by weight are prohibited, otherwise than in the course of continuous interstate transportation through such State, Territory, District, or Possession or attempts so to do, or assists in so doing,

Shall (1) If such liquor is not accompanied by such permits, or licenses therefor as may be required by the laws of such State, Territory, District, or Possession or (2) if all importation, bringing, or transportation of intoxicating liquor into such State, Territory, District, or Possession is prohibited by the laws thereof, be fined under this title or imprisoned not more than one year, or both.

In the enforcement of this section, the definition of intoxicating liquor contained in the laws of the respective States, Territories, Districts, or Possessions shall be applied, but only to the extent that sales of such intoxicating liquor (except for scientific, sacramental, medicinal, and mechanical purposes) are prohibited therein.

(June 25, 1948, ch. 645, 62 Stat. 761; May 24, 1949, ch. 139, § 32, 63 Stat. 94; Pub. L. 101–647, title

[1] So in original. There is no subsec. (b).

XXXV, § 3540, Nov. 29, 1990, 104 Stat. 4925; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 222, 223 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 2, 3, 49 Stat. 1928).

Section consolidates subsection (a) of section 222 with section 223, of title 27, U.S.C., 1940 ed.

Words ''or 3.2 per centum of alcohol by weight'' were inserted after ''volume.'' Such words conform with *Flippin v. U.S.* (1941, 121 F. 2d 742, 744, certiorari denied, 62 S. Ct. 184, 314 U.S. 677, 86 L. Ed. 542); *Robason v. U.S.* (1941, 122 F. 2d 991); *Dolloff v. U.S.* (1941, 121 F. 2d 157, certiorari denied, 62 S. Ct. 108, 314 U.S. 626, 86 L. Ed. 503, rehearing denied, 62 S. Ct. 178, 314 U.S. 710, 86 L. Ed. 566); and *Tucker v. U.S.* (1941, 123 F. 2d 280).

Those cases overruled *Arnold v. U.S.* (1940, 115 F. 2d 523) and Gregg v. U.S. (1940, 116 F. 2d 609) and established that preservation of the congressional intent which requires addition of the inserted language.

Subsection (b) of section 223 of title 27, U.S.C., 1940 ed., has been reworded to apply the definition of intoxicating liquor contained in the laws of the respective States to this section only, in accordance with administrative interpretation. Said section 223 was derived from section 3 of the Liquor Enforcement Act of 1936 (Act June 25, 1936, ch. 815, 49 Stat. 1928), which was enacted for the protection of dry States. As originally enacted, its provisions relating to such definition also embraced the interstate commerce liquor laws from which sections 1263–1265 of this title were derived. In the enforcement of the latter, however, their own definitions have been applied and not the definitions of the States into which or through which the liquor was shipped.

Words ''Territory, District, or Possession'' were inserted after ''State'', to conform with the definition of ''State'' given in said section 222 of title 27, U.S.C., 1940 ed. Such section, including subsection (b) thereof, is also incorporated in section 3615 of this title.

Words ''be guilty of a misdemeanor and shall'' were omitted in view of definitive section 1 of this title.

Minor changes were made throughout in arrangement and phraseology.

1949 ACT

This section [section 32] corrects a typographical error in section 1262 of title 18, U.S.C.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in second par.

1990—Pub. L. 101–647 substituted ''State'' for ''state'' in section catchline.

1949—Act May 24, 1949, substituted ''Districts'' for ''District'' in last par.

§ 1263. Marks and labels on packages

Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 761; Pub. L. 90–518, § 1, Sept. 26, 1968, 82 Stat. 872; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 390 (Mar. 4, 1909, ch. 321, § 240, 35 Stat. 1137; June 25, 1936, ch. 815, § 8, 49 Stat. 1930.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

References to Territory, District, etc., were revised and same changes made as in section 1264 of this title.

The provision that ''such liquor shall be forfeited to the United States'' was omitted as covered by section 3615 of this title, which was derived from section 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors.

The provision that such liquor ''may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law'' was likewise omitted as covered by section 3615 of this title, which provides for seizure and forfeiture under the internal revenue laws rather than under provisions of law ''for the seizure and forfeiture of property imported into the United States contrary to law'' or, in other words, rather than under the customs laws. Section 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors, on which said section 3615 of this title is based, was derived from the Liquor Enforcement Act of 1936 (Act June 25, 1936, ch. 815, 49 Stat. 1928). Said section 224 included, in its coverage, section 390 of title 18, U.S.C., 1940 ed., on which this revised section is based, even though the Liquor Enforcement Act of 1936, in another section thereof, in amending said section 390, retained the provision that seizures and forfeitures thereunder should be under the customs laws. By eliminating this conflicting provision, a uniform procedure for seizures and forfeitures, under the internal revenue laws, is established under said section 3615 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1968—Pub. L. 90–518 struck out ''of or package'' after ''any package'' and substituted ''shipment is accompanied by copy of a bill of lading, or other document showing'' for ''package is so labeled on the outside cover as to plainly show''.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 3 of Pub. L. 90–518 provided that: ''This Act [amending this section] shall become effective ninety days after the date of its enactment [Sept. 26, 1968].''

CONGRESSIONAL DISCLAIMER OF INTENT TO PREEMPT STATE REGULATION OF SHIPMENTS OF INTOXICATING LIQUOR

Section 2 of Pub. L. 90–518 provided that: ''Nothing contained in this Act [amending this section] shall be construed as indicating an intent on the part of Congress to deprive any State of the power to enact additional prohibitions with respect to the shipment of intoxicating liquors.''

§ 1264. Delivery to consignee

Whoever, being an officer, agent, or employee of any railroad company, express company, or other common carrier, knowingly delivers to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name, any spirituous, vinous, malted, or other fermented liquor or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, which has been shipped into any place

within the United States, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 761; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 388 (Mar. 4, 1909, ch. 321, § 238, 35 Stat. 1136; June 25, 1936, ch. 815, § 6, 49 Stat. 1929).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof,'' which appeared twice, were omitted. See section 5 of this title defining the ''United States.''

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 1265. C.O.D. shipments prohibited

Any railroad or express company, or other common carrier which, or any person who, in connection with the transportation of any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, into any State, Territory, District or Possession of the United States, which prohibits the delivery or sale therein of such liquor, collects the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or in any manner acts as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 762; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 389 (Mar. 4, 1909, ch. 321, § 239, 35 Stat. 1136; June 25, 1936, ch. 815, § 7, 49 Stat. 1929).

Changes similar to those made in section 1264 of this title were also made in this section.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

CHAPTER 61—LOTTERIES

Sec.
1301. Importing or transporting lottery tickets.
1302. Mailing lottery tickets or related matter.
1303. Postmaster or employee as lottery agent.
1304. Broadcasting lottery information.
1305. Fishing contests.
1306. Participation by financial institutions.
1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.

AMENDMENTS

1988—Pub. L. 100–625, § 3(a)(2), Nov. 7, 1988, 102 Stat. 3206, substituted ''Exceptions relating to certain advertisements and other information and to State-conducted lotteries'' for ''State-conducted lotteries'' in item 1307.

1975—Pub. L. 93–583, § 2, Jan. 2, 1975, 88 Stat. 1916, added item 1307.

1967—Pub. L. 90–203, § 5(b), Dec. 15, 1967, 81 Stat. 611, added item 1306.

1950—Act Aug. 16, 1950, ch. 722, § 2, 64 Stat. 452, added item 1305.

1949—Act May 24, 1949, ch. 139, § 33, 63 Stat. 94, substituted ''as'' for ''at'' in item 1303.

§ 1301. Importing or transporting lottery tickets

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift,[1] enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 762; Pub. L. 103–322, title XXXII, § 320905, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2126, 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 387 (Mar. 4, 1909, ch. 321, § 237, 35 Stat. 1136).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''in interstate or foreign commerce'' were substituted for involved enumeration of places, thus permitting section to be condensed and simplified without change of meaning. See definitive section 10 of this title.

The rewritten punishment provision is in lieu of the following: ''for the first offense, be fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years''. There seems no point in fixing a punishment for a second offense less than that for the first offense.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' and inserted ''or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conducted by another State (unless that business is permitted under

[1] So in original. The comma probably should not appear.

an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest;'' after ''scheme;''.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–625, § 1, Nov. 7, 1988, 102 Stat. 3205, provided that: ''This Act [amending sections 1304 and 1307 of this title and section 3005 of Title 39, Postal Service, and enacting provisions set out as notes under sections 1304 and 1307 of this title] may be cited as the 'Charity Games Advertising Clarification Act of 1988'.''

§ 1302. Mailing lottery tickets or related matter

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title—

Shall be fined under this title or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

(June 25, 1948, ch. 645, 62 Stat. 762; Oct. 31, 1951, ch. 655, § 29, 65 Stat. 721; Pub. L. 87–218, § 2, Sept. 13, 1961, 75 Stat. 492; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 336 (Mar. 4, 1909, ch. 321, § 213, 35 Stat. 1129).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Venue provision was omitted as covered by sections 3231 and 3237 of this title.

Minor changes were made in arrangement and phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

1961—Pub. L. 87–218 inserted sixth par., relating to articles described in section 1953 of this title.

1951—Act Oct. 31, 1951, substituted a colon for a semicolon at end of opening clause.

§ 1303. Postmaster or employee as lottery agent[1]

Whoever, being an officer or employee of the Postal Service, acts as agent for any lottery office, or under color of purchase or otherwise, vends lottery tickets, or knowingly sends by mail or delivers any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; Pub. L. 91–375, § 6(j)(10), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18 U.S.C., 1940 ed., § 337 (Mar. 4, 1909, ch. 321, § 214, 35 Stat. 1130). Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

1970—Pub. L. 91–375 substituted ''an officer or employee of the Postal Service'' for ''a postmaster or other person employed in the Postal Service''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established thereby by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1304. Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

(June 25, 1948, ch. 645, 62 Stat. 763; Pub. L. 100–625, § 3(a)(4), Nov. 7, 1988, 102 Stat. 3206; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 316 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs (June 19, 1934, ch. 652, § 316, 48 Stat. 1088).

Words ''upon conviction thereof'' were deleted as surplusage since punishment can be imposed only after a conviction.

[1] Section catchline was not amended to conform to change made in the text by Pub. L. 91–375.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1988—Pub. L. 100–625 inserted ''or television'' after ''radio'' in first sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5 of Pub. L. 100–625 provided that: ''The amendments made by this Act [amending this section and section 1307 of this title and section 3005 of Title 39, Postal Service] shall take effect 18 months after the date of the enactment of this Act [Nov. 7, 1988].''

§ 1305. Fishing contests

The provisions of this chapter shall not apply with respect to any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event.

(Added Aug. 16, 1950, ch. 722, § 1, 64 Stat. 451.)

§ 1306. Participation by financial institutions

Whoever knowingly violates section 5136A of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 90–203, § 5(a), Dec. 15, 1967, 81 Stat. 611; amended Pub. L. 101–73, title IX, § 962(b), Aug. 9, 1989, 103 Stat. 502; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

REFERENCES IN TEXT

Section 5136A of the Revised Statutes of the United States, referred to in text, is classified to section 25a of Title 12, Banks and Banking.

Section 9A of the Federal Reserve Act, referred to in text, is classified to section 339 of Title 12.

Section 20 of the Federal Deposit Insurance Act, referred to in text, is classified to section 1829a of Title 12.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1989—Pub. L. 101–73 struck out reference to section 410 of the National Housing Act.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90–203, set out as a note under section 25a of Title 12, Banks and Banking.

§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

(A) contained in a publication published in that State or in a State which conducts such a lottery; or

(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

(A) conducted by a not-for-profit organization or a governmental organization; or

(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing—

(1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or

(2) to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

(c) For the purposes of this section (1) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) ''foreign country'' means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(d) For the purposes of subsection (b) of this section ''lottery'' means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. ''Lottery'' does not include the placing or accepting of bets or wagers on sporting events or contests. For purposes of this section, the term a ''not-for-profit organization'' means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

(Added Pub. L. 93–583, § 1, Jan. 2, 1975, 88 Stat. 1916; amended Pub. L. 94–525, § 1, Oct. 17, 1976, 90 Stat. 2478; Pub. L. 96–90, § 1, Oct. 23, 1979, 93 Stat. 698; Pub. L. 100–625, §§ 2(a), (b), 3(a)(1), (3), Nov. 7, 1988, 102 Stat. 3205, 3206.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (d), is classified to section 501 of Title 26, Internal Revenue Code.

AMENDMENTS

1988—Pub. L. 100–625, § 3(a)(1), substituted ''Exceptions relating to certain advertisements and other information and to State-conducted lotteries'' for ''State-conducted lotteries'' in section catchline.

Subsec. (a). Pub. L. 100–625, § 2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

''(1) contained in a newspaper published in that State or in an adjacent State which conducts such a lottery, or

''(2) broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery.''

Subsec. (d). Pub. L. 100–625, §§2(b), 3(a)(3), inserted ''subsection (b) of'' after ''purposes of'' and inserted at end ''For purposes of this section, the term a 'not-for-profit organization' means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.''

1979—Subsec. (b). Pub. L. 96–90, §1(a), incorporated existing provision in text designated cl. (1), included mailing of equipment, and added cl. (2).

Subsec. (c). Pub. L. 96–90, §1(b), designated existing text as cl. (1) and added cl. (2).

1976—Subsec. (a)(1). Pub. L. 94–525 inserted ''or in an adjacent State which conducts such a lottery'' after ''State''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–625 effective 18 months after Nov. 7, 1988, see section 5 of Pub. L. 100–625, set out as a note under section 1304 of this title.

SEVERABILITY

Section 4 of Pub. L. 100–625 provided that: ''If any provision of this Act or the amendments made by this Act [amending sections 1304 and 1307 of this title and section 3005 of Title 39, Postal Service, and enacting provisions set out as notes under sections 1301 and 1304 of this title], or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.''

CHAPTER 63—MAIL FRAUD

Sec.
1341. Frauds and swindles.
1342. Fictitious name or address.
1343. Fraud by wire, radio, or television.
1344. Bank fraud.
1345. Injunctions against fraud.
1346. Definition of ''scheme or artifice to defraud''.
1347. Health care fraud.
1348. Securities fraud.
1349. Attempt and conspiracy.
1350. Failure of corporate officers to certify financial reports.

AMENDMENTS

2002—Pub. L. 107–204, title VIII, §807(b), title IX, §§902(b), 906(b), July 30, 2002, 116 Stat. 804–806, added items 1348 to 1350.

1996—Pub. L. 104–191, title II, §242(a)(2), Aug. 21, 1996, 110 Stat. 2016, added item 1347.

1990—Pub. L. 101–647, title XXXV, §3541, Nov. 29, 1990, 104 Stat. 4925, substituted ''or'' for ''and'' in item 1342.

1988—Pub. L. 100–690, title VII, §7603(b), Nov. 18, 1988, 102 Stat. 4508, added item 1346.

1984—Pub. L. 98–473, title II, §§1108(b), 1205(b), Oct. 12, 1984, 98 Stat. 2147, 2153, added items 1344 and 1345.

1952—Act July 16, 1952, ch. 879, §18(b), 66 Stat. 722, added item 1343.

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; May 24, 1949, ch. 139, §34, 63 Stat. 94; Pub. L. 91–375, §(6)(j)(11), Aug. 12, 1970, 84 Stat. 778; Pub. L. 101–73, title IX, §961(i), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101–647, title XXV, §2504(h), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103–322, title XXV, §250006, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2087, 2147; Pub. L. 107–204, title IX, §903(a), July 30, 2002, 116 Stat. 805.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §338 (Mar. 4, 1909, ch. 321, §215, 35 Stat. 1130).

The obsolete argot of the underworld was deleted as suggested by Hon. Emerich B. Freed, United States district judge, in a paper read before the 1944 Judicial Conference for the sixth circuit in which he said:

A brief reference to §1341, which proposes to reenact the present section covering the use of the mails to defraud. This section is almost a page in length, is involved, and contains a great deal of superfluous language, including such terms as ''sawdust swindle, green articles, green coin, green goods and green cigars.'' This section could be greatly simplified, and now-meaningless language eliminated.

The other surplusage was likewise eliminated and the section simplified without change of meaning.

A reference to causing to be placed any letter, etc. in any post office, or station thereof, etc. was omitted as unnecessary because of definition of ''principal'' in section 2 of this title.

1949 ACT

This section [section 34] corrects a typographical error in section 1341 of title 18, U.S.C.

AMENDMENTS

2002—Pub. L. 107–204 substituted ''20 years'' for ''five years''.

1994—Pub. L. 103–322, §330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' after ''thing, shall be''.

Pub. L. 103–322, §250006, inserted ''or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier,'' after ''Postal Service,'' and ''or such carrier'' after ''causes to be delivered by mail''.

1990—Pub. L. 101–647 substituted ''30'' for ''20'' before ''years''.

1989—Pub. L. 101–73 inserted at end ''If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.''

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department''.

1949—Act May 24, 1949, substituted ''of'' for ''or'' after ''dispose''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by

Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–204, title IX, § 901, July 30, 2002, 116 Stat. 804, provided that: ''This title [enacting sections 1349 and 1350 of this title, amending this section, section 1343 of this title, and section 1131 of Title 29, Labor, and enacting provisions set out as notes under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'White-Collar Crime Penalty Enhancement Act of 2002'.''

§ 1342. Fictitious name or address

Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 763; Pub. L. 91–375, § 6(j)(12), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 339 (Mar. 4, 1909, ch. 321, § 216, 35 Stat. 1131).

The punishment language used in section 1341 of this title was substituted in lieu of the reference to it in this section.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department of the United States''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(Added July 16, 1952, ch. 879, § 18(a), 66 Stat. 722; amended July 11, 1956, ch. 561, 70 Stat. 523; Pub. L. 101–73, title IX, § 961(j), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101–647, title XXV, § 2504(i), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–204, title IX, § 903(b), July 30, 2002, 116 Stat. 805.)

AMENDMENTS

2002—Pub. L. 107–204 substituted ''20 years'' for ''five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1990—Pub. L. 101–647 substituted ''30'' for ''20'' before ''years''.

1989—Pub. L. 101–73 inserted at end ''If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.''

1956—Act July 11, 1956, substituted ''transmitted by means of wire, radio, or television communication in interstate or foreign commerce'' for ''transmitted by means of interstate wire, radio, or television communication''.

§ 1344. Bank fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(Added Pub. L. 98–473, title II, § 1108(a), Oct. 12, 1984, 98 Stat. 2147; amended Pub. L. 101–73, title IX, § 961(k), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101–647, title XXV, § 2504(j), Nov. 29, 1990, 104 Stat. 4861.)

AMENDMENTS

1990—Pub. L. 101–647 substituted ''30'' for ''20'' before ''years''.

1989—Pub. L. 101–73 amended section generally, restating former subsec. (a) and striking out former subsec. (b) which defined ''federally chartered or insured financial institution''. Prior to amendment, subsec. (a) read as follows: ''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud a federally chartered or insured financial institution; or

''(2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than $10,000, or imprisoned not more than five years, or both.''

§ 1345. Injunctions against fraud

(a)(1) If a person is—

(A) violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title;

(B) committing or about to commit a banking law violation (as defined in section 3322(d) of this title); or

(C) committing or about to commit a Federal health care offense;

the Attorney General may commence a civil action in any Federal court to enjoin such violation.

(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title) or a Federal health care offense or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

(A) to enjoin such alienation or disposition of property; or

(B) for a restraining order to—

(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

(ii) appoint a temporary receiver to administer such restraining order.

(3) A permanent or temporary injunction or restraining order shall be granted without bond.

(b) The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Added Pub. L. 98–473, title II, § 1205(a), Oct. 12, 1984, 98 Stat. 2152; amended Pub. L. 100–690, title VII, § 7077, Nov. 18, 1988, 102 Stat. 4406; Pub. L. 101–647, title XXV, § 2521(b)(2), title XXXV, § 3542, Nov. 29, 1990, 104 Stat. 4865, 4925; Pub. L. 103–322, title XXXIII, § 330011(k), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 104–191, title II, § 247, Aug. 21, 1996, 110 Stat. 2018; Pub. L. 107–273, div. B, title IV, § 4002(b)(14), Nov. 2, 2002, 116 Stat. 1808.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

AMENDMENTS

2002—Subsec. (a)(1)(B). Pub. L. 107–273, § 4002(b)(14)(A), substituted ''; or'' for '', or'' at end.

Subsec. (a)(1)(C). Pub. L. 107–273, § 4002(b)(14)(B), substituted semicolon for period at end.

1996—Subsec. (a)(1)(C). Pub. L. 104–191, § 247(a), added subpar. (C).

Subsec. (a)(2). Pub. L. 104–191, § 247(b), inserted ''or a Federal health care offense'' after ''title)''.

1994—Pub. L. 103–322, § 330011(k), repealed Pub. L. 101–647, § 3542. See 1990 Amendment note below.

1990—Pub. L. 101–647, § 2521(b)(2), added subsec. (a), inserted subsec. (b) designation, and struck out former first sentence which read as follows: ''Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a violation of this chapter, or of section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such violation.''

Pub. L. 101–647, § 3542, which directed insertion of a comma after ''of this title'', was repealed by Pub. L. 103–322, § 330011(k).

1988—Pub. L. 100–690 inserted ''or of section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title'' after ''violation of this chapter,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(k) of Pub. L. 103–322 provided that the amendment made by that section is effective Nov. 29, 1990.

§ 1346. Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term ''scheme or artifice to defraud'' includes a scheme or artifice to deprive another of the intangible right of honest services.

(Added Pub. L. 100–690, title VII, § 7603(a), Nov. 18, 1988, 102 Stat. 4508.)

§ 1347. Health care fraud

Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—

(1) to defraud any health care benefit program; or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program,

in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.

(Added Pub. L. 104–191, title II, § 242(a)(1), Aug. 21, 1996, 110 Stat. 2016.)

§ 1348. Securities fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)); or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.

(Added Pub. L. 107–204, title VIII, § 807(a), July 30, 2002, 116 Stat. 804.)

§ 1349. Attempt and conspiracy

Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Added Pub. L. 107–204, title IX, § 902(a), July 30, 2002, 116 Stat. 805.)

§ 1350. Failure of corporate officers to certify financial reports

(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78*o*(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

(b) CONTENT.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act pf[1] 1934 (15 U.S.C. 78m or 78*o*(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

(c) CRIMINAL PENALTIES.—Whoever—

(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.

(Added Pub. L. 107–204, title IX, § 906(a), July 30, 2002, 116 Stat. 806.)

CHAPTER 65—MALICIOUS MISCHIEF

Sec.
1361. Government property or contracts.
1362. Communication lines, stations or systems.
1363. Buildings or property within special maritime and territorial jurisdiction.
1364. Interference with foreign commerce by violence.
1365. Tampering with consumer products.
1366. Destruction of an energy facility.
1367. Interference with the operation of a satellite.
1368. Harming animals used in law enforcement.
1369. Destruction of veterans' memorials.

AMENDMENTS

2003—Pub. L. 108–29, § 2(b), May 29, 2003, 117 Stat. 772, added item 1369.

2000—Pub. L. 106–254, § 2(b), Aug. 2, 2000, 114 Stat. 638, added item 1368.

1990—Pub. L. 101–647, title XXXV, § 3543, Nov. 29, 1990, 104 Stat. 4926, inserted a period after ''1366''.

1986—Pub. L. 99–646, § 29(b), Nov. 10, 1986, 100 Stat. 3598, redesignated item 1365, relating to destruction of an energy facility, as item 1366.

Pub. L. 99–508, title III, § 303(b), Oct. 21, 1986, 100 Stat. 1873, added item 1367.

1984—Section 1365(d) of this title as added by Pub. L. 98–473, title II, § 1011(a), Oct. 12, 1984, 98 Stat. 2141, added item 1365, relating to destruction of an energy facility.

1983—Pub. L. 98–127, § 3, Oct. 13, 1983, 97 Stat. 832, added item 1365, relating to tampering with consumer products.

§ 1361. Government property or contracts

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished as follows:

If the damage or attempted damage to such property exceeds the sum of $1,000, by a fine under this title or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of $1,000, by a fine under this title or by imprisonment for not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 764; Pub. L. 103–322, title XXXII, § 320903(d)(1), title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2125, 2147; Pub. L. 104–294, title VI, §§ 601(a)(3), 605(e), 606(a), Oct. 11, 1996, 110 Stat. 3498, 3510, 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 82 (Mar. 4, 1909, ch. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, ch. 194, 40 Stat. 1015; June 18, 1934, ch. 587, 48 Stat. 996; Apr. 4, 1938, ch. 69, 52 Stat. 197).

The embezzlement and theft provisions of section 82 of title 18, U.S.C., 1940 ed., are now incorporated in section 641 of this title.

Words ''or any corporation in which the United States of America is a stockholder'' were omitted as unnecessary in view of definition of ''agency'' in section 6 of this title.

Designation of the place of confinement as ''in a jail'' was omitted because section 4082 of this title commits all prisoners to the custody of the Attorney General or his authorized representative, who shall designate the place of confinement. (See reviser's note under section 1 of this title.)

The smaller penalty for offenses involving $50 or less was extended to offenses involving $100 or less. The use of $50 as the dividing line between felonies and misdemeanors originated at a time when that sum was of much greater value than $100 is now.

The word ''damage'' was substituted twice for the word ''value'', and the definition of ''value'' was omitted as inapplicable to this section. These words and definition, however, are retained in that part of said section 82 which is now section 641 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294, § 605(e), inserted comma after ''foregoing offenses'' in first par.

Pub. L. 104–294, §§ 601(a)(3), 606(a), in second par., substituted ''fine under this title'' for ''fine of under this title'' in two places and ''$1,000'' for ''$100'' in two places.

1994—Pub. L. 103–322, § 320903(d)(1)(A), inserted ''or attempts to commit any of the foregoing offenses'' before ''shall be punished'' in first par.

Pub. L. 103–322, § 330016(1)(H), (L), in second par., substituted ''under this title'' for ''not more than $10,000'' before ''or imprisonment for not more than ten years'' and for ''not more than $1,000'' before ''or by imprisonment for not more than one year''.

[1] So in original. Probably should be ''of''.

Pub. L. 103–322, § 320903(d)(1)(B), inserted ''or attempted damage'' after ''damage'' in two places in second par.

§ 1362. Communication lines, stations or systems

Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communication over any such line, or system, or attempts or conspires to do such an act, shall be fined under this title or imprisoned not more than ten years, or both.

In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended to be used for the military or civil defense functions of the United States.

(June 25, 1948, ch. 645, 62 Stat. 764; Pub. L. 87–306, Sept. 26, 1961, 75 Stat. 669; Pub. L. 103–322, title XXXII, § 320903(d)(2), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2125, 2147; Pub. L. 107–56, title VIII, § 811(c), Oct. 26, 2001, 115 Stat. 381.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 116 (Mar. 4, 1909, ch. 321, § 60, 35 Stat. 1099).

This section was extended to include radio and radio stations. Minor changes were made in phraseology.

AMENDMENTS

2001—Pub. L. 107–56, in first par., struck out ''or attempts willfully or maliciously to injure or destroy'' after ''Whoever willfully or maliciously injures or destroys'' and inserted ''or attempts or conspires to do such an act,'' before ''shall be fined''.

1994—Pub. L. 103–322, in first par., inserted ''or attempts willfully or maliciously to injure or destroy'' after ''willfully or maliciously injures or destroys'' and substituted ''fined under this title'' for ''fined not more than $10,000''.

1961—Pub. L. 87–306 extended the provisions of the section to means of communication used or intended to be used for military or civil defense functions of the United States, made the provisions inapplicable to lawful strike activities, which do not injure any line or system used for such functions, and increased the punishment by fine from $1,000 to $10,000 and by imprisonment from 3 to 10 years.

§ 1363. Buildings or property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures any structure, conveyance, or other real or personal property, or attempts or conspires to do such an act, shall be fined under this title or imprisoned not more than five years, or both, and if the building be a dwelling, or the life of any person be placed in jeopardy, shall be fined under this title or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 703, Apr. 24, 1996, 110 Stat. 1294; Pub. L. 107–56, title VIII, § 811(d), Oct. 26, 2001, 115 Stat. 381.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 464, 465 (Mar. 4, 1909, ch. 321, §§ 285, 286, 35 Stat. 1144).

Said sections were consolidated and rewritten both as to form and substance. The provisions relating to arson are incorporated in section 81 of this title. (See reviser's note under said section 81 of this title for explanation of changes.)

AMENDMENTS

2001—Pub. L. 107–56 struck out ''or attempts to destroy or injure'' after ''destroys or injures'' and inserted ''or attempts or conspires to do such an act,'' after ''personal property,''.

1996—Pub. L. 104–132 substituted ''any structure, conveyance, or other real or personal property'' for ''any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' after ''shipping, shall be'' and for ''fined not more than $5,000'' after ''jeopardy, shall be''.

§ 1364. Interference with foreign commerce by violence

Whoever, with intent to prevent, interfere with, or obstruct or attempt to prevent, interfere with, or obstruct the exportation to foreign countries of articles from the United States, injures or destroys, by fire or explosives, such articles or the places where they may be while in such foreign commerce, shall be fined under this title or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 381 (June 15, 1917, ch. 30, titles IV, XIII, § 1, 40 Stat. 221, 231; Mar. 28, 1940, ch. 72, § 4, 54 Stat. 79).

Mandatory punishment provisions were rephrased in the alternative.

Definition of the term ''United States'' was omitted and incorporated in section 5 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1365. Tampering with consumer products

(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall—

(1) in the case of an attempt, be fined under this title or imprisoned not more than ten years, or both;

(2) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;

(3) if serious bodily injury to any individual results, be fined under this title or imprisoned not more than twenty years, or both; and

(4) in any other case, be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or foreign commerce, shall be fined under this title or imprisoned not more than three years, or both.

(c)(1) Whoever knowingly communicates false information that a consumer product has been tainted, if such product or the results of such communication affect interstate or foreign commerce, and if such tainting, had it occurred, would create a risk of death or bodily injury to another person, shall be fined under this title or imprisoned not more than five years, or both.

(2) As used in paragraph (1) of this subsection, the term ''communicates false information'' means communicates information that is false and that the communicator knows is false, under circumstances in which the information may reasonably be expected to be believed.

(d) Whoever knowingly threatens, under circumstances in which the threat may reasonably be expected to be believed, that conduct that, if it occurred, would violate subsection (a) of this section will occur, shall be fined under this title or imprisoned not more than five years, or both.

(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined under this title or imprisoned not more than ten years, or both.

(f)(1) Whoever, without the consent of the manufacturer, retailer, or distributor, intentionally tampers with a consumer product that is sold in interstate or foreign commerce by knowingly placing or inserting any writing in the consumer product, or in the container for the consumer product, before the sale of the consumer product to any consumer shall be fined under this title, imprisoned not more than 1 year, or both.

(2) Notwithstanding the provisions of paragraph (1), if any person commits a violation of this subsection after a prior conviction under this section becomes final, such person shall be fined under this title, imprisoned for not more than 3 years, or both.

(3) In this subsection, the term ''writing'' means any form of representation or communication, including hand-bills, notices, or advertising, that contain letters, words, or pictorial representations.

(g) In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture, respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

(h) As used in this section—

(1) the term ''consumer product'' means—

(A) any ''food'', ''drug'', ''device'', or ''cosmetic'', as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use;

(2) the term ''labeling'' has the meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m));

(3) the term ''serious bodily injury'' means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(4) the term ''bodily injury'' means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

(Added Pub. L. 98–127, § 2, Oct. 13, 1983, 97 Stat. 831; amended Pub. L. 101–647, title XXXV, § 3544, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 103–322, title XXXIII, § 330016(1)(L), (O), (Q), (S), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 107–307, § 2, Dec. 2, 2002, 116 Stat. 2445.)

CODIFICATION

Another section 1365 was renumbered section 1366 of this title.

AMENDMENTS

2002—Subsecs. (f) to (h). Pub. L. 107–307 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1994—Subsec. (a)(1). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000''.

Subsec. (a)(2), (3). Pub. L. 103–322, § 330016(1)(S), substituted ''fined under this title'' for ''fined not more than $100,000''.

Subsec. (a)(4). Pub. L. 103–322, § 330016(1)(Q), substituted ''fined under this title'' for ''fined not more than $50,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

Subsecs. (c)(1), (d), (e). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000''.

1990—Subsec. (g)(1)(A). Pub. L. 101–647 inserted opening quotation marks before ''device''.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–307, § 1, Dec. 2, 2002, 116 Stat. 2445, provided that: ''This Act [amending this section] may be cited as the 'Product Packaging Protection Act of 2002'.''

SHORT TITLE

Section 1 of Pub. L. 98–127 provided: ''That this Act [enacting this section and section 155A of Title 35, Patents] may be cited as the 'Federal Anti-Tampering Act'.''

§ 1366. Destruction of an energy facility

(a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded $100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both.

(b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded $5,000 shall be punishable by a fine under this title, or imprisonment for not more than five years, or both.

(c) For purposes of this section, the term ''energy facility'' means a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or an interstate gas pipeline facility as defined in section 60101 of title 49.

(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.

(Added Pub. L. 98–473, title II, § 1011(a), Oct. 12, 1984, 98 Stat. 2141, § 1365; renumbered § 1366, Pub. L. 99–646, § 29(a), Nov. 10, 1986, 100 Stat. 3598; amended Pub. L. 101–647, title XXXV, §§ 3545, 3546, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 103–272, § 5(e)(9), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title XXXII, § 320903(d)(3), title XXXIII, § 330016(2)(C), Sept. 13, 1994, 108 Stat. 2125, 2148; Pub. L. 107–56, title VIII, § 810(b), Oct. 26, 2001, 115 Stat. 380; Pub. L. 109–177, title IV, § 406(c)(2), Mar. 9, 2006, 120 Stat. 245.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 substituted ''attempts or conspires'' for ''attempts'' wherever appearing and inserted '', or if the object of the conspiracy had been achieved,'' after ''the attempted offense had been completed''.

2001—Subsec. (a). Pub. L. 107–56, § 810(b)(1), substituted ''20 years'' for ''ten years''.

Subsec. (d). Pub. L. 107–56, § 810(b)(2), added subsec. (d).

1994—Subsec. (a). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $50,000''.

Pub. L. 103–322, § 320903(d)(3), inserted ''or attempts to damage'' after ''damages'' in two places, ''or would if the attempted offense had been completed have exceeded'' after ''exceeds'', and ''or attempts to cause'' after ''causes''.

Subsec. (b). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $25,000''.

Pub. L. 103–322, § 320903(d)(3)(A), (C), inserted ''or attempts to damage'' after ''damages'' and ''or would if the attempted offense had been completed have exceeded'' after ''exceeds''.

Subsec. (c). Pub. L. 103–272 substituted ''an interstate gas pipeline facility as defined in section 60101 of title 49'' for ''interstate transmission facilities, as defined in section 2 of the Natural Gas Pipeline Safety Act of 1968''.

1990—Subsec. (c). Pub. L. 101–647, § 3545, substituted ''section 2 of the Natural Gas Pipeline Safety Act of 1968'' for ''49 U.S.C. 1671''.

Subsec. (d). Pub. L. 101–647, § 3546, struck out subsec. (d) which read as follows: ''The table of contents for chapter 65 of title 18, United States Code, is amended by adding at the end thereof the following new item: '1365 Destruction of an energy facility.' ''

§ 1367. Interference with the operation of a satellite

(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States.

(Added Pub. L. 99–508, title III, § 303(a), Oct. 21, 1986, 100 Stat. 1872.)

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 302 of Pub. L. 99–508, set out as a note under section 3121 of this title.

§ 1368. Harming animals used in law enforcement

(a) Whoever willfully and maliciously harms any police animal, or attempts or conspires to do so, shall be fined under this title and imprisoned not more than 1 year. If the offense permanently disables or disfigures the animal, or causes serious bodily injury to or the death of the animal, the maximum term of imprisonment shall be 10 years.

(b) In this section, the term ''police animal'' means a dog or horse employed by a Federal agency (whether in the executive, legislative, or judicial branch) for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

(Added Pub. L. 106–254, § 2(a), Aug. 2, 2000, 114 Stat. 638; amended Pub. L. 107–273, div. B, title IV, § 4003(a)(4), Nov. 2, 2002, 116 Stat. 1811.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 inserted ''to'' after ''serious bodily injury''.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–254, § 1, Aug. 2, 2000, 114 Stat. 638, provided that: ''This Act [enacting this section] may be cited as

the 'Federal Law Enforcement Animal Protection Act of 2000'.''

§ 1369. Destruction of veterans' memorials

(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

(b) A circumstance described in this subsection is that—

(1) in committing the offense described in subsection (a), the defendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or

(2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government.

(Added Pub. L. 108–29, § 2(a), May 29, 2003, 117 Stat. 772.)

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–29, § 1, May 29, 2003, 117 Stat. 772, provided that: ''This Act [enacting this section and provisions set out as a note under section 109 of Title 23, Highways] may be cited as the 'Veterans' Memorial Preservation and Recognition Act of 2003'.''

CHAPTER 67—MILITARY AND NAVY

Sec.
1381. Enticing desertion and harboring deserters.
1382. Entering military, naval, or Coast Guard property.
[1383. Repealed.]
1384. Prostitution near military and naval establishments.
1385. Use of Army and Air Force as posse comitatus.
1386. Keys and keyways used in security applications by the Department of Defense.
1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery.
1388. Prohibition on disruptions of funerals of members or former members of the Armed Forces.

AMENDMENTS

2006—Pub. L. 109–464, § 1(b), Dec. 22, 2006, 120 Stat. 3481, added item 1388.

Pub. L. 109–228, § 3(b), May 29, 2006, 120 Stat. 389, added item 1387.

1991—Pub. L. 102–190, div. A, title X, § 1090(b), Dec. 5, 1991, 105 Stat. 1486, added item 1386.

1990—Pub. L. 101–647, title XXXV, § 3547, Nov. 29, 1990, 104 Stat. 4926, struck out item 1383 ''Restrictions in military areas and zones''.

1956—Act Aug. 10, 1956, ch. 1041, § 18(b), 70A Stat. 626, inserted item 1385.

§ 1381. Enticing desertion and harboring deserters

Whoever entices or procures, or attempts or endeavors to entice or procure any person in the Armed Forces of the United States, or who has been recruited for service therein, to desert therefrom, or aids any such person in deserting or in attempting to desert from such service; or

Whoever harbors, conceals, protects, or assists any such person who may have deserted from such service, knowing him to have deserted therefrom, or refuses to give up and deliver such person on the demand of any officer authorized to receive him—

Shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 764; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 94 (Mar. 4, 1909, ch. 321, § 42, 35 Stat. 1097).

Mandatory punishment provisions were changed to alternative.

Words ''armed forces'' were substituted for repeated references to military service, naval service, soldier and seamen.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' in last par.

§ 1382. Entering military, naval, or Coast Guard property

Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation; or

Whoever reenters or is found within any such reservation, post, fort, arsenal, yard, station, or installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof—

Shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 765; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 97 (Mar. 4, 1909, ch. 321, § 45, 35 Stat. 1097; Mar. 28, 1940, ch. 73, 54 Stat. 80).

Reference to territory, Canal Zone, Puerto Rico and the Philippine Islands was omitted as covered by definition of United States in section 5 of this title.

Words ''naval or Coast Guard'' were inserted before ''reservation'' and words ''yard, station, or installation'' were inserted after ''arsenal'' in two places, so as to extend section to naval or Coast Guard property.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in last par.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury

transferred to Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 108 of Title 49, Transportation.

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Coast Guard, referred to in this section, was generally a service in Department of the Treasury, but such Plan excepted from transfer functions of Coast Guard and Commandant thereof when Coast Guard was operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

[§ 1383. Repealed. Pub. L. 94–412, title V, § 501(e), Sept. 14, 1976, 90 Stat. 1258]

Section, act June 25, 1948, ch. 645, 62 Stat. 765, dealt with criminal penalties for persons entering, remaining in, leaving, or committing any act in a military area or zone contrary to restrictions imposed by Executive Order or Secretary of the Army.

SAVINGS PROVISION

Repeal of this section by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 1384. Prostitution near military and naval establishments

Within such reasonable distance of any military or naval camp, station, fort, post, yard, base, cantonment, training or mobilization place as the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or any two or all of them shall determine to be needful to the efficiency, health, and welfare of the Army, the Navy, or the Air Force, and shall designate and publish in general orders or bulletins, whoever engages in prostitution or aids or abets prostitution or procures or solicits for purposes of prostitution, or keeps or sets up a house of ill fame, brothel, or bawdy house, or receives any person for purposes of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure, or building, or permits any person to remain for the purpose of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building or leases or rents or contracts to lease or rent any vehicle, conveyance, place, structure or building, or part thereof, knowing or with good reason to know that it is intended to be used for any of the purposes herein prohibited shall be fined under this title or imprisoned not more than one year, or both.

The Secretaries of the Army, Navy, and Air Force and the Federal Security Administrator shall take such steps as they deem necessary to suppress and prevent such violations thereof, and shall accept the cooperation of the authorities of States and their counties, districts, and other political subdivisions in carrying out the purpose of this section.

This section shall not be construed as conferring on the personnel of the Departments of the Army, Navy, or Air Force or the Federal Security Agency any authority to make criminal investigations, searches, seizures, or arrests of civilians charged with violations of this section.

(June 25, 1948, ch. 645, 62 Stat. 765; May 24, 1949, ch. 139, § 35, 63 Stat. 94; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 518a (July 11, 1941, ch. 287, 55 Stat. 583; May 15, 1945, ch. 126, 59 Stat. 168; May 15, 1946, ch. 258, 60 Stat. 182).

The word "whoever" was substituted for the words "person, corporation, partnership, or association" in conformity with section 1 of title 1, U.S.C., 1940 ed., General Provisions, as amended and without change of substance.

The provisions with reference to punishment of persons subject to military or naval law as provided in the Articles of War and the Articles for the Government of the Navy were omitted, as was the exception of such persons from the punishment provisions of this section. The Articles of War and Articles for the Government of the Navy are sufficiently complete in themselves to authorize the adequate punishment of military or naval personnel for violations of general criminal statutes as well as for disobedience of orders. See Articles of War, Article 96, section 1568 of title 10, U.S.C., 1940 ed., Army, and Articles for the Government of the Navy, Articles 1, 4, 22, 23, section 1200, of title 34, U.S.C., 1940 ed., Navy.

The revised section, in this respect, places violations on the same basis as other misdemeanors in violation of the general statutes of the United States and authorizes punishment of persons subject to military or naval law under such law, or in case the military or naval authorities turn the violator over to the civil authorities, the trial and punishment may be under the general law.

The phrase "and/or" appearing twice in section 581a of title 18, U.S.C., 1940 ed., was deleted to avoid uncertainty and ambiguity.

Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in section 1 of this title.

Changes were made in phraseology.

1949 ACT

This section [section 35] makes the following changes in section 1384 of title 18, U.S.C.:

1. In the first paragraph, substitutes "Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and any two or all of them" for "Secretary of the Army or the Secretary of the Navy, or both", and substitutes "Army, the Navy, or the Air Force," for "Army or the Navy, or both,", in view of the establishment in 1947 of the Department of the Air Force, headed by a Secretary.

2. In the second paragraph, substitutes "The Secretaries of the Army, Navy, and Air Force" for "The Secretaries of the Army, and Navy", for the same reason given in item 1 above.

3. In the third paragraph, substitutes "Department of the Army, Navy, or Air Force" for "War or Navy Department" for the same reason given in item 1 above.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000" in first par.

1949—Act May 24, 1949, made section applicable to the Air Force which was established as a separate department in 1947, headed by a Secretary.

TRANSFER OF FUNCTIONS

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of

Health and Human Services by section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees. Federal Security Agency and office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953.

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

(Added Aug. 10, 1956, ch. 1041, § 18(a), 70A Stat. 626; amended Pub. L. 86–70, § 17(d), June 25, 1959, 73 Stat. 144; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTE

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1385	10:15.	June 18, 1878, ch. 263, § 15, 20 Stat. 152; Mar. 3, 1899, ch. 429, § 363 (proviso); added June 6, 1900, ch. 786, § 29 (less last proviso), 31 Stat. 330.

This section is revised to conform to the style and terminology used in title 18. It is not enacted as a part of title 10, United States Code, since it is more properly allocated to title 18.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1959—Pub. L. 86–70 struck out provisions which made section inapplicable in Alaska.

§ 1386. Keys and keyways used in security applications by the Department of Defense

(a)(1) Whoever steals, purloins, embezzles, or obtains by false pretense any lock or key to any lock, knowing that such lock or key has been adopted by any part of the Department of Defense, including all Department of Defense agencies, military departments, and agencies thereof, for use in protecting conventional arms, ammunition or explosives, special weapons, and classified information or classified equipment shall be punished as provided in subsection (b).

(2) Whoever—

(A) knowingly and unlawfully makes, forges, or counterfeits any key, knowing that such key has been adopted by any part of the Department of Defense, including all Department of Defense agencies, military departments, and agencies thereof, for use in protecting conventional arms, ammunition or explosives, special weapons, and classified information or classified equipment; or

(B) knowing that any lock or key has been adopted by any part of the Department of Defense, including all Department of Defense agencies, military departments, and agencies thereof, for use in protecting conventional arms, ammunition or explosives, special weapons, and classified information or classified equipment, possesses any such lock or key with the intent to unlawfully or improperly use, sell, or otherwise dispose of such lock or key or cause the same to be unlawfully or improperly used, sold, or otherwise disposed of,

shall be punished as provided in subsection (b).

(3) Whoever, being engaged as a contractor or otherwise in the manufacture of any lock or key knowing that such lock or key has been adopted by any part of the Department of Defense, including all Department of Defense agencies, military departments, and agencies thereof, for use in protecting conventional arms, ammunition or explosives, special weapons, and classified information or classified equipment, delivers any such finished or unfinished lock or any such key to any person not duly authorized by the Secretary of Defense or his designated representative to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer, shall be punished as provided in subsection (b).

(b) Whoever commits an offense under subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both.

(c) As used in this section, the term ''key'' means any key, keyblank, or keyway adopted by any part of the Department of Defense, including all Department of Defense agencies, military departments, and agencies thereof, for use in protecting conventional arms, ammunition or explosives, special weapons, and classified information or classified equipment.

(Added Pub. L. 102–190, div. A, title X, § 1090(a), Dec. 5, 1991, 105 Stat. 1485.)

§ 1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery

Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.

(Added Pub. L. 109–228, § 3(a), May 29, 2006, 120 Stat. 388.)

§ 1388. Prohibition on disruptions of funerals of members or former members of the Armed Forces

(a) PROHIBITION.—For any funeral of a member or former member of the Armed Forces that is not located at a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery, it shall be unlawful for any person to engage in an activity during the period beginning 60 minutes before and ending 60 minutes after such funeral, any part of which activity—

(1)(A) takes place within the boundaries of the location of such funeral or takes place within 150 feet of the point of the intersection between—

(i) the boundary of the location of such funeral; and

(ii) a road, pathway, or other route of ingress to or egress from the location of such funeral; and

(B) includes any individual willfully making or assisting in the making of any noise or diversion that is not part of such funeral and that disturbs or tends to disturb the peace or good order of such funeral with the intent of disturbing the peace or good order of that funeral; or

(2)(A) is within 300 feet of the boundary of the location of such funeral; and

(B) includes any individual willfully and without proper authorization impeding the access to or egress from such location with the intent to impede the access to or egress from such location.

(b) PENALTY.—Any person who violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

(c) DEFINITIONS.—In this section:

(1) The term ''Armed Forces'' has the meaning given the term in section 101 of title 10.

(2) The term ''funeral of a member or former member of the Armed Forces'' means any ceremony or memorial service held in connection with the burial or cremation of a member or former member of the Armed Forces.

(3) The term ''boundary of the location'', with respect to a funeral of a member or former member of the Armed Forces, means—

(A) in the case of a funeral of a member or former member of the Armed Forces that is held at a cemetery, the property line of the cemetery;

(B) in the case of a funeral of a member or former member of the Armed Forces that is held at a mortuary, the property line of the mortuary;

(C) in the case of a funeral of a member or former member of the Armed Forces that is held at a house of worship, the property line of the house of worship; and

(D) in the case of a funeral of a member or former member of the Armed Forces that is held at any other kind of location, the reasonable property line of that location.

(Added Pub. L. 109–464, §1(a), Dec. 22, 2006, 120 Stat. 3480.)

[CHAPTER 68—REPEALED]

[§§ 1401 to 1407. Repealed. Pub. L. 91–513, title III, § 1101(b)(1)(A), Oct. 27, 1970, 84 Stat. 1292]

Section 1401, acts July 18, 1956, ch. 629, title II, §201, 70 Stat. 572; July 12, 1960, Pub. L. 86–624, §13(a), 74 Stat. 413, defined ''heroin'' and ''United States''.

Section 1402, act July 18, 1956, ch. 629, title II, §201, 70 Stat. 572, provided for surrender to Secretary of the Treasury of all legally possessed heroin within 120 days of July 19, 1956.

Section 1403, act July 18, 1956, ch. 629, title II, §201, 70 Stat. 573, set penalties for unlawful use of communications facilities in commission of offenses involving importation or exportation of narcotics.

Section 1404, act July 18, 1956, ch. 629, title II, §201, 70 Stat. 573, granted the United States right to appeal from grant of a motion to suppress in prosecutions involving unlawful exportation or importation of narcotics.

Section 1405, acts July 18, 1956, ch. 629, title III, §201, 70 Stat. 573; Oct. 17, 1968, Pub. L. 90–578, title III, §301(a)(1), 82 Stat. 1115, set out procedure for issuance of search warrants.

Section 1406, act July 18, 1956, ch. 629, title II, §201, 70 Stat. 574, provided for authority to grant immunity from prosecution of any witnesses compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title. Section was repealed earlier by Pub. L. 91–452, title II, §224(a), Oct. 15, 1970, 84 Stat. 929, with such repeal to be effective on the sixtieth day following Oct. 15, 1970, but with such repeal not to affect any immunity to which any individual was entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970.

Section 1407, act July 18, 1956, ch. 629, title II, §201, 70 Stat. 574, prohibited border crossings by any person addicted to or using drugs or any person convicted of any violation of narcotic or marihuana laws of the United States or of any State, the penalty for which is imprisonment for more than one year.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CHAPTER 69—NATIONALITY AND CITIZENSHIP

Sec.
1421. Accounts of court officers.
1422. Fees in naturalization proceedings.
1423. Misuse of evidence of citizenship or naturalization.
1424. Personation or misuse of papers in naturalization proceedings.
1425. Procurement of citizenship or naturalization unlawfully.
1426. Reproduction of naturalization or citizenship papers.
1427. Sale of naturalization or citizenship papers.
1428. Surrender of canceled naturalization certificate.
1429. Penalties for neglect or refusal to answer subpena.

§ 1421. Accounts of court officers

Whoever, being a clerk or assistant clerk of a court, or other person charged by law with a duty to render true accounts of moneys received in any proceeding relating to citizenship, naturalization, or registration of aliens or to pay over any balance of such moneys due to the United States, willfully neglects to do so within thirty days after said payment shall become due and demand therefor has been made, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(34), (d) and (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, §346(a)(34), (d), (*l*), 54 Stat. 1167, 1168).

Minor changes in phraseology only were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1422. Fees in naturalization proceedings

Whoever knowingly demands, charges, solicits, collects, or receives, or agrees to charge, solicit, collect, or receive any other or additional fees or moneys in proceedings relating to naturalization or citizenship or the registry of aliens beyond the fees and moneys authorized by law, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(33), (d), (*l*) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(33), (d), (*l*), 54 Stat. 1167, 1168).

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1423. Misuse of evidence of citizenship or naturalization

Whoever knowingly uses for any purpose any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, unlawfully issued or made, or copies or duplicates thereof, showing any person to be naturalized or admitted to be a citizen, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsections (a)(14), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(14), (b), (d), 54 Stat. 1165, 1167).

Section consolidates subsections (a) paragraph (14), (b), (d), and the general punishment provision of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

The reference ''for the purpose of voting'' was omitted as surplusage being embraced in the all-inclusive phrase ''for any purpose.''

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1424. Personation or misuse of papers in naturalization proceedings

Whoever, whether as applicant, declarant, petitioner, witness or otherwise, in any naturalization or citizenship proceeding, knowingly personates another or appears falsely in the name of a deceased person or in an assumed or fictitious name; or

Whoever knowingly and unlawfully uses or attempts to use, as showing naturalization or citizenship of any person, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, or copies or duplicates thereof, issued to another person, or in a fictitious name or in the name of a deceased person—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsection (a) pars. (6)(a), (b), (15), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (6), (15), (b), (d), 54 Stat. 1164, 1165, 1167).

Section consolidates, with minor verbal changes, subsections (a), pars. (6)(a), (b), (15), (b), (d), and the general punishment provision of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 1425. Procurement of citizenship or naturalization unlawfully

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) pars. (2)–(5), (7), (b), and (d) of section 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a), pars. (2)–(5), (7), (b), (d), 54 Stat. 1163, 1164, 1167).

Section consolidates five similar paragraphs, and the punishment provisions of subsection (d) of said section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality, with minor necessary changes in translations and phraseology. Numerous references to aiding and assisting were omitted as unnecessary as such persons are principals under definitive section 2 of this title.

Words ''a certificate of arrival or'' were inserted before ''any certificate'' in subsection (b), so as to remove any doubt as to scope of section.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in last par.

1996—Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to fa-

cilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than five years'' in last par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1426. Reproduction of naturalization or citizenship papers

(a) Whoever falsely makes, forges, alters or counterfeits any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate or documentary evidence of naturalization or citizenship or any order, record, signature, paper or proceeding or any copy thereof, required or authorized by any law relating to naturalization or citizenship or registry of aliens; or

(b) Whoever utters, sells, disposes of or uses as true or genuine, any false, forged, altered, antedated or counterfeited oath, notice, affidavit, certificate of arrival, declaration of intention to become a citizen, certificate or documentary evidence of naturalization or citizenship, or any order, record, signature or other instrument, paper or proceeding required or authorized by any law relating to naturalization or citizenship or registry of aliens, or any copy thereof, knowing the same to be false, forged, altered, antedated or counterfeited; or

(c) Whoever, with intent unlawfully to use the same, possesses any false, forged, altered, antedated or counterfeited certificate of arrival, declaration of intention to become a citizen, certificate or documentary evidence of naturalization or citizenship purporting to have been issued under any law of the United States, or copy thereof, knowing the same to be false, forged, altered, antedated or counterfeited; or

(d) Whoever, without lawful authority, engraves or possesses, sells or brings into the United States any plate in the likeness or similitude of any plate designed, for the printing of a declaration of intention, or certificate or documentary evidence of naturalization or citizenship; or

(e) Whoever, without lawful authority, brings into the United States any document printed therefrom; or

(f) Whoever, without lawful authority, possesses any blank certificate of arrival, blank declaration of intention or blank certificate of naturalization or citizenship provided by the Immigration and Naturalization Service, with intent unlawfully to use the same; or

(g) Whoever, with intent unlawfully to use the same, possesses a distinctive paper adopted by the proper officer or agency of the United States for the printing or engraving of a declaration of intention to become a citizen, or certificate of naturalization or certificate of citizenship; or

(h) Whoever, without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 767; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) pars. (8)–(12), (16), (17), (20)–(29), (b), (d), (*l*) of section 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a) pars. (8)–(12), (16), (17), (20)–(29), (b), (d), (*l*), 54 Stat. 1164–1168).

Sections consolidates numerous similar paragraphs with necessary changes in phraseology and translations.

References to persons causing, procuring, aiding, abetting, or assisting were omitted as unnecessary, such persons being principals under definitive section 2 of this title.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in last par.

1996—Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than five years'' in last par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1427. Sale of naturalization or citizenship papers

Whoever unlawfully sells or disposes of a declaration of intention to become a citizen, certificate of naturalization, certificate of citizenship or copies or duplicates or other documentary evidence of naturalization or citizenship, shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 767; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) par. (13), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a)(13), (d), 54 Stat. 1165, 1167).

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility''.

1996—Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1428. Surrender of canceled naturalization certificate

Whoever, having in his possession or control a certificate of naturalization or citizenship or a copy thereof which has been canceled as provided by law, fails to surrender the same after at least sixty days' notice by the appropriate court or the Commissioner or Deputy Commissioner of Immigration, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 767; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on subsections (a) par. (31), (b), (d) of section 746 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, ch. 876, § 346(a) par. (31), (b), (d), 54 Stat. 1167).

Subsection (b) of said section 746 of title 8 is the authority for inserting ''or a copy thereof'' after ''citizenship.''

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested, in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2, of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1429. Penalties for neglect or refusal to answer subpena

Any person who has been subpenaed under the provisions of subsection (d) of section 336 of the Immigration and Nationality Act to appear at the final hearing of an application for naturalization, and who shall neglect or refuse to so appear and to testify, if in the power of such person to do so, shall be fined under this title or imprisoned not more than five years, or both.

(Added June 27, 1952, ch. 477, title IV, § 402(b), 66 Stat. 276; amended Pub. L. 97–116, § 18(u)(1), Dec. 29, 1981, 95 Stat. 1621; Pub. L. 101–649, title IV, § 407(c)(21), Nov. 29, 1990, 104 Stat. 5041; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

REFERENCES IN TEXT

Subsection (d) of section 336 of the Immigration and Nationality Act, referred to in text, is classified to section 1447(d) of Title 8, Aliens and Nationality.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1990—Pub. L. 101–649 substituted ''an application'' for ''a petition''.

1981—Pub. L. 97–116 substituted ''subsection (d)'' for ''subsection (e)''.

EFFECTIVE DATE OF 1990 AMENDMENT; SAVINGS PROVISIONS

Amendment by Pub. L. 101–649 effective Nov. 29, 1990, with general savings provisions, see section 408(a)(3) and (d) of Pub. L. 101–649, set out as a note under section 1421 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of Title 8, Aliens and Nationality.

CHAPTER 71—OBSCENITY

Sec.
1460. Possession with intent to sell, and sale, of obscene matter on Federal property.

Sec.
1461. Mailing obscene or crime-inciting matter.
1462. Importation or transportation of obscene matters.
1463. Mailing indecent matter on wrappers or envelopes.
1464. Broadcasting obscene language.
1465. Transportation of obscene matters for sale or distribution.[1]
1466. Engaging in the business of selling or transferring obscene matter.
1466A. Obscene visual representations of the sexual abuse of children.
1467. Criminal forfeiture.
1468. Distributing obscene material by cable or subscription television.
1469. Presumptions.
1470. Transfer of obscene material to minors.

AMENDMENTS

2003—Pub. L. 108–21, title V, § 504(b), Apr. 30, 2003, 117 Stat. 682, added item 1466A.

1998—Pub. L. 105–314, title IV, § 401(b), Oct. 30, 1998, 112 Stat. 2979, added item 1470.

1988—Pub. L. 100–690, title VII, §§ 7521(b), (f)[(e)], 7523(b), 7526(b), Nov. 18, 1988, 102 Stat. 4489, 4490, 4502, 4503, added items 1460 and 1466 to 1469.

1955—Act June 28, 1955, ch. 190, § 4, 69 Stat. 184, added item 1465.

1950—Act May 27, 1950, ch. 214, § 2, 64 Stat. 194, substituted ''matters'' for ''literature'' in item 1462.

§ 1460. Possession with intent to sell, and sale, of obscene matter on Federal property

(a) Whoever, either—

(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

(2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term ''visual depiction'' includes undeveloped film and videotape but does not include mere words.

(Added Pub. L. 100–690, title VII, § 7526(a), Nov. 18, 1988, 102 Stat. 4503; amended Pub. L. 101–647, title III, § 323(c), Nov. 29, 1990, 104 Stat. 4819.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647, § 323(c)(1), struck out ''or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct,'' after ''visual depiction'' in concluding provisions.

Subsec. (b). Pub. L. 101–647, § 323(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For the purposes of this section—

''(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and

''(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title.''

§ 1461. Mailing obscene or crime-inciting matter

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined under this title or imprisoned not more than five years, or both, for the first such offense, and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

The term ''indecent'', as used in this section includes matter of a character tending to incite arson, murder, or assassination.

(June 25, 1948, ch. 645, 62 Stat. 768; June 28, 1955, ch. 190, §§ 1, 2, 69 Stat. 183; Pub. L. 85–796, § 1, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91–662, §§ 3, 5(b), 6(3), Jan. 8, 1971, 84 Stat. 1973, 1974; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 334 (Mar. 4, 1909, ch. 321, § 211, 35 Stat. 1429 [1129]; Mar. 4, 1911, ch. 241, § 2, 36 Stat. 1339).

The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.

In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word ''adapted'' as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase ''designed, adapted or intended'' as requiring ''an intent on the part of the send-

[1] Section catchline amended by Pub. L. 109–248 without corresponding amendment of chapter analysis.

er that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes.'' The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything ''adapted,'' in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, ''even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons.'' In *United States v. Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis v. United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation v. C. I. Lee & Co., supra*, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States v. One Package*, C.C.A. 1936, 86 F. 2d 737.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322, in eighth par., substituted ''fined under this title'' for ''fined not more than $5,000'' after ''thereof, shall be'' and for ''fined not more than $10,000'' after ''offense, and shall be''.

1971—Pub. L. 91–662, § 3(1), in second par., struck out ''preventing conception or'' before ''producing abortion''.

Pub. L. 91–662, § 3(1), in third par., struck out ''preventing conception or'' after ''apply it for''.

Pub. L. 91–662, § 3(2), (3), in fourth par., substituted ''means abortion may be produced'' for ''means conception may be prevented or abortion produced''.

Pub. L. 91–662, § 3(1), in fifth par., struck out ''preventing conception or'' after ''applied for''.

Pub. L. 91–662, § 6(3), in eighth par., inserted ''or section 3001(e) of title 39'' after ''this section''. Section 5(b) of Pub. L. 91–662 inserted reference to section 4001(d) of Title 39, The Postal Service, which reflected provisions of Title 39 prior to the effective date of Title 39, Postal Service, as enacted by the Postal Reorganization Act. Said section 4001(d) was repealed by section 6(2) of Pub. L. 91–662, effective on the date that the Board of Governors of the Postal Service establish as the effective date for section 3001 of Title 39, Postal Service.

1958—Pub. L. 85–796 provided in eighth par. for continuing offenses by use of the mails instead of by deposits for mailing and for punishment for subsequent offenses.

1955—Act June 28, 1955, § 1, in first par., substituted ''indecent, filthy or vile article, matter, thing, device or substance'' for ''or filthy book, pamphlet, picture paper, letter, writing, print, or other publication of an indecent character''.

Act June 28, 1955, § 2, struck out fifth par., which read as follows: ''Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device or substance; and''.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by sections 3 and 5(b) of Pub. L. 91–662 effective Jan. 9, 1971, see section 7 of Pub. L. 91–662, set out as a note under section 552 of this title.

Section 6 of Pub. L. 91–662 provided that the amendment made by that section is effective on date that Board of Governors of United States Postal Service establishes as the effective date for section 3001 of title 39 of the United States Code, as enacted by the Postal Reorganization Act.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

Pub. L. 90–100, Oct. 3, 1967, 81 Stat. 253, as amended by Pub. L. 90–350, title V, § 502, June 19, 1968, 82 Stat. 197; Pub. L. 91–74, title V, § 503, Sept. 29, 1969, 83 Stat. 123, provided for establishment of Commission on Obscenity and Pornography, its membership, compensation of members, powers, functions, and duties of Commission, required Commission to report to President and to Congress its findings and recommendations no later than Sept. 30, 1970, and provided for its termination ten days following submission of report.

§ 1462. Importation or transportation of obscene matters

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or interactive computer service (as defined in section 230(e)(2)[1] of the Communications Act of 1934), for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes or receives, from such express company or other common carrier or interactive computer service (as defined in section 230(e)(2)[1] of the Communications Act of 1934) any matter or thing the carriage or importation of which is herein made unlawful—

Shall be fined under this title or imprisoned not more than five years, or both, for the first such offense and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

(June 25, 1948, ch. 645, 62 Stat. 768; May 27, 1950, ch. 214, § 1, 64 Stat. 194; Pub. L. 85–796, § 2, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91–662, § 4, Jan. 8, 1971, 84 Stat. 1973; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–104, title V, § 507(a), Feb. 8, 1996, 110 Stat. 137.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 396 (Mar. 4, 1909, ch. 321, § 245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060).

[1] See References in Text note below.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''in interstate or foreign commerce'' were substituted for ten lines of text without loss of meaning. (See definitive section 10 of this title.)

(See reviser's note under section 1461 of this title.)

Minor changes in phraseology were made.

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105–277, div. C, title XIV, § 1404(a)(2), Oct. 21, 1998, 112 Stat. 2681–739, and is classified to section 230(f)(2) of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

1996—Pub. L. 104–104, § 507(a)(1), inserted ''or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)'' after ''carrier'' in first par.

Pub. L. 104–104, § 507(a)(2), in second par., inserted ''or receives,'' after ''takes'', ''or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)'' after ''common carrier'', and ''or importation'' after ''carriage''.

1994—Pub. L. 103–322, in last par., substituted ''fined under this title'' for ''fined not more than $5,000'' after ''Shall be'' and for ''fined not more than $10,000'' after ''and shall be''.

1971—Pub. L. 91–662 struck out ''preventing conception, or'' before ''producing abortion''.

1958—Pub. L. 85–796 substituted ''uses'' for ''deposits with'' in opening par., ''carriage of which'' for ''depositing of which for carriage'' in penultimate par., and inserted penalty provisions for subsequent offenses in last par.

1950—Act May 27, 1950, brought within scope of section the importation or transportation of any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or think capable of producing sound.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–662 effective Jan. 9, 1971, see section 7 of Pub. L. 91–662, set out as a note under section 552 of this title.

CONSTRUCTION OF 1996 AMENDMENT

Section 507(c) of Pub. L. 104–104 provided that: ''The amendments made by this section [amending this section and section 1465 of this title] are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in United States v. Alpers, 338 U.S. 680 (1950).''

§ 1463. Mailing indecent matter on wrappers or envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 91–375, § 6(j)(13), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 335 (Mar. 4, 1909, ch. 321, § 212, 35 Stat. 1129).

Said section 335 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 1718 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 326 and 501 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radio-telegraphs (June 19, 1934, ch. 652, §§ 326, 501, 48 Stat. 1091, 1100).

Section consolidates last sentence of section 326 with penalty provision of section 501 both of title 47, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Section 501 of title 47, U.S.C., 1940 ed., is to remain, also, in said title 47, as it relates to other sections therein.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

OBSCENE LANGUAGE; PROMULGATION OF REGULATIONS

Federal Communications Commission to promulgate regulations by Jan. 31, 1989, in accordance with this section to enforce this section on a 24 hour per day basis, see section 608 of Pub. L. 100–459, set out as a note under section 303 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

§ 1465. Production and transportation of obscene matters for sale or distribution

Whoever knowingly produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly transports or travels in, or uses a facility or means of, interstate or foreign commerce or

an interactive computer service (as defined in section 230(e)(2)[1] of the Communications Act of 1934) in or affecting such commerce, for the purpose of sale or distribution of any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined under this title or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

(Added June 28, 1955, ch. 190, § 3, 69 Stat. 183; amended Pub. L. 100–690, title VII, §§ 7521(c), 7522(b), Nov. 18, 1988, 102 Stat. 4489, 4494; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–104, title V, § 507(b), Feb. 8, 1996, 110 Stat. 137; Pub. L. 109–248, title V, § 506(a), July 27, 2006, 120 Stat. 630.)

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105–277, div. C, title XIV, § 1404(a)(2), Oct. 21, 1998, 112 Stat. 2681–739, and is classified to section 230(f)(2) of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

2006—Pub. L. 109–248, § 506(a)(3), inserted comma after ''in or affecting such commerce'' in first par.

Pub. L. 109–248, § 506(a)(2), which directed amendment of this section by inserting ''produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly'' after ''whoever knowingly'' and before ''transports or travels in'', was executed by making the insertion after ''Whoever knowingly'' and before ''transports or travels in'' in first par., to reflect the probable intent of Congress.

Pub. L. 109–248, § 506(a)(1), inserted ''Production and'' before ''transportation'' in section catchline.

1996—Pub. L. 104–104, in first par., substituted ''transports or travels in, or uses a facility or means of,'' for ''transports in'', inserted ''or an interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) in or affecting such commerce'' before ''for the purpose of sale'', and substituted ''of'' for '', or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce,'' before ''any obscene, lewd, lascivious, or filthy book''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

1988—Pub. L. 100–690, § 7521(c), inserted '', or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce,'' after ''distribution'' in first par.

Pub. L. 100–690, § 7522(b), struck out last par. which read as follows: ''When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.''

CONSTRUCTION OF 1996 AMENDMENT

Amendment by Pub. L. 104–104 not to be interpreted as limiting or repealing any prohibition contained in sections 1462 and 1465 of this title, before such amendment, see section 507(c) of Pub. L. 104–104, set out as a note under section 1462 of this title.

§ 1466. Engaging in the business of selling or transferring obscene matter

(a) Whoever is engaged in the business of producing with intent to distribute or sell, or selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term ''engaged in the business'' means that the person who produces[1] sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the production, selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is ''engaged in the business'' as defined in this subsection.

(Added Pub. L. 100–690, title VII, § 7521(a), Nov. 18, 1988, 102 Stat. 4489; amended Pub. L. 101–647, title XXXV, § 3548, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 109–248, title V, § 506(b), July 27, 2006, 120 Stat. 630.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 506(b)(1), inserted ''producing with intent to distribute or sell, or'' before ''selling or transferring obscene matter,''.

Subsec. (b). Pub. L. 109–248, § 506(b)(3), which directed amendment of subsec. (b) by inserting ''production,'' before ''selling or transferring or offering to sell or transfer such material.'', was executed by making the insertion before ''selling or transferring or offering to sell or transfer such material be'', to reflect the probable intent of Congress.

Pub. L. 109–248, § 506(b)(2), inserted ''produces'' before ''sells or transfers or offers to sell or transfer obscene matter''.

1990—Subsec. (b). Pub. L. 101–647 substituted ''this section'' for ''this subsection'' and ''this subsection'' for ''subsection (b)''.

§ 1466A. Obscene visual representations of the sexual abuse of children

(a) IN GENERAL.—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with

[1] See References in Text note below.

[1] So in original. Probably should be followed by a comma.

intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

(b) ADDITIONAL OFFENSES.—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

(c) NONREQUIRED ELEMENT OF OFFENSE.—It is not a required element of any offense under this section that the minor depicted actually exist.

(d) CIRCUMSTANCES.—The circumstance referred to in subsections (a) and (b) is that—

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (b) that the defendant—

(1) possessed less than 3 such visual depictions; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(f) DEFINITIONS.—For purposes of this section—

(1) the term ''visual depiction'' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term ''sexually explicit conduct'' has the meaning given the term in section 2256(2)(A) or 2256(2)(B); and

(3) the term ''graphic'', when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

(Added Pub. L. 108–21, title V, § 504(a), Apr. 30, 2003, 117 Stat. 680.)

SENTENCING GUIDELINES

Pub. L. 108–21, title V, § 504(c), Apr. 30, 2003, 117 Stat. 682, provided that:

''(1) CATEGORY.—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

''(2) RANGES.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).''

REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 108–21, title V, § 513(b), Apr. 30, 2003, 117 Stat. 685, provided that:

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [Apr. 30, 2003], and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 or section 1466A of title 18, United States Code.

''(2) CONTENTS.—The report required under paragraph (1) shall include—

''(A) an evaluation of the prosecutions brought under chapter 110 or section 1466A of title 18, United States Code;

''(B) an outcome-based measurement of performance; and

''(C) an analysis of the technology being used by the child pornography industry.''

§ 1467. Criminal forfeiture

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in—

(1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

(b) The provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), with the exception of subsections (a) and (d), shall apply to the criminal forfeiture of property pursuant to subsection (a).

(c) Any property subject to forfeiture pursuant to subsection (a) may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46 of this title.

(Added Pub. L. 100–690, title VII, § 7522(a), Nov. 18, 1988, 102 Stat. 4490; amended Pub. L. 101–647, title XXXV, § 3549, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 109–248, title V, § 505(a), July 27, 2006, 120 Stat. 629.)

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–248, § 505(a)(1), substituted period at end for '', if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.''

Subsecs. (b) to (n). Pub. L. 109–248, § 505(a)(2), added subsecs. (b) and (c) and struck out former subsecs. (b) to (n) which related, respectively, to third party transfers, protective orders, warrant of seizure, order of forfeiture, execution of order, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, depositions, third party interests, construction of section, and substitute assets.

1990—Subsec. (h)(4). Pub. L. 101–647 substituted ''under section 616 of the Tariff Act of 1930'' for ''in accordance with the provisions of section 1616, title 19, United States Code''.

§ 1468. Distributing obscene material by cable or subscription television

(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

(b) As used in this section, the term ''distribute'' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.

(Added Pub. L. 100–690, title VII, § 7523(a), Nov. 18, 1988, 102 Stat. 4501.)

REFERENCES IN TEXT

The Cable Communications Policy Act of 1984, referred to in subsec. (c), is Pub. L. 98–549, Oct. 30, 1984, 98 Stat. 2779, which is classified principally to subchapter V–A (§ 521 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 609 of Title 47 and Tables.

§ 1469. Presumptions

(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.

(Added Pub. L. 100–690, title VII, § 7521(d), Nov. 18, 1988, 102 Stat. 4489.)

§ 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

(Added Pub. L. 105–314, title IV, § 401(a), Oct. 30, 1998, 112 Stat. 2979.)

STUDY ON LIMITING AVAILABILITY OF PORNOGRAPHY ON INTERNET

Pub. L. 105–314, title IX, § 901, Oct. 30, 1998, 112 Stat. 2991, provided that:

''(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Oct. 30, 1998], the Attorney General shall request that the National Academy of Sciences, acting through its National Research Council, enter into a contract to conduct a study of computer-based technologies and other approaches to the problem of the availability of pornographic material to children on the Internet, in order to develop possible amendments to Federal criminal law and other law enforcement techniques to respond to the problem.

''(b) CONTENTS OF STUDY.—The study under this section shall address each of the following:

''(1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic images.

''(2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic images.

''(3) Any inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic images.

''(4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic images.

''(c) FINAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a final report of the study under this section, which report shall—

''(1) set forth the findings, conclusions, and recommendations of the Council; and

''(2) be submitted by the Committees on the Judiciary of the House of Representatives and the Senate to relevant Government agencies and committees of Congress.''

CHAPTER 73—OBSTRUCTION OF JUSTICE

Sec.
1501. Assault on process server.
1502. Resistance to extradition agent.
1503. Influencing or injuring officer or juror generally.
1504. Influencing juror by writing.
1505. Obstruction of proceedings before departments, agencies, and committees.
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1507. Picketing or parading.
1508. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting.
1509. Obstruction of court orders.
1510. Obstruction of criminal investigations.
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1512. Tampering with a witness, victim, or an informant.
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1514. Civil action to restrain harassment of a victim or witness.
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1515. Definitions for certain provisions; general provision.
1516. Obstruction of Federal audit.
1517. Obstructing examination of financial institution.
1518. Obstruction of criminal investigations of health care offenses.
1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.
1520. Destruction of corporate audit records.

AMENDMENTS

2002—Pub. L. 107–204, title VIII, §§802(b), 806(b), July 30, 2002, 116 Stat. 801, 804, added items 1514A, 1519, and 1520.

1996—Pub. L. 104–191, title II, §245(b), Aug. 21, 1996, 110 Stat. 2018, added item 1518.

1990—Pub. L. 101–647, title XXV, §2503(b), Nov. 29, 1990, 104 Stat. 4861, added item 1517.

1988—Pub. L. 100–690, title VII, §§7030, 7078(b), Nov. 18, 1988, 102 Stat. 4398, 4406, inserted ''; general provision'' in item 1515 and added item 1516.

1982—Pub. L. 97–291, §4(b), Oct. 12, 1982, 96 Stat. 1253, substituted ''or juror'' for '', juror or witness'' after ''officer'' in item 1503, and added items 1512, 1513, 1514, and 1515.

1970—Pub. L. 91–452, title VIII, §802(b), Oct. 15, 1970, 84 Stat. 937, added item 1511.

1967—Pub. L. 90–123, §1(b), Nov. 3, 1967, 81 Stat. 362, added item 1510.

1962—Pub. L. 87–664, §6(b), Sept. 19, 1962, 76 Stat. 552, substituted ''Obstruction of proceedings before departments, agencies, and committees'' for ''Influencing or injuring witness before agencies and committees'' in item 1505.

1960—Pub. L. 86–449, title I, §102, May 6, 1960, 74 Stat. 86, added item 1509.

1956—Act Aug. 2, 1956, ch. 879, §2, 70 Stat. 936, added item 1508.

1950—Act Sept. 23, 1950, ch. 1024, title I, §31(b), 64 Stat. 1019, added item 1507.

§ 1501. Assault on process server

Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States magistrate judge; or

Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

Shall, except as otherwise provided by law, be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, §330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §245 (Mar. 4, 1909, ch. 321, §140, 35 Stat. 1114).

The phrase ''Except as otherwise expressly provided by law'' was inserted because sections 2231, 2232, and 2233 of this title provide greater penalties for obstructing service of search warrants.

Mandatory provisions were rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $300'' in last par.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''United States magistrate'' substituted for ''United States commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–204, title VIII, §801, July 30, 2002, 116 Stat. 800, provided that: ''This title [enacting sections 1348, 1514A, 1519, and 1520 of this title, amending section 523 of Title 11, Bankruptcy, and section 1658 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 994 and 1658 of Title 28] may be cited as the 'Corporate and Criminal Fraud Accountability Act of 2002'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–291, §1, Oct. 12, 1982, 96 Stat. 1248, provided: ''That this Act [enacting sections 1512 to 1515, 3579, and

3580 of this title, amending sections 1503, 1505, 1510, and 3146 of this title and Rule 32 of the Federal Rules of Civil Procedure, and enacting provisions set out as notes under sections 1512 and 3579 of this title] may be cited as the 'Victim and Witness Protection Act of 1982'.''

§ 1502. Resistance to extradition agent

Whoever knowingly and willfully obstructs, resists, or opposes an extradition agent of the United States in the execution of his duties, shall be fined under this title or imprisoned not more than one year, or both.

(June 24, 1948, ch. 645, 62 Stat. 769; Pub. L. 103–322, title XXXIII, § 330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 661 (R.S. 5277).

Said section 661 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 752 of this title.

Words ''an extradition agent of the United States'' were substituted for ''such agent'' which was referred to in sections 3182 et seq. of this title.

A fine of ''$300'' was substituted for ''$1,000'' as the mandatory maximum to harmonize with similar offenses in this chapter. (See section 1501 of this title.)

Punishment provision was rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $300''.

§ 1503. Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 97–291, § 4(c), Oct. 12, 1982, 96 Stat. 1253; Pub. L. 103–322, title VI, § 60016, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 1974, 2147; Pub. L. 104–214, § 1(3), Oct. 1, 1996, 110 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 241 (Mar. 4, 1909, ch. 321, § 135, 35 Stat. 1113; June 8, 1945, ch. 178, § 1, 59 Stat. 234).

The phrase ''other committing magistrate'' was substituted for ''officer acting as such commissioner'' in order to clarify meaning.

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–214 inserted at end ''If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.''

1994—Pub. L. 103–322, § 330016(1)(K), which directed the substitution of ''fined under this title'' for ''fined not more than $5,000'', could not be executed because the words ''fined not more than $5,000'' did not appear in text subsequent to amendment by Pub. L. 103–322, § 60016. See below.

Pub. L. 103–322, § 60016, designated existing provisions as subsec. (a), substituted ''magistrate judge'' for ''commissioner'' in two places and ''punished as provided in subsection (b)'' for ''fined not more than $5,000 or imprisoned not more than five years, or both'', and added subsec. (b).

1982—Pub. L. 97–291, § 4(c)(1), substituted ''or juror'' for '', juror or witness'' after ''officer'' in section catchline.

Pub. L. 97–291, § 4(c)(2), (3), substituted in text ''grand'' for ''witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand'' after ''or impede any'', and struck out ''injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or'' after ''discharge of his duty, or''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–291 effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as an Effective Date note under section 1512 of this title.

§ 1504. Influencing juror by writing

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

(June 25, 1948, ch. 645, 62 Stat. 770; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 243 (Mar. 4, 1909, ch. 321, § 137, 35 Stat. 1113).

Last paragraph was added to remove the possibility that a proper request to appear before a grand jury might be construed as a technical violation of this section.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770; Pub. L. 87–664, § 6(a), Sept. 19, 1962, 76 Stat. 551; Pub. L. 91–452, title IX, § 903, Oct. 15, 1970, 84 Stat. 947; Pub. L. 94–435, title I, § 105, Sept. 30, 1976, 90 Stat. 1389; Pub. L. 97–291, § 4(d), Oct. 12, 1982, 96 Stat. 1253; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 108–458, title VI, § 6703(a), Dec. 17, 2004, 118 Stat. 3766.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 241a, (Mar. 4, 1909, ch. 321, § 135a, as added Jan. 13, 1940, ch. 1, 54 Stat. 13; June 8, 1945, ch. 178, § 2, 59 Stat. 234).

Word ''agency'' was substituted for the words ''independent establishment, board, commission'' in two instances to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

REFERENCES IN TEXT

The Antitrust Civil Process Act, referred to in text, is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

AMENDMENTS

2004—Pub. L. 108–458, which directed amendment of the third undesignated paragraph of this section by substituting ''be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both'' for ''be fined under this title or imprisoned not more than 5 years, or both'', was executed by making the substitution for ''be fined under this title or imprisoned not more than five years, or both'', to reflect the probable intent of Congress.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

1982—Pub. L. 97–291 struck out first two paragraphs which provided, respectively, that whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavored to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress, and whoever injured any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein, would be subject to the penalty set forth in the last paragraph, and in the fourth paragraph substituted ''any pending'' for ''such'' after ''law under which'', and substituted ''any'' for ''such'' before ''department'' and before ''inquiry''.

1976—Pub. L. 94–435 struck out ''section 1968 of this title'' after ''Antitrust Civil Process Act'', inserted ''withholds, misrepresents'' after ''willfully'', ''covers up'' after ''conceals'', ''answers to written interrogatories, or oral testimony'', after ''any documentary material'', and ''or attempts to do so or solicits another to do so;'' after ''such demand''.

1970—Pub. L. 91–452 inserted reference to section 1968 of this title.

1962—Pub. L. 87–664 substituted section catchline ''Obstruction of proceedings before departments, agencies, and committees'' for ''Influencing or injuring witness before agencies and committees'' and punished the willful removal, concealment, destruction, mutilation, alteration or falsification of documents which were the subject of a demand under the Antitrust Civil Process Act if done with the intent to prevent compliance with a civil investigative demand.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–291 effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as an Effective Date note under section 1512 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–435 effective Sept. 30, 1976, see section 106 of Pub. L. 94–435, set out as a note under section 1311 of Title 15, Commerce and Trade.

§ 1506. Theft or alteration of record or process; false bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 770; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 233 (Mar. 4, 1909, ch. 321, § 127, 35 Stat. 1111).

The term of imprisonment was reduced from 7 to 5 years, to conform the punishment with like ones for similar offenses. (See section 1503 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 1507. Picketing or parading

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

(Added Sept. 23, 1950, ch. 1024, title I, § 31(a), 64 Stat. 1018; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

§ 1508. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting

Whoever knowingly and willfully, by any means or device whatsoever—

(a) records, or attempts to record, the proceedings of any grand or petit jury in any court of the United States while such jury is deliberating or voting; or

(b) listens to or observes, or attempts to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the United States while such jury is deliberating or voting—

shall be fined under this title or imprisoned not more than one year, or both.

Nothing in paragraph (a) of this section shall be construed to prohibit the taking of notes by a grand or petit juror in any court of the United States in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.

(Added Aug. 2, 1956, ch. 879, § 1, 70 Stat. 935; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(f)(13), Oct. 11, 1996, 110 Stat. 3500.)

AMENDMENTS

1996—Pub. L. 104–294 realigned margins for provisions beginning ''shall be fined'' and ending ''one year, or both.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in par. following par. (b).

§ 1509. Obstruction of court orders

Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.

No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime.

(Added Pub. L. 86–449, title I, § 101, May 6, 1960, 74 Stat. 86; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

§ 1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both.

(b)(1) Whoever, being an officer of a financial institution, with the intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that financial institution, or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than 5 years, or both.

(2) Whoever, being an officer of a financial institution, directly or indirectly notifies—

(A) a customer of that financial institution whose records are sought by a grand jury subpoena; or

(B) any other person named in that subpoena;

about the existence or contents of that subpoena or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than one year, or both.

(3) As used in this subsection—

(A) the term ''an officer of a financial institution'' means an officer, director, partner, employee, agent, or attorney of or for a financial institution; and

(B) the term ''subpoena for records'' means a Federal grand jury subpoena or a Department of Justice subpoena (issued under section 3486 of title 18), for customer records that has been served relating to a violation of, or a conspiracy to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1344, 1956, 1957, or chapter 53 of title 31; or

(ii) section 1341 or 1343 affecting a financial institution.

(c) As used in this section, the term ''criminal investigator'' means any individual duly authorized by a department, agency, or armed force of

the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.

(d)(1) Whoever—

(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

(2) As used in paragraph (1), the term ''subpoena for records'' means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.

(e) Whoever, having been notified of the applicable disclosure prohibitions or confidentiality requirements of section 2709(c)(1) of this title, section 626(d)(1) or 627(c)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)(1) or 1681v(c)(1)), section 1114(a)(3)(A) or 1114(a)(5)(D)(i) of the Right to Financial Privacy Act[1] (12 U.S.C. 3414(a)(3)(A) or 3414(a)(5)(D)(i)), or section 802(b)(1) of the National Security Act of 1947 (50 U.S.C. 436(b)(1)), knowingly and with the intent to obstruct an investigation or judicial proceeding violates such prohibitions or requirements applicable by law to such person shall be imprisoned for not more than five years, fined under this title, or both.

(Added Pub. L. 90–123, § 1(a), Nov. 3, 1967, 81 Stat. 362; amended Pub. L. 97–291, § 4(e), Oct. 12, 1982, 96 Stat. 1253; Pub. L. 101–73, title IX, § 962(c), Aug. 9, 1989, 103 Stat. 502; Pub. L. 102–550, title XV, § 1528, Oct. 28, 1992, 106 Stat. 4065; Pub. L. 103–322, title XXXII, § 320604(c), title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2119, 2147; Pub. L. 104–191, title II, § 248(c), Aug. 21, 1996, 110 Stat. 2020; Pub. L. 109–177, title I, § 117, Mar. 9, 2006, 120 Stat. 217.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–177 added subsec. (e).

1996—Subsec. (b)(3)(B). Pub. L. 104–191 which directed the insertion of ''or a Department of Justice subpoena (issued under section 3486 of title 18),'' after ''subpoena'', was executed by making the insertion after ''subpoena'' the second place it appeared to reflect the probable intent of Congress.

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (d). Pub. L. 103–322, § 320604(c), added subsec. (d).

1992—Subsec. (b)(3)(B)(i). Pub. L. 102–550 substituted ''1344, 1956, 1957, or chapter 53 of title 31'' for ''or 1344''.

1989—Subsecs. (b), (c). Pub. L. 101–73 added subsec. (b) and redesignated former subsec. (b) as (c).

1982—Subsec. (a). Pub. L. 97–291 struck out '', misrepresentation, intimidation, or force or threats thereof'' after ''bribery'', and struck out provision applying the penalties provided by this subsection to whoever injured any person in his person or property on account of the giving by such person or any other person of any information relating to a violation of any criminal statute of the United States to any criminal investigator.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–291 effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as an Effective Date note under section 1512 of this title.

[1] So in original. Probably should be followed by ''of 1978''.

§ 1511. Obstruction of State or local law enforcement

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section—

(1) ''illegal gambling business'' means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) ''gambling'' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

(d) Whoever violates this section shall be punished by a fine under this title or imprisonment for not more than five years, or both.

(Added Pub. L. 91–452, title VIII, § 802(a), Oct. 15, 1970, 84 Stat. 936; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–322, title XXXIII, § 330016(2)(C), Sept. 13, 1994, 108 Stat. 2148.)

REFERENCES IN TEXT

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–322 substituted ''fine under this title'' for ''fine of not more than $20,000''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 801 of title VIII of Pub. L. 91–452 provided that: ''The Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.''

PRIORITY OF STATE LAWS

Section 811 of title VIII of Pub. L. 91–452 provided that: ''No provision of this title [enacting this section and section 1955 of this title, amending section 2516 of this title, and enacting provisions set out as notes under this section and section 1955 of this title] indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a state or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession.''

§ 1512. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

[1] So in original.

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(Added Pub. L. 97–291, § 4(a), Oct. 12, 1982, 96 Stat. 1249; amended Pub. L. 99–646, § 61, Nov. 10, 1986, 100 Stat. 3614; Pub. L. 100–690, title VII, § 7029(a), (c), Nov. 18, 1988, 102 Stat. 4397, 4398; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title VI, § 60018, title XXXIII, § 330016(1)(O), (U), Sept. 13, 1994, 108 Stat. 1975, 2148; Pub. L. 104–214, § 1(2), Oct. 1, 1996, 110 Stat. 3017; Pub. L. 104–294, title VI, § 604(b)(31), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 107–204, title XI, § 1102, July 30, 2002, 116 Stat. 807; Pub. L. 107–273, div. B, title III, § 3001(a), (c)(1), Nov. 2, 2002, 116 Stat. 1803, 1804.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–273, § 3001(a)(1)(A), substituted ''as provided in paragraph (3)'' for ''as provided in paragraph (2)'' in concluding provisions.

Subsec. (a)(2). Pub. L. 107–273, § 3001(a)(1)(C), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 107–273, § 3001(a)(1)(B), (D), redesignated par. (2) as (3), added subpars. (B) and (C), and struck out former subpar. (B) which read as follows: ''(B) in the case of an attempt, imprisonment for not more than twenty years.''

Subsec. (b). Pub. L. 107–273, § 3001(a)(2), struck out ''or physical force'' after ''intimidation'' in introductory provisions.

Subsec. (b)(3). Pub. L. 107–273, § 3001(c)(1), inserted ''supervised release,'' after ''probation''.

Subsec. (c). Pub. L. 107–204 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–204 redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 107–273, § 3001(c)(1), inserted ''supervised release,'' after ''probation''.

Subsecs. (e) to (j). Pub. L. 107–204 redesignated former subsecs. (d) to (i) as (e) to (j), respectively.

Subsec. (k). Pub. L. 107–273, § 3001(a)(3), added subsec. (k).

1996—Subsec. (a)(2)(A). Pub. L. 104–294 inserted ''and'' after semicolon at end.

Subsec. (i). Pub. L. 104–214 added subsec. (i).

1994—Subsec. (a)(2)(A). Pub. L. 103–322, § 60018, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(U), substituted ''fined under this title'' for ''fined not more than $250,000'' in concluding provisions.

Subsec. (c). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000'' in concluding provisions.

1988—Subsec. (b). Pub. L. 100–690, § 7029(c), substituted ''threatens, or corruptly persuades'' for ''or threatens''.

Subsec. (h). Pub. L. 100–690, § 7029(a), added subsec. (h).

1986—Subsec. (a). Pub. L. 99–646, § 61(2), (3), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsecs. (b) to (g). Pub. L. 99–646, § 61(1), (3), redesignated former subsec. (a) as (b), inserted '', delay, or prevent'', and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

CHANGE OF NAME

Words ''magistrate judge'' and ''United States magistrate judge'' substituted for ''magistrate'' and ''United States magistrate'', respectively, in subsec. (f)(1) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE

Section 9 of Pub. L. 97–291 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting this section and sections 1513 to 1515, 3579, and 3580 of this title, amending sections 1503, 1505, 1510, and 3146 of this title and Rule 32 of the Federal Rules of Criminal Procedure, and enacting provisions set out as notes under this section and sections 1501 and 3579 of this title] shall take effect on the date of the enactment of this Act [Oct. 12, 1982].

''(b)(1) The amendment made by section 2 of this Act [enacting provisions set out as a note under this section] shall apply to presentence reports ordered to be made on or after March 1, 1983.

''(2) The amendments made by section 5 of this Act [enacting sections 3579 and 3580 of this title] shall apply with respect to offenses occurring on or after January 1, 1983.''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES

Section 2 of Pub. L. 97–291 provided that:

''(a) The Congress finds and declares that:

''(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

''(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

''(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system.

''(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.

''(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed.

''(6) The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory and they must often share the pretrial waiting room with the defendant or his family and friends.

''(7) The victim may lose valuable property to a criminal only to lose it again for long periods of time to Federal law enforcement officials, until the trial and sometimes and [sic] appeals are over; many times that property is damaged or lost, which is particularly stressful for the elderly or poor.

''(b) The Congress declares that the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title] are—

''(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;

''(2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and

''(3) to provide a model for legislation for State and local governments.''

FEDERAL GUIDELINES FOR TREATMENT OF CRIME VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

Section 6 of Pub. L. 97–291, as amended by Pub. L. 98–473, title II, § 1408(b), Oct. 12, 1984, 98 Stat. 2177, provided that:

''(a) Within two hundred and seventy days after the date of enactment of this Act [Oct. 12, 1982], the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title]. In preparing the guidelines the Attorney General shall consider the following objectives:

''(1) SERVICES TO VICTIMS OF CRIME.—Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following—

''(A) availability of crime victim compensation (where applicable);

''(B) community-based victim treatment programs;

''(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

''(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

''(2) NOTIFICATION OF AVAILABILITY OF PROTECTION.—A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation.

''(3) SCHEDULING CHANGES.—All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise.

''(4) PROMPT NOTIFICATION TO VICTIMS OF SERIOUS CRIMES.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of—

''(A) the arrest of an accused;

''(B) the initial appearance of an accused before a judicial officer;

''(C) the release of the accused pending judicial proceedings; and

''(D) proceedings in the prosecution and punishment of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, a hearing to determine a parole release date and the release of the accused from such imprisonment).

''(5) CONSULTATION WITH VICTIM.—The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about—

''(A) dismissal;

''(B) release of the accused pending judicial proceedings;

''(C) plea negotiations; and

''(D) pretrial diversion program.

''(6) SEPARATE WAITING AREA.—Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses.

''(7) PROPERTY RETURN.—Law enforcement agencies and prosecutor should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

''(8) NOTIFICATION TO EMPLOYER.—A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorneys for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain.

''(9) TRAINING BY FEDERAL LAW ENFORCEMENT TRAINING FACILITIES.—Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted.

''(10) GENERAL VICTIM ASSISTANCE.—The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims in court be provided.

''(b) Nothing in this title shall be construed as creating a cause of action against the United States.

''(c) The Attorney General shall assure that all Federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section.''

[Amendment of section 6 of Pub. L. 97–291 by Pub. L. 98–473, set out above, effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98–473, set out as an Effective Date note under section 10601 of Title 42, The Public Health and Welfare.]

§ 1513. Retaliating against a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 20 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e)[2] Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(e)[2] Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(Added Pub. L. 97–291, § 4(a), Oct. 12, 1982, 96 Stat. 1250; amended Pub. L. 103–322, title VI, § 60017, title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 1975, 2148; Pub. L. 104–214, § 1(1), Oct. 1, 1996, 110 Stat. 3017; Pub. L. 107–204, title XI, § 1107(a), July 30, 2002, 116 Stat. 810; Pub. L. 107–273, div. B, title III, § 3001(b), (c)(2), title IV, § 4002(b)(4), Nov. 2, 2002, 116 Stat. 1804, 1807.)

AMENDMENTS

2002—Subsecs. (a)(1)(B), (b)(2). Pub. L. 107–273, § 3001(c)(2), inserted ''supervised release,'' after ''probation''.

Subsec. (d). Pub. L. 107–273, § 4002(b)(4), transferred subsec. (d) to appear after subsec. (c).

Subsec. (e). Pub. L. 107–273, § 3001(b), added subsec. (e) relating to conspiracy to commit any offense under this section.

Pub. L. 107–204 added subsec. (e) relating to taking of action harmful to any person for providing law enforcement officer truthful information relating to commission of offense.

1996—Subsec. (c). Pub. L. 104–214, § 1(1)(B), added subsec. (c) at end.

Pub. L. 104–214, § 1(1)(A), redesignated subsec. (c) as (d).

Subsec. (d). Pub. L. 104–214, § 1(1)(A), redesignated subsec. (c) as (d).

1994—Subsec. (a). Pub. L. 103–322, § 60017(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 103–322, § 330016(1)(U), substituted ''fined under this title'' for ''fined not more than $250,000'' in concluding provisions.

Pub. L. 103–322, § 60017(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103–322, § 60017(1), redesignated subsec. (b) as (c).

EFFECTIVE DATE

Section effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as a note under section 1512 of this title.

[1] So in original.

[2] So in original. Two subsecs. (e) have been enacted.

§ 1514. Civil action to restrain harassment of a victim or witness

(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 10 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for such longer period agreed to by the adverse party.

(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

(E) If on two days notice to the attorney for the Government or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(b)(1) A United States district court, upon motion of the attorney for the Government, shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The attorney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section.

(c) As used in this section—

(1) the term ''harassment'' means a course of conduct directed at a specific person that—

(A) causes substantial emotional distress in such person; and

(B) serves no legitimate purpose; and

(2) the term ''course of conduct'' means a series of acts over a period of time, however short, indicating a continuity of purpose.

(Added Pub. L. 97–291, § 4(a), Oct. 12, 1982, 96 Stat. 1250.)

EFFECTIVE DATE

Section effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as a note under section 1512 of this title.

§ 1514A. Civil action to protect against retaliation in fraud cases

(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(Added Pub. L. 107–204, title VIII, § 806(a), July 30, 2002, 116 Stat. 802.)

§ 1515. Definitions for certain provisions; general provision

(a) As used in sections 1512 and 1513 of this title and in this section—

(1) the term ''official proceeding'' means—

(A) a proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims, or a Federal grand jury;

(B) a proceeding before the Congress;

(C) a proceeding before a Federal Government agency which is authorized by law; or

(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;

(2) the term ''physical force'' means physical action against another, and includes confinement;

(3) the term ''misleading conduct'' means—

(A) knowingly making a false statement;

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

(E) knowingly using a trick, scheme, or device with intent to mislead;

(4) the term ''law enforcement officer'' means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant—

(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

(B) serving as a probation or pretrial services officer under this title;

(5) the term ''bodily injury'' means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary; and

(6) the term ''corruptly persuades'' does not include conduct which would be misleading conduct but for a lack of a state of mind.

(b) As used in section 1505, the term ''corruptly'' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

(c) This chapter does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

(Added Pub. L. 97–291, § 4(a), Oct. 12, 1982, 96 Stat. 1252; amended Pub. L. 99–646, § 50(b), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100–690, title VII, § 7029(b), (d), Nov. 18, 1988, 102 Stat. 4398; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–322, title XXXII, § 320604(a), Sept. 13, 1994, 108 Stat. 2118; Pub. L. 104–292, § 3, Oct. 11, 1996, 110 Stat. 3460; Pub. L. 104–294, title VI, § 604(b)(39), Oct. 11, 1996, 110 Stat. 3509.)

AMENDMENTS

1996—Subsec. (a)(1)(D). Pub. L. 104–294 struck out ''or'' after semicolon at end.

Subsecs. (b), (c). Pub. L. 104–292 added subsec. (b) and redesignated former subsec. (b) as (c).

1994—Subsec. (a)(1)(D). Pub. L. 103–322 added subpar. (D).

1992—Subsec. (a)(1)(A). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1988—Subsec. (a)(1)(A). Pub. L. 100–690, § 7029(b), inserted ''a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Claims Court,'' after ''bankruptcy judge,''.

Subsec. (a)(6). Pub. L. 100–690, § 7029(d), added par. (6).

1986—Pub. L. 99–646 inserted ''; general provision'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a)(1)(A) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective Oct. 12, 1982, see section 9(a) of Pub. L. 97–291, set out as a note under section 1512 of this title.

§ 1516. Obstruction of Federal audit

(a) Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person, entity, or program receiving in excess of $100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract, grant, or cooperative agreement, or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary, or relating to any property that is security for a loan that is made or guaranteed under title V of the Housing Act of 1949, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) For purposes of this section—

(1) the term ''Federal auditor'' means any person employed on a full- or part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States; and

(2) the term ''in any 1 year period'' has the meaning given to the term ''in any one-year period'' in section 666.

(Added Pub. L. 100–690, title VII, § 7078(a), Nov. 18, 1988, 102 Stat. 4406; amended Pub. L. 103–322, title XXXII, § 320609, Sept. 13, 1994, 108 Stat. 2120; Pub. L. 104–294, title VI, § 604(b)(43), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 105–65, title V, § 564, Oct. 27, 1997, 111 Stat. 1420; Pub. L. 106–569, title VII, § 709(b), Dec. 27, 2000, 114 Stat. 3018; Pub. L. 107–273, div. A, title II, § 205(c), Nov. 2, 2002, 116 Stat. 1778.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (a), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 inserted '', entity, or program'' after ''person'' and ''grant, or cooperative agreement,'' after ''subcontract,''.

2000—Subsec. (a). Pub. L. 106–569 inserted ''or relating to any property that is security for a loan that is made or guaranteed under title V of the Housing Act of 1949,'' before ''shall be fined under this title''.

1997—Subsec. (a). Pub. L. 105–65 inserted ''or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary,'' after ''under a contract or subcontract,''.

1996—Subsec. (b)(1). Pub. L. 104–294 inserted ''and'' after semicolon at end.

1994—Subsec. (b). Pub. L. 103–322 substituted ''section—'' for ''section'', inserted ''(1)'' before ''the term'', substituted semicolon for the period at end, and added par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 1517. Obstructing examination of financial institution

Whoever corruptly obstructs or attempts to obstruct any examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of such financial institution shall be fined under this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 101–647, title XXV, § 2503(a), Nov. 29, 1990, 104 Stat. 4861.)

§ 1518. Obstruction of criminal investigations of health care offenses

(a) Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section the term ''criminal investigator'' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.

(Added Pub. L. 104–191, title II, § 245(a), Aug. 21, 1996, 110 Stat. 2017.)

§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub. L. 107–204, title VIII, § 802(a), July 30, 2002, 116 Stat. 800.)

§ 1520. Destruction of corporate audit records

(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.

(Added Pub. L. 107–204, title VIII, § 802(a), July 30, 2002, 116 Stat. 800.)

CHAPTER 74—PARTIAL-BIRTH ABORTIONS

Sec.
1531. Partial-birth abortions prohibited.

§ 1531. Partial-birth abortions prohibited

(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

(b) As used in this section—

(1) the term ''partial-birth abortion'' means an abortion in which the person performing the abortion—

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

(2) the term ''physician'' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: *Provided, however*, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include—

(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(B) statutory damages equal to three times the cost of the partial-birth abortion.

(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical dis-

order, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.

(Added Pub. L. 108–105, §3(a), Nov. 5, 2003, 117 Stat. 1206.)

REFERENCES IN TEXT

The enactment, referred to in subsec. (a), probably means the date of the enactment of Pub. L. 108–105, which enacted this section and was approved Nov. 5, 2003.

SHORT TITLE

Pub. L. 108–105, §1, Nov. 5, 2003, 117 Stat. 1201, provided that: ''This Act [enacting this chapter and provisions set out as a note under this section] may be cited as the 'Partial-Birth Abortion Ban Act of 2003'.''

FINDINGS

Pub. L. 108–105, §2, Nov. 5, 2003, 117 Stat. 1201, provided that: ''The Congress finds and declares the following:

''(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child's body until either the entire baby's head is outside the body of the mother, or any part of the baby's trunk past the navel is outside the body of the mother and only the head remains inside the womb, for the purpose of performing an overt act (usually the puncturing of the back of the child's skull and removing the baby's brains) that the person knows will kill the partially delivered infant, performs this act, and then completes delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

''(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

''(3) In Stenberg v. Carhart, 530 U.S. 914, 932 (2000), the United States Supreme Court opined 'that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an 'undue burden' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the 'health' of the mother.

''(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

''(5) However, substantial evidence presented at the Stenberg trial and overwhelming evidence presented and compiled at extensive congressional hearings, much of which was compiled after the district court hearing in Stenberg, and thus not included in the Stenberg trial record, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed and is outside the standard of medical care.

''(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not 'clearly erroneous'. A finding of fact is clearly erroneous 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'. Anderson v. City of Bessemer City, North Carolina, 470 U.S. 564, 573 (1985). Under this standard, 'if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently'. Id. at 574.

''(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge—the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

''(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the 'clearly erroneous' standard. Rather, the United States Congress is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

''(9) In Katzenbach v. Morgan, 384 U.S. 641 (1966), the Supreme Court articulated its highly deferential review of congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965 [42 U.S.C. 1973b(e)]. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in 'gaining nondiscriminatory treatment in public services,' the Court stated that '[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations * * *. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.'. Id. at 653.

''(10) Katzenbach's highly deferential review of Congress' factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the 'bail-out' provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973c), stating that 'congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose'. City of Rome, Georgia v. U.S., 472 F. Supp. 221 (D.D.C. 1979) aff'd City of Rome, Georgia v. U.S., 446 U.S. 156 (1980).

''(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 [Pub. L. 102–385, see Tables for classification]. See Turner Broadcasting System, Inc. v. Federal Communications Commission, 512 U.S. 622

(1994) (Turner I) and Turner Broadcasting System, Inc. v. Federal Communications Commission, 520 U.S. 180 (1997) (Turner II). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be 'seriously jeopardized'. The Turner I Court recognized that as an institution, 'Congress is far better equipped than the judiciary to ''amass and evaluate the vast amounts of data'' bearing upon an issue as complex and dynamic as that presented here', 512 U.S. at 665–66. Although the Court recognized that 'the deference afforded to legislative findings does ''not foreclose our independent judgment of the facts bearing on an issue of constitutional law,'' ' its 'obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'. Id. at 666.

''(12) Three years later in Turner II, the Court upheld the 'must-carry' provisions based upon Congress' findings, stating the Court's 'sole obligation is ''to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'' ' 520 U.S. at 195. Citing its ruling in Turner I, the Court reiterated that '[w]e owe Congress' findings deference in part because the institution ''is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon'' legislative questions,' id. at 195, and added that it 'owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'. Id. at 196.

''(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a 'health' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, 107th, and 108th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

''(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, 107th, and 108th Congresses, Congress finds and declares that:

''(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: An increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, 'there are very few, if any, indications for * * * other than for delivery of a second twin'; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

''(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

''(C) A prominent medical association has concluded that partial-birth abortion is 'not an accepted medical practice', that it has 'never been subject to even a minimal amount of the normal medical practice development,' that 'the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,' and that 'there is no consensus among obstetricians about its use'. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is 'ethically wrong,' and 'is never the only appropriate procedure'.

''(D) Neither the plaintiff in Stenberg v. Carhart, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

''(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a woman.

''(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

''(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

''(H) Based upon Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child 'in a state of being born and before actual birth,' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a 'person' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a 'person'. Thus, the government has a heightened interest in protecting the life of the partially-born child.

''(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are 'ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb'. According to this medical association, the ' ''partial birth'' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body'.

''(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of

the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children—obstetricians who preserve and protect the life of the mother and the child—and instead uses those techniques to end the life of the partially-born child.

''(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

''(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

''(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

''(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.

''(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.''

CHAPTER 75—PASSPORTS AND VISAS

Sec.
1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
1546. Fraud and misuse of visas, permits, and other documents.
1547. Alternative imprisonment maximum for certain offenses.

AMENDMENTS

1994—Pub. L. 103–322, title XIII, § 130009(b), Sept. 13, 1994, 108 Stat. 2030, added item 1547.

1986—Pub. L. 99–603, title I, § 103(b), Nov. 6, 1986, 100 Stat. 3380, amended item 1546 generally, striking out ''entry'' before ''documents''.

§ 1541. Issuance without authority

Whoever, acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person whomsoever; or

Whoever, being a consular officer authorized to grant, issue, or verify passports, knowingly and willfully grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not—

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 771; Pub. L. 103–322, title XIII, § 130009(a)(1), title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2030, 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 104–294, title VI, § 607(n), Oct. 11, 1996, 110 Stat. 3512; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on section 219 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. 4078; June 14, 1902, ch. 1088, § 3, 32 Stat. 386).

The venue provision, which followed the punishment provisions, was omitted as covered by section 3238 of this title.

Changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in third par.

1996—Pub. L. 104–294, § 607(n)(1), struck out ''or possession'' after ''or a State'' in first par.

Pub. L. 104–294, § 607(n)(2), added last par. defining ''State'' for purposes of this section.

Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than 10 years'' in third par.

1994—Pub. L. 103–322, § 330016(1)(G), which directed the amendment of this section by substituting ''under this title'' for ''not more than $500'', could not be executed because the words ''not more than $500'' did not appear in text subsequent to amendment by Pub. L. 103–322, § 130009(a)(1). See below.

Pub. L. 103–322, § 130009(a)(1), substituted ''under this title, imprisoned not more than 10 years'' for ''not more than $500 or imprisoned not more than one year'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1542. False statement in application and use of passport

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 771; Pub. L. 103–322, title XIII, § 130009(a)(2), title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2030, 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on section 220 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 2, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Mandatory-punishment provision was rephrased in the alternative.

Punishment of five years' imprisonment was substituted for ''ten years'' to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in last par.

1996—Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than 10 years'' in last par.

1994—Pub. L. 103–322, § 330016(1)(I), which directed the amendment of this section by substituting ''under this title'' for ''not more than $2,000'', could not be executed because the words ''not more than $2,000'' did not appear in text subsequent to amendment by Pub. L. 103–322, § 130009(a)(2). See below.

Pub. L. 103–322, § 130009(a)(2), substituted ''under this title, imprisoned not more than 10 years'' for ''not more than $2,000 or imprisoned not more than five years'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1543. Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same—

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 771; Pub. L. 103–322, title XIII, § 130009(a)(2), title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2030, 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on section 222 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 4, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Mandatory-punishment provision with authorization for added fine in discretion of court was rephrased in the alternative.

Punishment of five years' imprisonment was substituted for ''ten years'' to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in last par.

1996—Pub. L. 104–208 substituted ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than 10 years'' in last par.

1994—Pub. L. 103–322, § 330016(1)(I), which directed the amendment of this section by substituting ''under this title'' for ''not more than $2,000'', could not be executed because the words ''not more than $2,000'' did not appear in text subsequent to amendment by Pub. L. 103–322, § 130009(a)(2). See below.

Pub. L. 103–322, § 130009(a)(2), substituted ''under this title, imprisoned not more than 10 years'' for ''not more than $2,000 or imprisoned not more than five years'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see

section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1544. Misuse of passport

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 771; Pub. L. 103–322, title XIII, § 130009(a)(2), title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2030, 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

HISTORICAL AND REVISION NOTES

Based on section 221 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (June 15, 1917, ch. 30, title IX, § 3, 40 Stat. 227; Mar. 28, 1940, ch. 72, § 7, 54 Stat. 80).

Mandatory-punishment provision rephrased in the alternative.

Punishment of five years' imprisonment was substituted for "ten years" to conform with other sections embracing offenses of comparable gravity.

The phrase "which said rules shall be printed on the passport" was omitted as inconsistent with administrative practice and because the existing rules are too voluminous to be printed on a passport.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted "to facilitate" for "to facility" in last par.

1996—Pub. L. 104–208 substituted "imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)" for "imprisoned not more than 10 years" in last par.

1994—Pub. L. 103–322, § 330016(1)(I), which directed the amendment of this section by substituting "under this title" for "not more than $2,000", could not be executed because the words "not more than $2,000" did not appear in text subsequent to amendment by Pub. L. 103–322, § 130009(a)(2). See below.

Pub. L. 103–322, § 130009(a)(2), substituted "under this title, imprisoned not more than 10 years" for "not more than $2,000 or imprisoned not more than five years" in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

§ 1545. Safe conduct violation

Whoever violates any safe conduct or passport duly obtained and issued under authority of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 771; Pub. L. 103–322, title XIII, § 130009(a)(3), title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2030, 2147.)

HISTORICAL AND REVISION NOTES

Based on section 251 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse (R.S. 4062).

The punishment provision was rewritten to permit the alternative of a fine of not more than $2,000 or imprisonment, or both, instead of imprisonment and fine "at the discretion of the court", to conform with other sections embracing offenses of comparable gravity.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(I), which directed the amendment of this section by substituting "under this title" for "not more than $2,000", could not be executed because the words "not more than $2,000" did not appear in text subsequent to amendment by Pub. L. 103–322, § 130009(a)(3). See below.

Pub. L. 103–322, § 130009(a)(3), substituted "under this title, imprisoned not more than 10 years" for "not more than $2,000 or imprisoned not more than three years".

§ 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(b) Whoever uses—

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).[1] For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 771; June 27, 1952, ch. 477, title IV, § 402(a), 66 Stat. 275; Pub. L. 94–550, § 5, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 99–603, title I, § 103(a), Nov. 6, 1986, 100 Stat. 3380; Pub. L. 100–525, § 2(c), Oct. 24, 1988, 102 Stat. 2610; Pub. L. 101–647, title XXXV, § 3550, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 103–322, title XIII, § 130009(a)(4), (5), title XXXIII, § 330011(p), Sept. 13, 1994, 108 Stat. 2030, 2145; Pub. L. 104–208, div. C, title II, §§ 211(a)(2), 214, Sept. 30, 1996, 110 Stat. 3009–569, 3009–572; Pub. L. 104–294, title VI, § 607(m), Oct. 11, 1996, 110 Stat. 3512; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

[1] See References in Text note below.

HISTORICAL AND REVISION NOTES

Based on section 220 of title 8, U.S.C., 1940 ed., Aliens and Nationality (May 26, 1924, ch. 190, § 22, 43 Stat. 165).

Words ''upon conviction thereof'' were omitted as surplusage since punishment can be imposed only after a conviction.

Fine of $10,000 was reduced to $2,000 to conform with sections embracing offences of comparable gravity.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The immigration laws, referred to in subsec. (a), are classified generally to Title 8, Aliens and Nationality. See also section 1101(a)(17) of Title 8.

Section 274A(b) of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1324a(b) of Title 8.

Title V of the Organized Crime Control Act of 1970, referred to in subsec. (c), is title V of Pub. L. 91–452, Oct. 15, 1970, 84 Stat. 933, which was set out as a note preceding section 3481 of this title, and was repealed by Pub. L. 98–473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163. See section 3521 et seq. of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 substituted ''to facilitate'' for ''to facility'' in concluding par.

1996—Subsec. (a). Pub. L. 104–208 substituted ''which contains any such false statement or which fails to contain any reasonable basis in law or fact'' for ''containing any such false statement'' in fourth par. and ''imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facility such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)'' for ''imprisoned not more than 10 years'' in concluding par.

Subsec. (c). Pub. L. 104–294 inserted at end ''For purposes of this section, the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''

1994—Subsec. (a). Pub. L. 103–322, § 330011(p), amended directory language of Pub. L. 101–647, § 3550. See 1990 Amendment note below.

Pub. L. 103–322, § 130009(a)(4), substituted ''10 years'' for ''five years'' in concluding par.

Subsec. (b). Pub. L. 103–322, § 130009(a)(5), in concluding provisions, substituted ''under this title, imprisoned not more than 5 years'' for ''in accordance with this title, or imprisoned not more than two years''.

1990—Subsec. (a). Pub. L. 101–647, § 3550, as amended by Pub. L. 103–322, § 330011(p), substituted ''Shall be fined under this title'' for ''Shall be fined in accordance with this title'' in concluding par.

1988—Pub. L. 100–525 amended Pub. L. 99–603. See 1986 Amendment note below.

1986—Pub. L. 99–603, as amended by Pub. L. 100–525, substituted ''other documents'' for ''other entry documents'' in section catchline, designated existing provisions as subsec. (a), substituted ''permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States'' for ''or other document required for entry into the United States'' and for ''or document'' in

first par., substituted ''in accordance with this title'' for ''not more than $2,000'' in concluding par., and added subsecs. (b) and (c).

1976—Pub. L. 94–550 inserted '', or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true,'' after ''Whoever knowingly makes under oath'' in fourth par.

1952—Act June 27, 1952, made section applicable to entry documents other than visas and permits.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 211(a)(2) of Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 211(c) of Pub. L. 104–208, set out as a note under section 1028 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(p) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3550 of Pub. L. 101–647 took effect.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of Title 8, Aliens and Nationality.

TRANSFER OF FUNCTIONS

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to the inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving the United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, § 2, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees. The transfer was negated by section 1(a)(1), (b) of Pub. L. 93–253, Mar. 16, 1974, 88 Stat. 50, which repealed section 2 of 1973 Reorg. Plan No. 2, eff. July 1, 1973.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1547. Alternative imprisonment maximum for certain offenses

Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter (other than an offense under section 1545)—

(1) if committed to facilitate a drug trafficking crime (as defined in 929(a)) is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 20 years.

(Added Pub. L. 103–322, title XIII, § 130009(a)(6), Sept. 13, 1994, 108 Stat. 2030.)

CHAPTER 77—PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS

Sec.
1581. Peonage; obstructing enforcement.
1582. Vessels for slave trade.
1583. Enticement into slavery.
1584. Sale into involuntary servitude.
1585. Seizure, detention, transportation or sale of slaves.
1586. Service on vessels in slave trade.
1587. Possession of slaves aboard vessel.
1588. Transportation of slaves from United States.
1589. Forced labor.
1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.
1591. Sex trafficking of children or by force, fraud, or coercion.
1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.
1593. Mandatory restitution.
1594. General provisions.
1595. Civil remedy.

HISTORICAL AND REVISION NOTES

It was felt that further revision of this chapter should be considered at an opportune time for the same reasons stated with respect to chapter 81, ''Piracy and Privateering''.

AMENDMENTS

2003—Pub. L. 108–193, §§ 4(a)(4)(B), 5(c)(1), Dec. 19, 2003, 117 Stat. 2878, 2879, substituted ''PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS'' for ''PEONAGE AND SLAVERY'' as chapter heading and added item 1595.

2000—Pub. L. 106–386, div. A, § 112(a)(3), Oct. 28, 2000, 114 Stat. 1489, added items 1589 to 1594.

1949—Act May 24, 1949, ch. 139, § 36, 63 Stat. 95, substituted a semicolon for comma after ''Peonage'' in item 1581.

§ 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

(June 25, 1948, ch. 645, 62 Stat. 772; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 218(a), Sept. 30, 1996, 110 Stat. 3009–573; Pub. L. 106–386, div. A, § 112(a)(1), Oct. 28, 2000, 114 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 444, 445 (Mar. 4, 1909, ch. 321, §§ 269, 270, 35 Stat. 1142).

Section consolidates sections 444 and 445 of said title 18, U.S.C., 1940 ed., with changes in phraseology to amplify and clarify their provisions.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–386 substituted ''20 years'' for ''10 years'' and inserted at end ''If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.''

1996—Subsec. (a). Pub. L. 104–208 substituted ''10 years'' for ''five years''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 218(d) of div. C of Pub. L. 104–208 provided that: ''This section [amending this section and sections 1583, 1584, and 1588 of this title and enacting provisions set out as notes under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].''

§ 1582. Vessels for slave trade

Whoever, whether as master, factor, or owner, builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, in any port or place within the United States, or causes such vessel to sail from any such port or place, for the purpose of procuring any person from any foreign kingdom or country to be transported and held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined under this title or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 772; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 424 (Mar. 4, 1909, ch. 321, § 249, 35 Stat. 1139).

Words ''within the United States'' were substituted for ''within the jurisdiction of the United States''. See section 5 of this title defining ''United States''.

Provision for division of the fine and its recovery by private person was omitted. (See reviser's note under section 1585 of this title.)

Mandatory-punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1583. Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(June 25, 1948, ch. 645, 62 Stat. 772; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 218(a), Sept. 30, 1996, 110 Stat. 3009–573; Pub. L. 106–386, div. A, § 112(a)(1), Oct. 28, 2000, 114 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 443 (Mar. 4, 1909, ch. 321, § 268, 35 Stat. 1141).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in paragraphing of section.

AMENDMENTS

2000—Pub. L. 106–386, in last par., substituted ''20 years'' for ''10 years'' and inserted at end ''If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.''

1996—Pub. L. 104–208 substituted ''10 years'' for ''five years'' in last par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 218(d) of Pub. L. 104–208, set out as a note under section 1581 of this title.

§ 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 218(a), Sept. 30, 1996, 110 Stat. 3009–573; Pub. L. 106–386, div. A, § 112(a)(1), Oct. 28, 2000, 114 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 423, 446 (Mar. 4, 1909, ch. 321, §§ 248, 271, 35 Stat. 1139, 1142).

Sections consolidated with changes of phraseology necessary to effect consolidation.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Provisions as to holding of kidnapped persons were omitted as superseded by section 1201 of this title and original text relating to sale or holding to involuntary servitude retained.

Words ''within the United States'' were substituted for ''within the jurisdiction of the United States''. (See section 5 of this title defining ''United States''.)

The punishment provisions were derived from section 446 of title 18, U.S.C., 1940 ed., as more consistent with other sections of this chapter.

The requirement of section 423 of title 18, U.S.C., 1940 ed., for payment of one-half the fine ''for the use of the person prosecuting the indictment to effect'' was omitted as meaningless. (See also reviser's note under section 1585 of this title.)

Mandatory-punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

2000—Pub. L. 106–386 substituted ''20 years'' for ''10 years'' and inserted at end ''If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.''

1996—Pub. L. 104–208 substituted ''10 years'' for ''five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 218(d) of Pub. L. 104–208, set out as a note under section 1581 of this title.

§ 1585. Seizure, detention, transportation or sale of slaves

Whoever, being a citizen or resident of the United States and a member of the crew or ship's company of any foreign vessel engaged in the slave trade, or whoever, being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore seizes any person with intent to make that person a slave, or decoys, or forcibly brings, carries, receives, confines, detains or transports any person as a slave on board such vessel, or, on board such vessel, offers or attempts to sell any such person as a slave, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from such vessel any person with intent to sell, or having previously sold, such person as a slave, shall be fined under this title or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 421, 422, 425 (Mar. 4, 1909, ch. 321, §§ 246, 247, 250, 35 Stat. 1138, 1139).

Section consolidates and restores three basic sections (act May 25, 1820, ch. 113, §§ 4, 5, 3 Stat. 600, 601; act Apr. 20, 1818, ch. 91, § 4, 3 Stat. 451). As reenacted in the Revised Statutes, such sections were extended and broadened beyond such basic acts. The language at the beginning, ''being a citizen or resident of the United States'', was inserted from said section 425 of title 18, U.S.C., 1940 ed., as enacted originally. While the basic provisions of said sections 421 and 422 are thus broadened, their application as enacted in the 1909 Criminal Code is narrowed.

Designation in said section 421 of title 18, U.S.C., 1940 ed., of offender as a ''pirate'' was omitted as unnecessary. The punishment provision of section 1582 of this title (incorporated by reference in said section 425) has been adopted as consistent with other slave-trade statutes rather than the life-imprisonment penalty contained in said sections 421 and 422 of title 18, U.S.C., 1940 ed. However, the requirement in section 1582 of this title that one-half the fine be for the ''use of the person prosecuting the indictment to effect'' was omitted as meaningless.

Mandatory-punishment provisions were rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1586. Service on vessels in slave trade

Whoever, being a citizen or resident of the United States, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 427 (Mar. 4, 1909, ch. 321, § 252, 35 Stat. 1139).

Mandatory-punishment provisions were rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1587. Possession of slaves aboard vessel

Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering off the coast thereof, and having on board any person for the purpose of selling such person as a slave, or with intent to land such person for such purpose, shall be fined under this title or imprisoned not more than four years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 426 (Mar. 4, 1909, ch. 321, § 251, 35 Stat. 1139).

Mandatory-punishment provisions were rephrased in the alternative.

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 1588. Transportation of slaves from United States

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 218(a), Sept. 30, 1996, 110 Stat. 3009–573.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 428 (Mar. 4, 1909, ch. 321, § 253, 35 Stat. 1139).

Words ''subject to the jurisdiction of'' which appeared twice in this section were omitted and ''within'' substituted, in view of section 5 of this title defining ''United States''.

AMENDMENTS

1996—Pub. L. 104–208 substituted ''10 years'' for ''five years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to offenses occurring on or after Sept. 30, 1996, see section 218(d) of Pub. L. 104–208, set out as a note under section 1581 of this title.

§ 1589. Forced labor

Whoever knowingly provides or obtains the labor or services of a person—

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process,

shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1486.)

§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1487.)

§ 1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In this section:

(1) The term ''commercial sex act'' means any sex act, on account of which anything of value is given to or received by any person.

(2) The term ''coercion'' means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term ''venture'' means any group of two or more individuals associated in fact, whether or not a legal entity.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1487; amended Pub. L. 108–21, title I, § 103(a)(3), Apr. 30, 2003, 117 Stat. 653; Pub. L. 108–193, § 5(a), Dec. 19, 2003, 117 Stat. 2879; Pub. L. 109–248, title II, § 208, July 27, 2006, 120 Stat. 615.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–248, § 208(1), substituted ''and imprisonment for any term of years not less than 15 or for life'' for ''or imprisonment for any term of years or for life, or both''.

Subsec. (b)(2). Pub. L. 109–248, § 208(2)(B), which directed amendment of subsec. (b)(2) by striking out '', or both'', could not be executed because that language did not appear in text subsequent to amendment by Pub. L. 109–248, § 208(2)(A). See below.

Pub. L. 109–248, § 208(2)(A), substituted ''and imprisonment for not less than 10 years or for life'' for ''or imprisonment for not more than 40 years, or both''.

2003—Pub. L. 108–193, § 5(a)(1), inserted comma after ''fraud'' in section catchline.

Subsec. (a)(1). Pub. L. 108–193, § 5(a)(2), substituted ''in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States'' for ''in or affecting interstate commerce''.

Subsec. (b). Pub. L. 108–193, § 5(a)(3), substituted ''the person recruited, enticed, harbored, transported, provided, or obtained'' for ''the person transported'' in pars. (1) and (2).

Subsec. (b)(2). Pub. L. 108–21 substituted ''40'' for ''20''.

§ 1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1488.)

REFERENCES IN TEXT

Section 103 of the Trafficking Victims Protection Act of 2000, referred to in subsecs. (a)(3) and (b), is classified to section 7102 of Title 22, Foreign Relations and Intercourse.

§ 1593. Mandatory restitution

(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) As used in this subsection, the term ''full amount of the victim's losses'' has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(c) As used in this section, the term ''victim'' means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1488.)

REFERENCES IN TEXT

The Fair Labor Standards Act, referred to in subsec. (b)(3), probably means the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§ 1594. General provisions

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(d) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1489.)

§ 1595. Civil remedy

(a) An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a ''criminal action'' includes investigation and prosecution and is pending until final adjudication in the trial court.

(Added Pub. L. 108–193, § 4(a)(4)(A), Dec. 19, 2003, 117 Stat. 2878.)

CHAPTER 79—PERJURY

Sec.
1621. Perjury generally.
1622. Subornation of perjury.
1623. False declarations before grand jury or court.

AMENDMENTS

1970—Pub. L. 91–452, title IV, § 401(b), Oct. 15, 1970, 84 Stat. 933, added item 1623.

§ 1621. Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88–619, § 1, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94–550, § 2, Oct. 18, 1976, 90 Stat. 2534; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 231, 629 (Mar. 4, 1909, ch. 321, § 125, 35 Stat. 1111; June 15, 1917, ch. 30, title XI, § 19, 40 Stat. 230).

Words ''except as otherwise expressly provided by law'' were inserted to avoid conflict with perjury provisions in other titles where the punishment and application vary.

More than 25 additional provisions are in the code. For construction and application of several such sections, see *Behrle v. United States* (App. D.C. 1938, 100 F. 2d 714), *United States v. Hammer* (D.C.N.Y., 1924, 299 F. 1011, affirmed, 6 F. 2d 786), *Rosenthal v. United States* (1918, 248 F. 684, 160 C.C.A. 584), cf. *Epstein v. United States* (1912, 196 F. 354, 116 C.C.A. 174, certiorari denied 32 S. Ct. 527, 223 U.S. 731, 56 L. ed. 634).

Mandatory punishment provisions were rephrased in the alternative.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' in concluding provisions.

1976—Pub. L. 94–550 divided existing provisions into a single introductory word ''Whoever'', par. (1), and closing provisions following par. (2), and added par. (2).

1964—Pub. L. 88–619 inserted at end ''This section is applicable whether the statement or subscription is made within or without the United States.''

§ 1622. Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 232 (Mar. 4, 1909, ch. 321, § 126, 35 Stat. 1111).

The punishment prescribed in section 1621 of this title was substituted for the reference thereto.

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

(Added Pub. L. 91–452, title IV, § 401(a), Oct. 15, 1970, 84 Stat. 932; amended Pub. L. 94–550, § 6, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1976—Subsec. (a). Pub. L. 94–550 inserted ''(or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code)'' after ''under oath''.

CHAPTER 81—PIRACY AND PRIVATEERING

Sec.
1651. Piracy under law of nations.
1652. Citizens as pirates.
1653. Aliens as pirates.
1654. Arming or serving on privateers.
1655. Assault on commander as piracy.
1656. Conversion or surrender of vessel.
1657. Corruption of seamen and confederating with pirates.
1658. Plunder of distressed vessel.
1659. Attack to plunder vessel.
1660. Receipt of pirate property.
1661. Robbery ashore.

HISTORICAL AND REVISION NOTES

In the light of far-reaching developments in the field of international law and foreign relations, the law of piracy is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion. Such a task may be regarded as beyond the scope of this project. The present revision is, therefore, confined to the making of some obvious and patent corrections. It is recommended, however, that at some opportune time in the near future, the subject of piracy be entirely reconsidered and the law bearing on it modified and restated in accordance with the needs of the times.

§ 1651. Piracy under law of nations

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 481 (Mar. 4, 1909, ch. 321, § 290, 35 Stat. 1145).

§ 1652. Citizens as pirates

Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 495 (Mar. 4, 1909, ch. 321, § 304, 35 Stat. 1147).

Words ''Notwithstanding the pretense of such authority,'' were omitted as surplusage.

§ 1653. Aliens as pirates

Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 496 (Mar. 4, 1909, ch. 321, § 305, 35 Stat. 1147.)

Minor change was made in phraseology.

§ 1654. Arming or serving on privateers

Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm or is concerned in furnishing, fitting out, or arming any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property; or

Whoever takes the command of or enters on board of any such vessel with such intent; or

Whoever purchases any interest in any such vessel with a view to share in the profits thereof—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 494 (Mar. 4, 1909, ch. 321, § 303, 35 Stat. 1147).

Reference to persons procuring or aiding was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Mandatory punishment provisions were rephrased in the alternative.

The last sentence relating to venue was omitted as unnecessary in view of the general provision to the same effect in section 3238 of this title.

Minor changes were made in phraseology and arrangement.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

§ 1655. Assault on commander as piracy

Whoever, being a seaman, lays violent hands upon his commander, to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 774.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 485 (Mar. 4, 1909, ch. 321, § 294, 35 Stat. 1146).

A minor verbal change was made.

§ 1656. Conversion or surrender of vessel

Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of $50 or over; or

Whoever yields up such vessel voluntarily to any pirate—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 497 (Mar. 4, 1909, ch. 321, § 306, 35 Stat. 1148).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

§ 1657. Corruption of seamen and confederating with pirates

Whoever attempts to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or any goods, wares, or merchandise, or to turn pirate or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such; or

Whoever furnishes such pirate with any ammunition, stores, or provisions of any kind; or

Whoever fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or

Whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or

Whoever, being a seaman, confines the master of any vessel—

Shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 775; Pub. L. 101–647, title XXV, § 2527(b), Nov. 29, 1990, 104 Stat. 4877; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 498 (Mar. 4, 1909, ch. 321, § 307, 35 Stat. 1148).

Mandatory punishment provisions were rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

1990—Pub. L. 101–647, which directed insertion of ''section 11, 12, or 13 of the Federal Deposit Insurance Act'' after ''consideration of any action brought under'', could not be executed because the words ''consideration of any action brought under'' did not appear.

§ 1658. Plunder of distressed vessel

(a) Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or

Whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger or distress or shipwreck—

Shall be imprisoned not less than ten years and may be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 775; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 488 (Mar. 4, 1909, ch. 321, § 297, 35 Stat. 1146).

Mandatory punishment provision in subsection (a) was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1659. Attack to plunder vessel

Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 775; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 489 (Mar. 4, 1909, ch. 321, § 298, 35 Stat. 1147).

Mandatory punishment provisions were rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1660. Receipt of pirate property

Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 775.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 552 (Mar. 4, 1909, ch. 321, § 334, 35 Stat. 1152).

Provision relating to concealment of pirate and words ''is an accessory after the fact to such robbery or piracy'' were omitted in view of definitive section 3 of this title.

§ 1661. Robbery ashore

Whoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and commits robbery on shore, is a pirate, and shall be imprisoned for life.

(June 25, 1948, ch. 645, 62 Stat. 775.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 493 (Mar. 4, 1909, ch. 321, § 302, 35 Stat. 1147).

Transposition of several words was made.

CHAPTER 83—POSTAL SERVICE

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AMENDMENTS

2000—Pub. L. 106–578, § 4, Dec. 28, 2000, 114 Stat. 3076, struck out item 1738 ''Mailing private identification documents without a disclaimer''.

1994—Pub. L. 103–322, title XXXII, § 320108(b)(2), Sept. 13, 1994, 108 Stat. 2113, added item 1716D.

1990—Pub. L. 101–647, title XII, § 1210(b), (c), title XXXV, § 3552(b), Nov. 29, 1990, 104 Stat. 4832, 4926, struck out item 1714 ''Foreign divorce information as nonmailable'', struck out ''; opening letters'' after ''nonmailable'' in item 1717, and struck out item 1718 ''Libelous matter on wrappers or envelopes''.

1988—Pub. L. 100–690, title VII, § 7090(d), Nov. 18, 1988, 102 Stat. 4410, inserted ''locksmithing devices and'' before ''motor'' in item 1716A.

Pub. L. 100–574, §§ 1(b)(2), 2(b), Oct. 31, 1988, 102 Stat. 2893, added items 1716B and 1716C.

1982—Pub. L. 97–398, § 4(b), Dec. 31, 1982, 96 Stat. 2011, added item 1738.

1970—Pub. L. 91–375, § 6(j)(19)(B), (36)(B), (37)(B), Aug. 12, 1970, 84 Stat. 778, 780, 781, substituted ''officer'' for ''postmaster'' in item 1709 and ''Mailing periodical publications without prepayment of postage'' for ''Affidavits relating to second class mail'' in item 1733, and added items 1735 to 1737.

1968—Pub. L. 90–560, § 2(2), Oct. 12, 1968, 82 Stat. 997, added item 1716A.

Pub. L. 90–384, § 1(b), July 5, 1968, 82 Stat. 292, struck out item 1727 ''Postage accounting''.

1960—Pub. L. 86–682, § 8, Sept. 2, 1960, 74 Stat. 706, added items 1733 and 1734.

§ 1691. Laws governing postal savings

All the safeguards provided by law for the protection of public moneys, and all statutes relating to the embezzlement, conversion, improper handling, retention, use, or disposal of postal and money-order funds, false returns of postal and money-order business, forgery, counterfeiting, alteration, improper use or handling of postal and money-order blanks, forms, vouchers, accounts, and records, and the dies, plates, and engravings therefor, with the punishments provided for such offenses are extended and made applicable to postal savings depository business and funds and related matters.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on section 765 of title 39, U.S.C., 1940 ed., The Postal Service (June 25, 1910, ch. 386, § 15, 36 Stat. 818).

Changes of phraseology were made without change of substance.

§ 1692. Foreign mail as United States mail

Every foreign mail, while being transported across the territory of the United States under authority of law, is mail of the United States, and any depredation thereon, or offense in respect thereto, shall be punishable as though it were United States mail.

(June 25, 1948, ch. 645, 62 Stat. 776.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 359 (Mar. 4, 1909, ch. 321, § 229, 35 Stat. 1134).

Minor changes were made in phraseology and obvious surplusage omitted.

§ 1693. Carriage of mail generally

Whoever, being concerned in carrying the mail, collects, receives, or carries any letter or

packet, contrary to law, shall be fined under this title or imprisoned not more than thirty days, or both.

(June 25, 1948, ch. 645, 62 Stat. 776; Pub. L. 103–322, title XXXIII, § 330016(1)(A), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 303 (Mar. 4, 1909, ch. 321, § 180, 35 Stat. 1123).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $50''.

§ 1694. Carriage of matter out of mail over post routes

Whoever, having charge or control of any conveyance operating by land, air, or water, which regularly performs trips at stated periods on any post route, or from one place to another between which the mail is regularly carried, carries, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such conveyance, or to the current business of the carrier, or to some article carried at the same time by the same conveyance, shall, except as otherwise provided by law, be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 776; Pub. L. 103–322, title XXXIII, § 330016(1)(A), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 307 (Mar. 4, 1909, ch. 321, § 184, 35 Stat. 1124).

Words ''by land, air, or water'' were substituted for ''stagecoach, railway car, steamboat'' with necessary minor changes in phraseology.

Enumeration of persons having charge was omitted as unnecessary.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $50''.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91–375, set out as a note under section 601 of Title 39, Postal Service.

§ 1695. Carriage of matter out of mail on vessels

Whoever carries any letter or packet on board any vessel which carries the mail, otherwise than in such mail, shall, except as otherwise provided by law, be fined under this title or imprisoned not more than thirty days, or both.

(June 25, 1948, ch. 645, 62 Stat. 777; Pub. L. 103–322, title XXXIII, § 330016(1)(A), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 308 (Mar. 4, 1909, ch. 321, § 185, 35 Stat. 1124).

The words ''thirty days'' were substituted for ''one month,'' to make the term of imprisonment more definite and to conform to other comparable sections. (See section 1693 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $50''.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91–375, set out as a note under section 601 of Title 39, Postal Service.

§ 1696. Private express for letters and packets

(a) Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, shall be fined not more than $500 or imprisoned not more than six months, or both.

This section shall not prohibit any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter any mail matter properly stamped.

(b) Whoever transmits by private express or other unlawful means, or delivers to any agent thereof, or deposits at any appointed place, for the purpose of being so transmitted any letter or packet, shall be fined under this title.

(c) This chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only. Whenever more than twenty-five such letters or packets are conveyed or transmitted by such special messenger, the requirements of section 601 of title 39, shall be observed as to each piece.

(June 25, 1948, ch. 645, 62 Stat. 777; Pub. L. 91–375, § 6(j)(14), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(A), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 304, 306, 309 (Mar. 4, 1909, ch. 321, §§ 181, 183, 186, 35 Stat. 1123, 1124; June 22, 1934, ch. 716, 48 Stat. 1207).

Section consolidates sections 304, 306, and 309 of title 18, U.S.C., 1940 ed. Reference to persons causing, procuring, aiding or assisting was omitted as such persons are principals under section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $50''.

1970—Subsec. (c). Pub. L. 91–375 substituted ''section 601 of title 39'' for ''section 500 of title 39''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by

Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

STUDY OF PRIVATE CARRIAGE OF MAIL; REPORTS TO PRESIDENT AND CONGRESS

Congressional findings of need for study and reevaluation of restrictions on private carriage of letters and packets contained in this section and submission by United States Postal Service of reports to President and Congress for modernization of law, regulations, and administrative practices, see section 7 of Pub. L. 91–375, set out as a note under section 601 of Title 39, Postal Service.

§ 1697. Transportation of persons acting as private express

Whoever, having charge or control of any conveyance operating by land, air, or water, knowingly conveys or knowingly permits the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and actually in possession of the same for the purpose of conveying them contrary to law, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 777; Pub. L. 103–322, title XXXIII, § 330016(1)(C), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 305 (Mar. 4, 1909, ch. 321, § 182, 35 Stat. 1124).

Same changes were made as in section 1694 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $150''.

§ 1698. Prompt delivery of mail from vessel

Whoever, having charge or control of any vessel passing between ports or places in the United States, and arriving at any such port or place where there is a post office, fails to deliver to the postmaster or at the post office, within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 777; Pub. L. 103–322, title XXXIII, §§ 330004(10), 330016(1)(C), Sept. 13, 1994, 108 Stat. 2141, 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. § 323 (Mar. 4, 1909, ch. 321, § 200, 35 Stat. 1126).

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(C), substituted ''fined under this title'' for ''fined not more than $150''.

Pub. L. 103–322, § 330004(10), struck out second par. which read as follows: ''For each letter or package so delivered he shall receive two cents unless the same is carried under contract.''

§ 1699. Certification of delivery from vessel

No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post office, except where waybilled for discharge at other ports in the United States at which the vessel is scheduled to call and the Postal Service does not determine that unreasonable delay in the mails will occur, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master _____, of the _____, arriving from _____, and now lying in the port of _____, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post office at _____ every letter and every bag, packet, or parcel of letters on board the said vessel during her last voyage, or in my possession or under my power or control, except where waybilled for discharge at other ports in the United States at which the said vessel is scheduled to call and which the Postal Service has not determined will be unreasonably delayed by remaining on board the said vessel for delivery at such ports.

Whoever, being the master or other person having charge or control of such vessel, breaks bulk before he has arranged for such delivery or onward carriage, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 777; July 3, 1952, ch. 553, 66 Stat. 325; Pub. L. 91–375, § 6(j)(15), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 327 (Mar. 4, 1909, ch. 321, § 204, 35 Stat. 1127).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100'' in last par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General'' in two places.

1952—Act July 3, 1952, provided for only the unloading of mail from a vessel as can be expedited by discharge at such port.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 1700. Desertion of mails

Whoever, having taken charge of any mail, voluntarily quits or deserts the same before he

has delivered it into the post office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the Postal Service authorized to receive the same, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 322 (Mar. 4, 1909, ch. 321, § 199, 35 Stat. 1126).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1701. Obstruction of mails generally

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 324, 325 (Mar. 4, 1909, ch. 321, §§ 201, 202, 35 Stat. 1127).

Sections 324 and 325 of title 18, U.S.C., 1940 ed., were consolidated with changes of phraseology necessary to effect consolidation.

Words ''carriage, horse, driver or'', ''car, steamboat'', and ''or vessel'' were omitted as covered by ''any carrier or conveyance''.

The punishment provision is derived from said section 324 rather than from section 325 which provided only a fine of not more than $100 and related only to ferrymen.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

§ 1702. Obstruction of correspondence

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 317 (Mar. 4, 1909, ch. 321, § 194, 35 Stat. 1125; Feb. 25, 1925, ch. 318, 43 Stat. 977; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256).

Section 317 of said title 18, U.S.C., 1940 ed., was incorporated in this and section 1708 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1703. Delay or destruction of mail or newspapers

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; May 24, 1949, ch. 139, § 37, 63 Stat. 95; Pub. L. 91–375, § 6(j)(16), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(B), (G), Sept. 13, 1994, 108 Stat. 2146, 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 318, 319 (Mar. 4, 1909, ch. 321, §§ 195, 196, 35 Stat. 1125, 1126).

Section consolidated sections 318 and 319 of said title 18, U.S.C., 1940 ed. The embezzlement and theft provisions of each were incorporated in sections 1709 and 1710 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 37] corrects typographical errors in section 1703 of title 18, U.S.C.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in subsec. (a) and ''fined under this title'' for ''fined not more than $100'' in last par.

1970—Subsec. (a). Pub. L. 91–375, § 6(j)(16)(A), amended subsec. (a) generally, which prior to amendment read as follows: ''Whoever, being a postmaster or Postal Service employee, unlawfully detains, delays, or opens any letter, postal card, package, bag, or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or secretes, or destroys any such letter, postal card, package, bag, or mail, shall be fined not more than $500 or imprisoned not more than five years, or both.''

Subsec. (b). Pub. L. 91–375, § 6(j)(16)(B), substituted ''Postal Service officer or employee'' for ''postmaster or Postal Service employee''.

1949—Subsec. (a). Act May 24, 1949, § 37(a), substituted ''secretes'' for ''secrets''.

Subsec. (b). Act May 24, 1949, § 37(b), substituted ''newspapers'' for ''newspaper''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1704. Keys or locks stolen or reproduced

Whoever steals, purloins, embezzles, or obtains by false pretense any key suited to any lock adopted by the Post Office Department or the Postal Service and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or

Whoever knowingly and unlawfully makes, forges, or counterfeits any such key, or possesses any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of; or

Whoever, being engaged as a contractor or otherwise in the manufacture of any such mail lock or key, delivers any finished or unfinished lock or the interior part thereof, or key, used or designed for use by the department, to any person not duly authorized under the hand of the Postmaster General and the seal of the Post Office Department or the Postal Service, to receive the same, unless the person receiving it is the contractor for furnishing the same or engaged in the manufacture thereof in the manner authorized by the contract, or the agent of such manufacturer—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 778; Pub. L. 91–375, § 6(j)(17), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 314 (Mar. 4, 1909, ch. 321, § 191, 35 Stat. 1125).

Reference to persons aiding, causing or assisting was omitted. Such persons are principals under section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in last par.

1970—Pub. L. 91–375 inserted ''or the Postal Service'' after ''Post Office Department'' in first and third pars.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1705. Destruction of letter boxes or mail

Whoever willfully or maliciously injures, tears down or destroys any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or breaks open the same or willfully or maliciously injures, defaces or destroys any mail deposited therein, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; May 24, 1949, ch. 139, § 38, 63 Stat. 95; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–273, div. B, title III, § 3002(a)(2), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 321 (Mar. 4, 1909, ch. 321, § 198, 35 Stat. 1126; May 18, 1916, ch. 126, § 10, 39 Stat. 162; July 28, 1916, ch. 261, § 1, 39 Stat. 418; May 7, 1934, ch. 220, § 1, 48 Stat. 667).

Words ''or shall willfully take or steal such mail from or out of such letter box or other receptacle'' were omitted as covered by section 1702 of this title. Prosecutions for theft of mail matter are invariably made under that section whereas this section is used as basis for prosecutions for malicious mischief to mail boxes or receptacles. By Postal Regulations (1928), section 700, paragraph 2, an ordinary letter box is within this section and also section 1702 of this title. *Huebner v. United States* (C.C.A. 1928, 28 F. 2d 929).

Reference to persons assisting or aiding was omitted. Such persons are principals under definitive section 2 of this title.

Minor changes were made in phraseology.

1949 ACT

As amended by this section [section 38] of the bill, section 1705 of title 18, U.S.C., is brought more closely into conformity with the original statute from which it was derived by eliminating an inadvertent reference to a ''conveyance'' which was not in the original statute. (See S. Rept. No. 133, 81st Cong.)

AMENDMENTS

2002—Pub. L. 107–273 inserted '', or both'' after ''years''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1949—Act May 24, 1949, struck out reference to a ''conveyance'' which was not in original statute.

§ 1706. Injury to mail bags

Whoever tears, cuts, or otherwise injures any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or draws or breaks any staple or loosens any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 312 (Mar. 4, 1909, ch. 321, § 189, 35 Stat. 1124).

A fine of ''$1,000'' was substituted for ''$500'' thus increasing the maximum to correspond with other comparable sections. (See section 1705 of this title.)

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 1707. Theft of property used by Postal Service

Whoever steals, purloins, or embezzles any property used by the Postal Service, or appropriates any such property to his own or any other than its proper use, or conveys away any such property to the hindrance or detriment of the public service, shall be fined under this title or imprisoned not more than three years, or both; but if the value of such property does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; Pub. L. 91–375, § 6(j)(18), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 313 (Mar. 4, 1909, ch. 321, § 190, 35 Stat. 1124).

The phrase ''used by'' was substituted for ''in use by or belonging to'' in order to limit the application of the section to property used by the Post Office Department. Theft of public property belonging to governmental departments is covered by section 641 of this title.

A fine of ''$1,000'' was substituted for ''$200,'' thus increasing the maximum to conform with other comparable sections. (See section 1705 of this title.)

The smaller penalty for an offense involving property valued at $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' after ''service, shall be'' and for ''fined not more than $500'' after ''he shall be''.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Post Office Department''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1708. Theft or receipt of stolen mail matter generally

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 779; May 24, 1949, ch. 139, § 39, 63 Stat. 95; July 1, 1952, ch. 535, 66 Stat. 314; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 317, 321 (Mar. 4, 1909, ch. 321, §§ 194, 198, 35 Stat. 1125, 1126; May 18, 1916, ch. 126, § 10, 39 Stat. 162; July 28, 1916, ch. 261, § 1, 39 Stat. 418; Feb. 25, 1925, ch. 318, 43 Stat. 977; May 7, 1934, ch. 220, § 1, 48 Stat. 667; Aug. 26, 1935, ch. 693, 49 Stat. 867; Aug. 7, 1939, ch. 557, 53 Stat. 1256).

Each of these two sections has been divided. Provisions relating to theft or larceny of mail were placed in this section.

Words ''letter box, mail receptacle, or any mail route'' are from section 321 of title 18, U.S.C., 1940 ed. Such receptacles are authorized depositaries. (See *Rosen v. United States*, N.Y. 1917, 38 S.Ct. 148, 245 U.S. 467, 62 L.Ed. 406, and *Foster v. Biddle*, C.C.A. Kan. 1926, 14 F.2d 280, involving indictment under section 317 of title 18, U.S.C., 1940 ed.) No cases are reported of prosecutions for mail theft under section 321 of title 18, U.S.C., 1940 ed., which relates primarily to malicious mischief respecting letter boxes.

Language omitted from section 317 of title 18, U.S.C., 1940 ed., and all of section 321 of title 18, U.S.C., 1940 ed., except that above quoted, was incorporated in sections 1702 and 1705 of this title.

Words ''or aids in buying, receiving, or concealing'' were omitted as unnecessary in view of the definition of principal in section 2 of this title.

The smaller penalty for an offense involving $100 or less was added. (See sections 641 and 645 of this title.)

Minor changes were made in phraseology.

1949 ACT

This section [section 39] corrects a typographical error in section 1708 of title 18, U.S.C.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' in last par.

1952—Act July 1, 1952, made any thefts or receipt of stolen mail a felony regardless of the monetary value of the thing stolen.

1949—Act May 24, 1949, substituted ''buys'' for ''buy'' in third par.

§ 1709. Theft of mail matter by officer or employee

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 780; Pub. L. 91–375, § 6(j)(19)(A), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 318 (Mar. 4, 1909, ch. 321, § 195, 35 Stat. 1125).

The provisions of said section 318 of title 18, U.S.C., 1940 ed., were incorporated in this section and section 1703 of this title.

The fine of ''$500'' was increased to ''$2,000'' as more proportionate to the imprisonment provision and to conform with other comparable sections. (See sections 1702 and 1708 of this title.)

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

1970—Pub. L. 91–375 substituted ''officer'' for ''postmaster'' in section catchline, and in text substituted ''Postal Service officer or employee'' for ''postmaster or Postal Service employee'' and ''entrusted'' for ''intrusted'' and inserted ''or of the Postal Service'' after ''Postmaster General''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1710. Theft of newspapers

Whoever, being a Postal Service officer or employee, takes or steals any newspaper or package of newspapers from any post office or from any person having custody thereof, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 780; Pub. L. 91–375, § 6(j)(20), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 319 (Mar. 4, 1909, ch. 321, § 196, 35 Stat. 1126).

Theft provisions alone are retained in this section. Those relating to other offenses were incorporated in section 1703 of this title.

Words ''mail or'' following ''steals any'' were omitted as covered by section 1709 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

1970—Pub. L. 91–375 substituted ''Postal Service officer or employee'' for ''postmaster or Postal Service employee''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1711. Misappropriation of postal funds

Whoever, being a Postal Service officer or employee, loans, uses, pledges, hypothecates, or converts to his own use, or deposits in any bank, or exchanges for other funds or property, except as authorized by law, any money or property coming into his hands or under his control in any manner, in the execution or under color of his office, employment, or service, whether or not the same shall be the money or property of the United States; or fails or refuses to remit to or deposit in the Treasury of the United States or in a designated depository, or to account for or turn over to the proper officer or agent, any such money or property, when required to do so by law or the regulations of the Postal Service, or upon demand or order of the Postal Service, either directly or through a duly authorized officer or agent, is guilty of embezzlement; and every such person, as well as every other person advising or knowingly participating therein, shall be fined under this title or in a sum equal to the amount or value of the money or property embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount or value thereof does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit any Postal Service officer or employee from depositing, under the direction of the Postal Service, in a national bank designated by the Secretary of the Treasury for that purpose, to his own credit as Postal Service officer or employee, any funds in his charge, nor prevent his negotiating drafts or other evidences of debt through such bank, or through United States disbursing officers, or otherwise, when instructed or required so to do by the Postal Service, for the purpose of remitting surplus funds from one post office to another.

(June 25, 1948, ch. 645, 62 Stat. 780; Pub. L. 91–375, § 6(j)(21), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (2)(G), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 355 (Mar. 4, 1909, ch. 321, § 225, 35 Stat. 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Said section 355 was divided into two sections, this section and section 3498 of this title.

The smaller punishment for an offense involving $100 or less was added. (See reviser's notes under sections 641 and 645 of this title.)

Changes of phraseology only were made.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''$1,000'' for ''$100'' in first par.

1994—Pub. L. 103–322, § 330016(2)(G), in first par., substituted ''be fined under this title or in a sum equal to the amount or value of the money or property embezzled, whichever is greater, or imprisoned'' for ''be fined in a sum equal to the amount or value of the money or property embezzled or imprisoned''.

Pub. L. 103–322, § 330016(1)(H), in first par., substituted ''fined under this title'' for ''fined not more than $1,000'' after ''he shall be''.

1970—Pub. L. 91–375 substituted ''Postal Service officer or employee'' and ''Postal Service'' for ''postmaster or Postal Service employee'' and ''Post Office Department'' in first par., ''Postal Service officer or employee'' for ''Postmaster'' in two places in second par., and ''Postal Service'' for ''Postmaster General'' once in

first par. after ''order of the'' and twice in second par., respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1712. Falsification of postal returns to increase compensation

Whoever, being a Postal Service officer or employee, makes a false return, statement, or account to any officer of the United States, or makes a false entry in any record, book, or account, required by law or the rules or regulations of the Postal Service to be kept in respect of the business or operations of any post office or other branch of the Postal Service, for the purpose of fraudulently increasing his compensation or the compensation of the postmaster or any employee in a post office; or

Whoever, being a Postal Service officer or employee in any post office or station thereof, for the purpose of increasing the emoluments or compensation of his office, induces, or attempts to induce, any person to deposit mail matter in, or forward in any manner for mailing at, the office where such officer or employee is employed, knowing such matter to be properly mailable at another post office—

Shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 780; Pub. L. 91–375, § 6(j)(22), Aug. 12, 1970, 84 Stat. 779; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 329 and on section 172 of title 39, U.S.C., 1940 ed., The Postal Service (Aug. 4, 1886, ch. 901, § 3, 24 Stat. 221; Mar. 4, 1909, ch. 321, § 206, 35 Stat. 1128; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Said sections were consolidated.

The texts of the two sections were substantially identical except that said section 172 of title 39, U.S.C., 1940 ed., provided that ''whenever, upon evidence deemed satisfactory to him, the Postmaster General shall determine that any such false return has been made, he may, by order, fix absolutely the compensation of the postmaster for such special delivery during any quarter or quarters which he shall deem affected by such false return, and the General Accounting Office shall adjust the postmaster's account accordingly'', the words ''General Accounting Office'' having been substituted for ''Auditor'' on the authority of the act of June 10, 1921, shown in the credits above. This particular language was omitted because such powers and duties as it prescribes would devolve upon the Postmaster General without legislation and also because said section 172 of Title 39, which was derived from the act of August 4, 1886, shown in the credits above, was impliedly repealed by the general repealing clause of section 341 of the Criminal Code of 1909. Section 208 of that Code contained the provisions which formed the basis for said section 329 of Title 18.

Reference in said section 329 of title 18, U.S.C., 1940 ed., to persons assisting, causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in last par.

1970—Pub. L. 91–375 substituted ''Postal Service officer or employee'' for ''postmaster or Postal Service employee'' and ''Postal Service'' for ''Post Office Department'' after ''rules or regulations of the'' in first par. and ''Postal Service officer or employee'' and ''officer or employee'' for ''postmaster or employee'' and ''postmaster or other person'' in second par., respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1713. Issuance of money orders without payment

Whoever, being an officer or employee of the Postal Service, issues a money order without having previously received the money therefor, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 781; Pub. L. 91–375, § 6(j)(23), Aug. 12, 1970, 84 Stat. 779; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 333 (Mar. 4, 1909, ch. 321, § 210, 35 Stat. 1129).

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1970—Pub. L. 91–375 substituted ''an officer or employee of the Postal Service'' for ''a postmaster or other person employed in any branch of the Postal Service''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

[§ 1714. Repealed. Pub. L. 101–647, title XII, § 1210(b), Nov. 29, 1990, 104 Stat. 4832]

Section, act June 25, 1948, ch. 645, 62 Stat. 781, provided that certain foreign divorce information was nonmailable.

§ 1715. Firearms as nonmailable; regulations

Pistols, revolvers, and other firearms capable of being concealed on the person are nonmailable and shall not be deposited in or carried by the mails or delivered by any officer or employee of the Postal Service. Such articles may be conveyed in the mails, under such regulations as the Postal Service shall prescribe, for use in connection with their official duty, to officers of the Army, Navy, Air Force, Coast Guard, Marine Corps, or Organized Reserve Corps; to officers of the National Guard or Militia of a State, Territory, Commonwealth, Possession, or District; to officers of the United States or of a State, Territory, Commonwealth, Possession, or District whose official duty is to serve warrants of arrest or commitments; to employees of the Postal Service; to officers and employees of enforcement agencies of the United States; and to

watchmen engaged in guarding the property of the United States, a State, Territory, Commonwealth, Possession, or District. Such articles also may be conveyed in the mails to manufacturers of firearms or bona fide dealers therein in customary trade shipments, including such articles for repairs or replacement of parts, from one to the other, under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any pistol, revolver, or firearm declared nonmailable by this section, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 781; May 24, 1949, ch. 139, § 40, 63 Stat. 95; Pub. L. 91–375, § 6(j)(24), Aug. 12, 1970, 84 Stat. 779; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 607(f), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 361 (Feb. 8, 1927, ch. 75, § 1, 44 Stat. 1059; May 15, 1939, ch. 134, 53 Stat. 744; Mar. 7, 1942, ch. 160, 56 Stat. 141).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 40] inserts ''Air Force,'' in section 1715 of title 18, U.S.C., in view of the establishment in 1947 of this separate branch of the armed forces, and substitutes, ''Organized'' for ''Officers' '', preceding ''Reserve Corps'', to conform to section 2 of title 10, U.S.C., as amended by the act of March 25, 1948 (ch. 157, § 1, 62 Stat. 87), which grouped all reserve branches into a reserve component called the Organized Reserve Corps.

AMENDMENTS

1996—Pub. L. 104–294, in first par., substituted ''State, Territory, Commonwealth, Possession, or District'' for ''State, Territory, or District'' wherever appearing.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in second par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General'' after ''such regulations as the'' in two places and ''officer or employee of'' for ''postmaster, letter carrier, or other person in'' in first par., respectively.

1949—Act May 24, 1949, inserted ''Air Force'' after ''Navy'' and substituted ''Organized'' for ''Officers' '' before ''Reserve Corps'' in first par., to make section applicable to the Air Force and to conform to the grouping of all reserve branches into a single reserve component.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1716. Injurious articles as nonmailable

(a) All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, reptiles, and all explosives, hazardous materials, inflammable materials, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property, whether or not sealed as first-class matter, are nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof, nor by any officer or employee of the Postal Service.

(b) The Postal Service may permit the transmission in the mails, under such rules and regulations as it shall prescribe as to preparation and packing, of any such articles which are not outwardly or of their own force dangerous or injurious to life, health, or property.

(c) The Postal Service is authorized and directed to permit the transmission in the mails, under regulations to be prescribed by it, of live scorpions which are to be used for purposes of medical research or for the manufacture of antivenom. Such regulations shall include such provisions with respect to the packaging of such live scorpions for transmission in the mails as the Postal Service deems necessary or desirable for the protection of Postal Service personnel and of the public generally and for ease of handling by such personnel and by any individual connected with such research or manufacture. Nothing contained in this paragraph shall be construed to authorize the transmission in the mails of live scorpions by means of aircraft engaged in the carriage of passengers for compensation or hire.

(d) The transmission in the mails of poisonous drugs and medicines may be limited by the Postal Service to shipments of such articles from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians under such rules and regulations as it shall prescribe.

(e) The transmission in the mails of poisons for scientific use, and which are not outwardly dangerous or of their own force dangerous or injurious to life, health, or property, may be limited by the Postal Service to shipments of such articles between the manufacturers thereof, dealers therein, bona fide research or experimental scientific laboratories, and such other persons who are employees of the Federal, a State, or local government, whose official duties are comprised, in whole or in part, of the use of such poisons, and who are designated by the head of the agency in which they are employed to receive or send such articles, under such rules and regulations as the Postal Service shall prescribe.

(f) All spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind are nonmailable and shall not be deposited in or carried through the mails.

(g) All knives having a blade which opens automatically (1) by hand pressure applied to a button or other device in the handle of the knife, or (2) by operation of inertia, gravity, or both, are nonmailable and shall not be deposited in or carried by the mails or delivered by any of-

ficer or employee of the Postal Service. Such knives may be conveyed in the mails, under such regulations as the Postal Service shall prescribe—

(1) to civilian or Armed Forces supply or procurement officers and employees of the Federal Government ordering, procuring, or purchasing such knives in connection with the activities of the Federal Government;

(2) to supply or procurement officers of the National Guard, the Air National Guard, or militia of a State ordering, procuring, or purchasing such knives in connection with the activities of such organizations;

(3) to supply or procurement officers or employees of any State, or any political subdivision of a State or Territory, ordering, procuring, or purchasing such knives in connection with the activities of such government; and

(4) to manufacturers of such knives or bona fide dealers therein in connection with any shipment made pursuant to an order from any person designated in paragraphs (1), (2), and (3).

The Postal Service may require, as a condition of conveying any such knife in the mails, that any person proposing to mail such knife explain in writing to the satisfaction of the Postal Service that the mailing of such knife will not be in violation of this section.

(h) Any advertising, promotional, or sales matter which solicits or induces the mailing of anything declared nonmailable by this section is likewise nonmailable unless such matter contains wrapping or packaging instructions which are in accord with regulations promulgated by the Postal Service.

(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

(2) As used in this subsection, the term ''ballistic knife'' means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(j)(1) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined under this title or imprisoned not more than one year, or both.

(2) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, whether or not transmitted in accordance with the rules and regulations authorized to be prescribed by the Postal Service, with intent to kill or injure another, or injure the mails or other property, shall be fined under this title or imprisoned not more than twenty years, or both.

(3) Whoever is convicted of any crime prohibited by this section, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

(k) For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 781; May 8, 1952, ch. 246, 66 Stat. 67; June 29, 1955, ch. 224, 69 Stat. 191; Pub. L. 85–268, Sept. 2, 1957, 71 Stat. 594; Pub. L. 85–623, § 5, Aug. 12, 1958, 72 Stat. 562; Pub. L. 91–375, § 6(j)(25), Aug. 12, 1970, 84 Stat. 779; Pub. L. 92–191, § 1, Dec. 15, 1971, 85 Stat. 647; Pub. L. 99–570, title X, § 10003, Oct. 27, 1986, 100 Stat. 3207–167; Pub. L. 103–322, title VI, § 60003(a)(7), title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 1969, 2147; Pub. L. 104–294, title VI, § 607(g), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 107–273, div. B, title IV, § 4002(b)(2), (6), Nov. 2, 2002, 116 Stat. 1807; Pub. L. 109–435, title X, § 1008(d), Dec. 20, 2006, 120 Stat. 3261.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 340 (Mar. 4, 1909. ch. 321, § 217, 35 Stat. 1131; May 25, 1920, ch. 196, 41 Stat. 620; Jan. 11, 1929, ch. 53, 45 Stat. 1072; June 19, 1934, ch. 650, 48 Stat. 1063).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

The maximum of ''twenty years'' was reduced to ''ten years'' as more consistent with such comparable sections as sections 111 and 1113 of this title.

Minor changes were made in phraseology.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–435 inserted ''hazardous materials,'' after ''explosives,''.

2002—Subsec. (g)(3). Pub. L. 107–273, § 4002(b)(2), made technical correction to directory language of Pub. L. 104–294, § 607(g)(2). See 1996 Amendment note below.

Subsec. (j). Pub. L. 107–273, § 4002(b)(6), designated first, second, and third undesignated pars. after subsec. (i) as pars. (1) to (3), respectively, of subsec. (j) and, in par. (2), substituted ''under this title'' for ''not more than $10,000''. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 107–273, § 4002(b)(6)(D), redesignated subsec. (j) as (k).

1996—Subsec. (g)(2). Pub. L. 104–294, § 607(g)(1), substituted ''State'' for ''State, Territory, or the District of Columbia''.

Subsec. (g)(3). Pub. L. 104–294, § 607(g)(2), as amended by Pub. L. 107–273, § 4002(b)(2), substituted ''any State, or any political subdivision of a State'' for ''the municipal government of the District of Columbia or of the government of any State or Territory, or any county, city, or other political subdivision of a State''.

Subsec. (j). Pub. L. 104–294, § 607(g)(3), added subsec. (j) at end.

1994—Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in first undesignated par. after subsec. (i).

Pub. L. 103–322, § 60003(a)(7), in last par., struck out before period at end '', if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion, shall so order''.

1986—Subsec. (i). Pub. L. 99–570 added subsec. (i).

1971—Subsecs. (a) to (g). Pub. L. 92–191 designated existing seven paragraphs preceding the penal provisions as subsecs. (a) to (g), respectively.

Subsec. (h). Pub. L. 92–191 added subsec. (h).

1970—First par. Pub. L. 91–375, § 6(j)(25)(B)(ii), substituted ''officer or employee of the Postal Service'' for ''letter carrier''.

Second par. Pub. L. 91–375, § 6(j)(25)(A), substituted ''Postal Service'' and ''it shall prescribe'' for ''Postmaster General'' and ''he shall prescribe''.

Third par. Pub. L. 91–375, § 6(j)(25)(A), substituted ''Postal Service'' for ''Postmaster General'' in two places, ''prescribed by it'' for ''prescribed by him'', ''antivenom'' for ''antivenin'', ''necessary or desirable'' for ''necessary or advisable'', and ''Postal Service personnel'' for ''Post Office Department personnel''.

Fourth par. Pub. L. 91–375, § 6(j)(25)(A), substituted ''Postal Service'' and ''it shall prescribe'' for ''Postmaster General'' and ''he shall prescribe'', respectively, and struck out the comma after ''veterinarians''.

Fifth par. Pub. L. 91–375 § 6(j)(25)(B)(i) substituted ''Postal Service'' for ''Postmaster General'' in two places.

Seventh par. Pub. L. 91–375, § 6(j)(25)(B)(i), (iii), substituted ''Postal Service'' for ''Postmaster General'' in three places, and ''officer or employee of the Postal Service'' for ''postmaster, letter carrier, or other person in the postal service'', respectively.

Eighth to tenth pars. Pub. L. 91–375, § 6(j)(25)(B)(i), substituted ''Postal Service'' for ''Postmaster General''.

1958—Pub. L. 85–623 inserted paragraph prohibiting mailing of switchblade knives except in connection with Armed Forces or other Government orders.

1957—Pub. L. 85–268 reduced penalty from two to one year for mailing nonmailable articles; increased penalty from ten to twenty years for mailing nonmailable matter with intent to kill or injure another or injure the mails or other property but where death does not result; and provided death penalty or life imprisonment for mailing nonmailable matter resulting in death.

1955—Act June 29, 1955, inserted paragraph to permit the transportation in the mails of live scorpions for certain purposes.

1952—Act May 8, 1952, inserted fourth paragraph to extend the Postmaster General's authority as it relates to the transmission of poisonous drugs through the mails for scientific purposes.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(b)(2), Nov. 2, 2002, 116 Stat. 1807, provided that the amendment made by section 4002(b)(2) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–570 effective 30 days after Oct. 27, 1986, see section 10004 of Pub. L. 99–570, set out as an Effective Date note under section 1245 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 92–191 provided that: ''The amendments made by this Act [amending this section and section 3001 of Title 39, Postal Service] shall become effective at the beginning of the third calendar month following the date of enactment of this Act [Dec. 15, 1971] or on the date section 3001 of title 39, United States Code, becomes effective [July 1, 1971] pursuant to section 15(a) of Public Law 91–375 [set out as an Effective Date note preceding section 101 of title 39], whichever is the later.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–623 effective on sixtieth day after Aug. 12, 1958, see Effective Date note set out under section 1241 of Title 15, Commerce and Trade.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this section, see Pub. L. 86–613, § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

§ 1716A. Nonmailable locksmithing devices and motor vehicle master keys

(a) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon, or at any place to which it is directed to be delivered by the person to whom it is addressed, any matter declared to be nonmailable by section 3002 of title 39, shall be fined under this title or imprisoned not more than one year, or both.

(b) Whoever knowingly deposits for mailing or delivery, causes to be delivered by mail, or causes to be delivered by any interstate mailing or delivery other than by the United States Postal Service, any matter declared to be nonmailable by section 3002a of title 39, shall be fined under this title, imprisoned not more than one year, or both.

(Added Pub. L. 90–560, § 2(1), Oct. 12, 1968, 82 Stat. 997; amended Pub. L. 91–375, Aug. 12, 1970, § 6(j)(26), 84 Stat. 780; Pub. L. 100–690, title VII, § 7090(c), Nov. 18, 1988, 102 Stat. 4410; Pub. L. 101–647, title XXXV, § 3551, Nov. 29, 1990, 104 Stat. 4926.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 substituted ''shall be fined under this title or'' for ''shall be under this title''.

1988—Pub. L. 100–690 inserted ''locksmithing devices and'' in section catchline, designated existing provisions as subsec. (a), substituted ''under this title'' for ''fined not more than $1,000, or'', and added subsec. (b).

1970—Pub. L. 91–375 substituted ''section 3002'' for ''section 4010'' of title 39.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section 3 of Pub. L. 90–560 provided that: ''The amendments made by the first section and section 2 of this Act [enacting this section and section 4010 of former Title 39, The Postal Service] shall become effective on the sixtieth day after the date of enactment of this Act [Oct. 12, 1968].''

§ 1716B. Nonmailable plants

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by section 3014(b) of title 39, unless in accordance with the rules and regulations prescribed by the Postal Service under section 3014(c) of such title, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 100–574, § 1(b)(1), Oct. 31, 1988, 102 Stat. 2893.)

EFFECTIVE DATE

Section effective Oct. 31, 1989, see section 4 of Pub. L. 100–574, set out as a note under section 3014 of Title 39, Postal Service.

§ 1716C. Forged agricultural certifications

Whoever forges or counterfeits any certification authorized under any rules or regulations prescribed under section 3014(c) of title 39 with intent to make it appear that such is a genuine certification, or makes or knowingly uses or sells, or possesses with intent to use or sell, any forged or counterfeited certification so authorized, or device for imprinting any such certification, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 100–574, § 2(a), Oct. 31, 1988, 102 Stat. 2893.)

EFFECTIVE DATE

Section effective Oct. 31, 1989, see section 4 of Pub. L. 100–574, set out as a note under section 3014 of Title 39, Postal Service.

§ 1716D. Nonmailable injurious animals, plant pests, plants, and illegally taken fish, wildlife, and plants

A person who knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything that section 3015 of title 39 declares to be nonmailable matter shall be fined under this title, imprisoned not more than 1 year, or both.

(Added Pub. L. 103–322, title XXXII, § 320108(b)(1), Sept. 13, 1994, 108 Stat. 2113.)

§ 1717. Letters and writings as nonmailable

(a) Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, in violation of sections 499, 506, 793, 794, 915, 954, 956, 957, 960, 964, 1017, 1542, 1543, 1544 or 2388 of this title or which contains any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is nonmailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

(b) Whoever uses or attempts to use the mails or Postal Service for the transmission of any matter declared by this section to be nonmailable, shall be fined under this title or imprisoned not more than ten years or both.

(June 25, 1948, ch. 645, 62 Stat. 782; Pub. L. 86–682, § 12(b), Sept. 2, 1960, 74 Stat. 708; Pub. L. 91–375, § 6(j)(27), Aug. 12, 1970, 84 Stat. 780; Pub. L. 101–647, title XXXV, § 3552(a), Nov. 29, 1990, 104 Stat. 4926; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 343, 344, 345, 346 (June 15, 1917, ch. 30, title XII, §§ 1–3, title XIII, § 1, 40 Stat. 230, 231; Mar. 28, 1940, ch. 72, § 9, 54 Stat. 80).

Section consolidates said sections 343–345 of title 18, U.S.C., 1940 ed. The provision as to opening letters was incorporated in paragraph (c).

Venue provisions in said section 345 of title 18, U.S.C., 1940 ed., were omitted as covered by section 3237 of this title.

Section 346 of title 18, U.S.C., 1940 ed., defining "United States" was omitted. It is incorporated, however, in section 5 of this title.

References in text to other sections do not include definitive sections. Only those susceptible of violation are cited.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in arrangement, translation, and phraseology.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

1990—Pub. L. 101–647 struck out "; opening letters" after "nonmailable" in section catchline.

1970—Subsec. (b). Pub. L. 91–375 struck out "of the United States" after "Postal Service".

1960—Subsec. (c). Pub. L. 86–682 repealed subsec. (c) which related to the opening of letters, effective Sept. 1, 1960.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

[§ 1718. Repealed. Pub. L. 101–647, title XII, § 1210(c), Nov. 29, 1990, 104 Stat. 4832]

Section, acts June 25, 1948, ch. 645, 62 Stat. 782; Aug. 12, 1970, Pub. L. 91–375, § 6(j)(28), 84 Stat. 780, provided that libelous matter on wrappers or envelopes was nonmailable.

§ 1719. Franking privilege

Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title.

(June 25, 1948, ch. 645. 62 Stat. 783; Pub. L. 103–322, title XXXIII, § 330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 357 (Mar. 4, 1909, ch. 321, § 227, 35 Stat. 1134).

Minor verbal change was made. Section 746(f) of title 8, U.S.C., 1940 ed., Aliens and Nationality, providing same penalty for misuse of franking privilege in naturalization service, should be repealed as covered by this section. The proviso in section 337 of title 39, U.S.C., 1940 ed., The Postal Service, should also be repealed for the same reason.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $300".

§ 1720. Canceled stamps and envelopes

Whoever uses or attempts to use in payment of postage, any canceled postage stamp, whether the same has been used or not, or removes, attempts to remove, or assists in removing, the canceling or defacing marks from any postage stamp, or the superscription from any stamped envelope, or postal card, that has once been used in payment of postage, with the intent to use the same for a like purpose, or to sell or offer to sell the same, or knowingly possesses any such postage stamp, stamped envelope, or postal card, with intent to use the same or knowingly sells or offers to sell any such postage stamp,

stamped envelope, or postal card, or uses or attempts to use the same in payment of postage; or

Whoever unlawfully and willfully removes from any mail matter any stamp attached thereto in payment of postage; or

Whoever knowingly uses in payment of postage, any postage stamp, postal card, or stamped envelope, issued in pursuance of law, which has already been used for a like purpose—

Shall be fined under this title or imprisoned not more than one year, or both; but if he is a person employed in the Postal Service, he shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 783; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 328 (Mar. 4, 1909, ch. 321, § 205, 35 Stat. 1127).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in two places in last par.

§ 1721. Sale or pledge of stamps

Whoever, being a Postal Service officer or employee, knowingly and willfully: uses or disposes of postage stamps, stamped envelopes, or postal cards entrusted to his care or custody in the payment of debts, or in the purchase of merchandise or other salable articles, or pledges or hypothecates the same or sells or disposes of them except for cash; or sells or disposes of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sells or disposes of stamped envelopes for a larger or less sum than is charged therefor by the Postal Service for like quantities; or sells or disposes of postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such officer or employee is employed; or for the purpose of increasing the emoluments, or compensation of any such officer or employee, inflates or induces the inflation of the receipts of any post office or any station or branch thereof; or sells or disposes of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Postal Service; shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 783; Aug. 1, 1956, ch. 818, 70 Stat. 784; Pub. L. 91–375, § 6(j)(29), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 331 of title 18 and section 364 of title 39, The Postal Service, both U.S.C., 1940 ed. (R.S. § 3920; Mar. 4, 1909, ch. 321, § 208, 35 Stat. 1128).

Said sections were consolidated with only minor changes in phraseology.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1970—Pub. L. 91–375 substituted ''Postal Service officer or employee'' for ''postmaster or postal service employee'', ''Postal Service'' for ''Post Office Department'' in two places, ''officer or employee'' for ''postmaster or other person'', and ''any such officer or employee'' for ''the postmaster or any employee of a post office or station or branch thereof'', respectively.

1956—Act Aug. 1, 1956, broadened the class of postal employees subject to penalties prescribed by this section and broadened the prohibition to include the inflation of receipts by means other than the disposing of stamps, stamped envelopes, or postal cards.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1722. False evidence to secure second-class rate

Whoever knowingly submits to the Postal Service or to any officer or employee of the Postal Service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 783; Pub. L. 91–375, § 6(j)(30), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 353 (Mar. 4, 1909, ch. 321, § 223, 35 Stat. 1133).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal change was made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1970—Pub. L. 91–375 substituted ''the Postal Service or to any officer or employee of the Postal Service'' for ''any postmaster or to the Post Office Department or any officer of the Postal Service''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1723. Avoidance of postage by using lower class matter

Matter of the second, third, or fourth class containing any writing or printing in addition to the original matter, other than as authorized by law, shall not be admitted to the mails, nor delivered, except upon payment of postage for matter of the first class, deducting therefrom any amount which may have been prepaid by

stamps affixed, unless by direction of a duly authorized officer of the Postal Service such postage shall be remitted.

Whoever knowingly conceals or incloses any matter of a higher class in that of a lower class, and deposits the same for conveyance by mail, at a less rate than would be charged for such higher class matter, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 784; Pub. L. 91–375, § 6(j)(31), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 351 (Mar. 4, 1909, ch. 321, § 221, 35 Stat. 1132).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100'' in second par.

1970—Pub. L. 91–375 substituted ''a duly authorized officer of the Postal Service'' for ''Postmaster General'' in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1724. Postage on mail delivered by foreign vessels

Except as otherwise provided by treaty or convention the Postal Service may require the transportation by any steamship of mail between the United States and any foreign port at the compensation fixed under authority of law. Upon refusal by the master or the commander of such steamship or vessel to accept the mail, when tendered by the Postal Service or its representative, the collector or other officer of the port empowered to grant clearance, on notice of the refusal aforesaid, shall withhold clearance, until the collector or other officer of the port is informed by the Postal Service or its representative that the master or commander of the steamship or vessel has accepted the mail or that conveyance by his steamship or vessel is no longer required by the Postal Service.

(June 25, 1948, ch. 645, 62 Stat. 784; Sept. 25, 1951, ch. 413, § 1(4), 65 Stat. 336; Pub. L. 91–375, § 6(j)(32), Aug. 12, 1970, 84 Stat. 780.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 326 (Mar. 4, 1909, ch. 321, § 203, 35 Stat. 1127; Feb. 6, 1929, ch. 157, 45 Stat. 1153).

AMENDMENTS

1970—Pub. L. 91–375 substituted ''Postal Service'' and ''Postal Service or its representative'' for ''Postmaster General'' and ''Postmaster General or his representative'', respectively, in two places.

1951—Act Sept. 25, 1951, repealed former first paragraph relating to penalties for failure to pay postage on or unlawful conveyance of mail to or from any part of the United States by foreign vessels.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1725. Postage unpaid on deposited mail matter

Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 784; Pub. L. 91–375, § 6(j)(33), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 321a (May 7, 1934, ch. 220, § 2, 48 Stat. 667).

Reference to persons aiding or assisting was struck out as unnecessary since such persons are made principals by section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $300''.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1726. Postage collected unlawfully

Whoever, being a postmaster or other person authorized to receive the postage of mail matter, fraudulently demands or receives any rate of postage or gratuity or reward other than is provided by law for the postage of such mail matter, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 784; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 330 (Mar. 4, 1909, ch. 321, § 207, 35 Stat. 1128).

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100''.

[§ 1727. Repealed. Pub. L. 90–384, § 1(a), July 5, 1968, 82 Stat. 292]

Section, act June 25, 1948, ch. 645, 62 Stat. 785, provided for a fine of not more than $50 for postage accounting violations.

SAVINGS PROVISION

Section 2 of Pub. L. 90–384 provided that: ''Nothing in this Act [repealing this section] shall be construed to

affect in any way any prosecution for any offense occurring prior to the date of enactment of such Act [July 5, 1968].''

§ 1728. Weight of mail increased fraudulently

Whoever places any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 103–322, title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 358 (Mar. 4, 1909, ch. 321, § 228, 35 Stat. 1134).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $20,000''.

§ 1729. Post office conducted without authority

Whoever, without authority from the Postal Service, sets up or professes to keep any office or place of business bearing the sign, name, or title of post office, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 91–375, § 6(j)(34), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 302 (Mar. 4, 1909, ch. 321, § 179, 35 Stat. 1123).

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1730. Uniforms of carriers

Whoever, not being connected with the letter-carrier branch of the Postal Service, wears the uniform or badge which may be prescribed by the Postal Service to be worn by letter carriers, shall be fined under this title or imprisoned not more than six months, or both.

The provisions of the preceding paragraph shall not apply to an actor or actress in a theatrical, television, or motion-picture production who wears the uniform or badge of the letter-carrier branch of the Postal Service while portraying a member of that service.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 90–413, July 21, 1968, 82 Stat. 396; Pub. L. 91–375, § 6(j)(35), Aug. 12, 1970, 84 Stat. 780; Pub. L. 101–647, title XII, § 1210(a), Nov. 29, 1990, 104 Stat. 4832; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 310 (Mar. 4, 1909, ch. 321, § 187, 35 Stat. 1124).

Minor verbal change was made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $100'' in first par.

1990—Pub. L. 101–647 struck out '', if the portrayal does not tend to discredit that service'' before period at end of second par.

1970—Pub. L. 91–375 substituted ''Postal Service'' for ''Postmaster General'' before ''to be worn'' in first par.

1968—Pub. L. 90–413 inserted provision exempting an actor or actress in a theatrical, television, or motion-picture production who wears the uniform or badge of the letter-carrier branch of the Postal Service from the penalties imposed by this section.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 1731. Vehicles falsely labeled as carriers

It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words ''United States Mail'', or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used.

Whoever violates, and every owner, receiver, lessee, or managing operator who suffers, or permits the violation of, any provision of this section, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 311 (Mar. 4, 1909, ch. 321, § 188, 35 Stat. 1124).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

The punishment provision was rewritten to conform more closely with comparable offenses in other sections. (See sections 1729 and 1730 of this title.)

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in second par.

§ 1732. Approval of bond or sureties by postmaster

Whoever, being a postmaster, affixes his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in

any contract, before the said bond or contract is signed by the bidder or contractor and his sureties, or knowingly, or without the exercise of due diligence, approves any bond of a bidder with insufficient sureties, or knowingly makes any false or fraudulent certificate, shall be fined under this title or imprisoned not more than one year, or both; and shall be dismissed from office and disqualified from holding the office of postmaster.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 352 (Mar. 4, 1909, ch. 321, § 222, 35 Stat. 1133).

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1733. Mailing periodical publications without prepayment of postage

Whoever, except as permitted by law, knowingly mails any periodical publication without the prepayment of postage, or, being an officer or employee of the Postal Service, knowingly permits any periodical publication to be mailed without prepayment of postage, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 86–682, § 7, Sept. 2, 1960, 74 Stat. 705; amended Pub. L. 91–375, § 6(j)(36)(A), Aug. 12, 1970, 84 Stat. 780; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

1970—Pub. L. 91–375 substituted ''Mailing periodical publications without prepayment of postage'' for ''Affidavits relating to second class mail'' as section catchline, struck out subsec. (a) penalty provision for fine of not more than $1,000 for each refusal to make affidavits relating to second class mail when tendering for mailing such mail without any affidavits, and reenacted subsec. (b) as the section without any subsection designation, inserting '', except as permitted by law,'' and substituting ''periodical publication'' for ''second class mail'' in two places, ''prepayment of postage'' for ''payment of postage'' where first appearing, and ''officer or employee of the Postal Service'' for ''postmaster or postal official''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section effective Sept. 1, 1960, see section 11 of Pub. L. 86–682.

§ 1734. Editorials and other matter as "advertisements"

Whoever, being an editor or publisher, prints in a publication entered as second class mail, editorial or other reading matter for which he has been paid or promised a valuable consideration, without plainly marking the same ''advertisement'' shall be fined under this title.

(Added Pub. L. 86–682, § 7, Sept. 2, 1960, 74 Stat. 706; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

EFFECTIVE DATE

Section effective Sept. 1, 1960, see section 11 of Pub. L. 86–682.

§ 1735. Sexually oriented advertisements

(a) Whoever—

(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such section; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section;

shall be fined under this title or imprisoned not more than five years, or both, for the first offense, and shall be fined under this title or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) For the purposes of this section, the term ''sexually oriented advertisement'' shall have the same meaning as given it in section 3010(d) of title 39.

(Added Pub. L. 91–375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, in concluding provisions, substituted ''fined under this title'' for ''fined not more than $5,000'' after ''shall be'' and for ''fined not more than $10,000'' after ''and shall be''.

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91–375, set out as a note preceding section 101 of Title 39, Postal Service.

§ 1736. Restrictive use of information

(a) No information or evidence obtained by reason of compliance by a natural person with any provision of section 3010 of title 39, or regulations issued thereunder, shall, except as provided in subsection (c) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding.

(b) The fact of the performance of any act by an individual in compliance with any provision of section 3010 of title 39, or regulations issued thereunder, shall not be deemed the admission of any fact, or otherwise be used, directly or indirectly, as evidence against that person in a criminal proceeding, except as provided in subsection (c) of this section.

(c) Subsections (a) and (b) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

(Added Pub. L. 91–375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.)

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91–375, set out as a note preceding section 101 of Title 39, Postal Service.

§ 1737. Manufacturer of sexually related mail matter

(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section 3008 or 3010 of title 39, or in violation of any regulation of the Postal Service issued under such section, shall be fined under this title or imprisoned not more than five years, or both, for the first offense, and shall be fined under this title or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) As used in this section, the term ''sexually related mail matter'' means any matter which is within the scope of section 3008(a) or 3010(d) of title 39.

(Added Pub. L. 91–375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' after ''section, shall be'' and for ''fined not more than $10,000'' after ''offense, and shall be''.

EFFECTIVE DATE

Section effective on first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91–375, set out as a note preceding section 101 of Title 39, Postal Service.

[§ 1738. Repealed. Pub. L. 106–578, § 4, Dec. 28, 2000, 114 Stat. 3076]

Section, added Pub. L. 97–398, § 4(a), Dec. 31, 1982, 96 Stat. 2011; amended Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147, related to mailing private identification documents without a disclaimer.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Dec. 28, 2000, see section 5 of Pub. L. 106–578, set out as an Effective Date of 2000 Amendment note under section 1028 of this title.

CHAPTER 84—PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPPING, AND ASSAULT

Sec.
1751. Presidential and Presidential staff assassination, kidnapping, and assault; penalties.
1752. Restricted building or grounds.

AMENDMENTS

2006—Pub. L. 109–177, title VI, § 602(b)(2), Mar. 9, 2006, 120 Stat. 252, substituted ''Restricted building or grounds'' for ''Temporary residences and offices of the President and others'' in item 1752.

1994—Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150, which directed the amendment of this title ''by striking 'kidnaping' each place it appears and inserting 'kidnapping' '', was executed by substituting ''KIDNAPPING'' for ''KIDNAPING'' in chapter heading, to reflect the probable intent of Congress.

Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150, substituted ''kidnapping'' for ''kidnaping'' in item 1751.

1990—Pub. L. 101–647, title XXXV, § 3553, Nov. 29, 1990, 104 Stat. 4926, added item 1752.

1982—Pub. L. 97–285, § 4(b), (c), Oct. 6, 1982, 96 Stat. 1220, inserted ''and Presidential staff'' after ''Presidential'' in chapter heading and in item 1751.

§ 1751. Presidential and Presidential staff assassination, kidnapping, and assault; penalties

(a) Whoever kills (1) any individual who is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the Office of the President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States, or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President, shall be punished as provided by sections 1111 and 1112 of this title.

(b) Whoever kidnaps any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

(d) If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

(e) Whoever assaults any person designated in subsection (a)(1) shall be fined under this title, or imprisoned not more than ten years, or both. Whoever assaults any person designated in subsection (a)(2) shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.

(f) The terms ''President-elect'' and ''Vice-President-elect'' as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.

(g) The Attorney General of the United States, in his discretion is authorized to pay an amount

not to exceed $100,000 for information and services concerning a violation of subsection (a)(1). Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this subsection.

(h) If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.

(i) Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(j) In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an official protected by this section.

(k) There is extraterritorial jurisdiction over the conduct prohibited by this section.

(Added Pub. L. 89–141, § 1, Aug. 28, 1965, 79 Stat. 580; amended Pub. L. 97–285, §§ 3, 4(a), Oct. 6, 1982, 96 Stat. 1220; Pub. L. 103–322, title XXXII, § 320101(e), title XXXIII, §§ 330016(1)(K), (L), 330021(1), Sept. 13, 1994, 108 Stat. 2108, 2147, 2150; Pub. L. 104–294, title VI, § 604(b)(12)(D), Oct. 11, 1996, 110 Stat. 3507.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–294, § 604(b)(12)(D), repealed Pub. L. 103–322, § 320101(e)(1), (2). See 1994 Amendment notes below.

1994—Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping'' in section catchline.

Subsec. (e). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' after ''subsection (a)(2) shall be''.

Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' after ''subsection (a)(1) shall be'' and after ''results, shall be''.

Pub. L. 103–322, § 320101(e)(3), inserted ''the assault involved the use of a dangerous weapon, or'' before ''personal injury results''.

Pub. L. 103–322, § 320101(e)(2), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(K), above, was repealed by Pub. L. 104–294, § 604(b)(12)(D).

Pub. L. 103–322, § 320101(e)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(L), above, was repealed by Pub. L. 104–294, § 604(b)(12)(D).

1982—Pub. L. 97–285, § 4(a), inserted ''and Presidential staff'' after ''Presidential'' in section catchline.

Subsec. (a). Pub. L. 97–285, § 3(a), inserted ''(1)'' after ''Whoever kills'' and ''or (2) any person appointed under section 105(a)(2)(A) of title 3 employed in the Executive Office of the President or appointed under section 106(a)(1)(A) of title 3 employed in the Office of the Vice President,'' after ''laws of the United States''.

Subsec. (e). Pub. L. 97–285, § 3(b), substituted ''(a)(1)'' for ''(a)'' and inserted provision that whoever assaults any person designated in subsec. (a)(2) of this section shall be fined not more than $5,000, or imprisoned not more than one year, or both; and if personal injury results, shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

Subsec. (g). Pub. L. 97–285, § 3(c), substituted ''subsection (a)(1)'' for ''this section'' after ''a violation of''.

Subsecs. (j), (k). Pub. L. 97–285, § 3(d), added subsecs. (j) and (k).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 1752. Restricted building or grounds

(a) It shall be unlawful for any person or group of persons—

(1) willfully and knowingly to enter or remain in any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting;

(2) willfully and knowingly to enter or remain in any posted, cordoned off, or otherwise restricted area of a building or grounds so restricted in conjunction with an event designated as a special event of national significance;

(3) willfully, knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, to engage in disorderly or disruptive conduct in, or within such proximity to, any building or grounds described in paragraph (1) or (2) when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;

(4) willfully and knowingly to obstruct or impede ingress or egress to or from any building, grounds, or area described in paragraph (1) or (2); or

(5) willfully and knowingly to engage in any act of physical violence against any person or property in any building, grounds, or area described in paragraph (1) or (2).

(b) Violation of this section, and attempts or conspiracies to commit such violations, shall be punishable by—

(1) a fine under this title or imprisonment for not more than 10 years, or both, if—

(A) the person, during and in relation to the offense, uses or carries a deadly or dangerous weapon or firearm; or

(B) the offense results in significant bodily injury as defined by section 2118(e)(3); and

(2) a fine under this title or imprisonment for not more than one year, or both, in any other case.

(c) Violation of this section, and attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney in the Federal district court having jurisdiction of the place where the offense occurred.

(d) None of the laws of the United States or of the several States and the District of Columbia shall be superseded by this section.

(e) As used in this section, the term ''other person protected by the Secret Service'' means any person whom the United States Secret Service is authorized to protect under section 3056 of this title when such person has not declined such protection.

(Added Pub. L. 91–644, title V, § 18, Jan. 2, 1971, 84 Stat. 1891; amended Pub. L. 97–308, § 1, Oct. 14, 1982, 96 Stat. 1451; Pub. L. 98–587, § 3(b), Oct. 30, 1984, 98 Stat. 3112; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub.

L. 109–177, title VI, § 602(a), (b)(1), Mar. 9, 2006, 120 Stat. 252.)

AMENDMENTS

2006—Pub. L. 109–177, § 602(b)(1), substituted ''Restricted building or grounds'' for ''Temporary residences and offices of the President and others'' in section catchline.

Subsec. (a)(1). Pub. L. 109–177, § 602(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''willfully and knowingly to enter or remain in

''(i) any building or grounds designated by the Secretary of the Treasury as temporary residences of the President or other person protected by the Secret Service or as temporary offices of the President and his staff or of any other person protected by the Secret Service, or

''(ii) any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting,

in violation of the regulations governing ingress or egress thereto:''

Subsec. (a)(2). Pub. L. 109–177, § 602(a)(1)(C), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 109–177, § 602(a)(1)(B), (D), redesignated par. (2) as (3), inserted ''willfully, knowingly, and'' before ''with intent to impede or disrupt'', and substituted ''described in paragraph (1) or (2)'' for ''designated in paragraph (1)''. Former par. (3) redesignated (4).

Subsec. (a)(4), (5). Pub. L. 109–177, § 602(a)(1)(B), (E), (F), redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted ''described in paragraph (1) or (2)'' for ''designated or enumerated in paragraph (1)'' in each par.

Subsec. (b). Pub. L. 109–177, § 602(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Violation of this section, and attempts or conspiracies to commit such violations, shall be punishable by a fine under this title or imprisonment not exceeding six months, or both.''

Subsecs. (d) to (f). Pub. L. 109–177, § 602(a)(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: ''The Secretary of the Treasury is authorized—

''(1) to designate by regulations the buildings and grounds which constitute the temporary residences of the President or other person protected by the Secret Service and the temporary offices of the President and his staff or of any other person protected by the Secret Service, and

''(2) to prescribe regulations governing ingress or egress to such buildings and grounds and to posted, cordoned off, or otherwise restricted areas where the President or other person protected by the Secret Service is or will be temporarily visiting.''

1994—Subsec. (b). Pub. L. 103–322, which directed the amendment of this section by substituting ''under this title'' for ''not more than $500'', was executed in subsec. (b) by substituting ''under this title'' for ''not exceeding $500'' to reflect the probable intent of Congress.

1984—Subsec. (f). Pub. L. 98–587 amended subsec. (f) generally, substituting ''any person whom the United States Secret Service is authorized to protect under section 3056 of this title when such person has not declined such protection'' for ''any person authorized by section 3056 of this title or by Public Law 90–331, as amended, to receive the protection of the United States Secret Service when such person has not declined such protection pursuant to section 3056 of this title or pursuant to Public Law 90–331, as amended''.

1982—Pub. L. 97–308, § 1(a), substituted ''Temporary residences and offices of the President and others'' for ''Temporary residence of the President'' in section catchline.

Subsec. (a)(1)(i). Pub. L. 97–308, § 1(b), made one's presence unlawful at designated temporary residences and temporary offices of any other person protected by the Secret Service.

Subsec. (a)(1)(ii). Pub. L. 97–308, § 1(c), inserted ''or other person protected by the Secret Service'' after ''President''.

Subsec. (d)(1). Pub. L. 97–308, § 1(d), authorized regulations for designation of the temporary residences and the temporary offices of any other person protected by the Secret Service.

Subsec. (d)(2). Pub. L. 97–308, § 1(e), inserted ''or other person protected by the Secret Service'' after ''President''.

Subsec. (f). Pub. L. 97–308, § 1(f), added subsec. (f).

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 85—PRISON-MADE GOODS

Sec.
1761. Transportation or importation.
1762. Marking packages.

§ 1761. Transportation or importation

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.

(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State or not-for-profit organizations.

(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—

(1) are participating in—one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance;

(2) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed, except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:

(A) taxes (Federal, State, local);

(B) reasonable charges for room and board, as determined by regulations issued by the chief State correctional officer, in the case of a State prisoner;

(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;

(D) contributions to any fund established by law to compensate the victims of crime of

not more than 20 per centum but not less than 5 per centum of gross wages;

(3) have not solely by their status as offenders, been deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation. However, such convicts or prisoners shall not be qualified to receive any payments for unemployment compensation while incarcerated, notwithstanding any other provision of the law to the contrary; and

(4) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

(d) For the purposes of this section, the term ''State'' means a State of the United States and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 785; Pub. L. 90–351, title I, § 819(a), formerly § 827(a), as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1215, and renumbered Pub. L. 98–473, title II, § 609B(f), Oct. 12, 1984, 98 Stat. 2093; Pub. L. 98–473, title II, §§ 223(c), 609K, Oct. 12, 1984, 98 Stat. 2028, 2102; Pub. L. 100–17, title I, § 112(b)(3), Apr. 2, 1987, 101 Stat. 149; Pub. L. 101–647, title XXIX, § 2906, Nov. 29, 1990, 104 Stat. 4914; Pub. L. 102–393, title V, § 535(a), Oct. 6, 1992, 106 Stat. 1764; Pub. L. 103–322, title XXXIII, §§ 330010(11), 330016(1)(H), Sept. 13, 1994, 108 Stat. 2144, 2147; Pub. L. 104–134, title I, § 101(b) [title I, § 136], Apr. 26, 1996, 110 Stat. 1321–77, 1321–93; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–294, title VI, §§ 601(a)(7), 607(h), Oct. 11, 1996, 110 Stat. 3498, 3512.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 396a, 396b (July 24, 1935, ch. 412, § 1, 49 Stat. 494; Oct. 14, 1940, ch. 872, 54 Stat. 1134; July 9, 1941, ch. 283, 55 Stat. 581).

Section consolidates sections 396a and 396b of title 18, U.S.C., 1940 ed. Each section related to the same subject matter and defined the same offense. Section 396a of title 18, U.S.C., 1940 ed., was enacted later and superseded section 396b of title 18, U.S.C., 1940 ed.

Reference to persons aiding, causing or assisting was omitted. Such persons are principals under section 2 of this title.

Reference to states, territories, specific places, etc., were omitted. This was made possible by insertion of words ''interstate commerce or from any foreign country into the United States,'' and by definitive section 10 of this title.

Subsection (b) was rewritten to eliminate ambiguity and uncertainty by expressly making the exceptive language apply to the entire chapter and by permitting State institutions to manufacture goods for the Federal Government and the District of Columbia and vice versa. In such subsections, the words ''penal and correctional'' and ''penal or correctional,'' preceding ''institutions'' and ''institution,'' respectively, were omitted as surplusage.

Minor changes in phraseology were made.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294, § 601(a)(7), substituted ''fined under this title'' for ''fined not more than $50,000''.

Subsec. (b). Pub. L. 104–134 inserted ''or not-for-profit organizations'' after ''of a State''.

Subsec. (d). Pub. L. 104–294, § 607(h), added subsec. (d).

1994—Pub. L. 103–322, § 330016(1)(H), which directed the amendment of this section by substituting ''under this title'' for ''not more than $1,000'', could not be executed because the phrase ''not more than $1,000'' did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 102–393. See 1992 Amendment note below.

Subsec. (c). Pub. L. 103–322, § 330010(11), struck out ''and'' at end of par. (1), substituted semicolon for period at end of par. (2)(B), and inserted ''and'' at end of par. (3).

1992—Subsec. (a). Pub. L. 102–393 substituted ''$50,000'' for ''$1,000'' and ''two years'' for ''one year''.

1990—Subsec. (c). Pub. L. 101–647, § 2906(1), (2), substituted ''In addition to the exceptions set forth in subsection (b) of this section, this chapter shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who'' for ''In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than twenty pilot projects designated by the Director of the Bureau of Justice Assistance and who'' in introductory provisions, added par. (1), and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (c)(2)(B). Pub. L. 101–647, § 2906(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''reasonable charges for room and board as determined by regulations which shall be issued by the Chief State correctional officer;''.

1987—Subsec. (d). Pub. L. 100–17 struck out subsec. (d) which read as follows: ''Notwithstanding any law to the contrary, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.''

1984—Subsec. (a). Pub. L. 98–473, § 223(c), inserted '', supervised release,'' after ''parole''.

Subsec. (c). Pub. L. 98–473, § 609K(a), substituted ''twenty'' for ''seven'' and ''Director of the Bureau of Justice Assistance'' for ''Administrator of the Law Enforcement Assistance Administration''.

Subsec. (d). Pub. L. 98–473, § 609K(b), added subsec. (d).

1979—Subsec. (c). Pub. L. 90–351 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(c) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) through (6) of Title 42, The Public Health and Welfare, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of Title 42.

REPORTS BY SECRETARY OF LABOR

Pub. L. 101–647, title XXIX, § 2908, Nov. 29, 1990, 104 Stat. 4915, which required the Secretary of Labor to submit an annual report to Congress on compliance by State Prison Industry Enhancement Certification programs with requirements set forth in section 1761(c) of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 123 of House Document No. 103–7.

EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON-MADE GOODS

Pub. L. 90–351, title I, § 819(c), formerly § 827(c), as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1215, renumbered and amended Pub. L. 98–473, title II, § 609B(f),

(*o*), Oct. 12, 1984, 98 Stat. 2093, 2096, provided that: ''The provisions of section 1761 of title 18, United States Code, and of the first section of the Act of June 30, 1936 (49 Stat. 2036; 41 U.S.C. 35), commonly known as the Walsh-Healey Act, creating exemptions to Federal restrictions on marketability of prison-made goods, as amended from time to time, shall not apply unless—

''(1) representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by this section; and

''(2) such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services.''

§ 1762. Marking packages

(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

(b) Whoever violates this section shall be fined under this title, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 102–393, title V, § 535(b), Oct. 6, 1992, 106 Stat. 1764; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(a)(7), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 396c, 396d, 396e (July 24, 1935, ch. 412, §§ 2, 3, 4, 49 Stat. 494, 495).

Section consolidates sections 396c, 396d, and 396e of title 18, U.S.C., 1940 ed.

Words ''upon conviction thereof'' were deleted as unnecessary, since punishment cannot be imposed until after conviction.

Words ''transported in violation of this section or section 1761'' were added after the word ''merchandise'' to continue existing law.

The provisions of said section 396e of title 18, U.S.C., 1940 ed., relating to venue, were omitted as covered by section 3237 of this title.

Minor changes were made in translations and phraseology.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $50,000''.

1994—Pub. L. 103–322, which directed the amendment of this section by substituting ''under this title'' for ''not more than $1,000'', could not be executed because the phrase ''not more than $1,000'' did not appear in text subsequent to amendment of subsec. (b) by Pub. L. 102–393. See 1992 Amendment note below.

1992—Subsec. (b). Pub. L. 102–393 substituted ''$50,000'' for ''$1,000''.

CHAPTER 87—PRISONS

Sec.
1791. Providing or possessing contraband in prison.
1792. Mutiny and riot prohibited.
1793. Trespass on Bureau of Prisons reservations and land.

AMENDMENTS

1986—Pub. L. 99–646, § 64(b), Nov. 10, 1986, 100 Stat. 3614, added item 1793.

1984—Pub. L. 98–473, title II, § 1109(c), Oct. 12, 1984, 98 Stat. 2148, amended analysis generally by revising items 1791 and 1792, and by inserting a second chapter heading which was not executed to text as redundant.

§ 1791. Providing or possessing contraband in prison

(a) OFFENSE.—Whoever—

(1) in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or

(2) being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object;

shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—The punishment for an offense under this section is a fine under this title or—

(1) imprisonment for not more than 20 years, or both, if the object is specified in subsection (d)(1)(C) of this section;

(2) imprisonment for not more than 10 years, or both, if the object is specified in subsection (d)(1)(A) of this section;

(3) imprisonment for not more than 5 years, or both, if the object is specified in subsection (d)(1)(B) of this section;

(4) imprisonment for not more than one year, or both, if the object is specified in subsection (d)(1)(D) or (d)(1)(E) of this section; and

(5) imprisonment for not more than 6 months, or both, if the object is specified in subsection (d)(1)(F) of this section.

(c) CONSECUTIVE PUNISHMENT REQUIRED IN CERTAIN CASES.—Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such a controlled substance. Any punishment imposed under subsection (b) for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation.

(d) DEFINITIONS.—As used in this section—

(1) the term ''prohibited object'' means—

(A) a firearm or destructive device or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection;

(B) marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection, ammunition, a weapon (other than a firearm or destructive device), or an object that is designed or intended to be

used as a weapon or to facilitate escape from a prison;

(C) a narcotic drug, methamphetamine, its salts, isomers, and salts of its isomers, lysergic acid diethylamide, or phencyclidine;

(D) a controlled substance (other than a controlled substance referred to in subparagraph (A), (B), or (C) of this subsection) or an alcoholic beverage;

(E) any United States or foreign currency; and

(F) any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual;

(2) the terms ''ammunition'', ''firearm'', and ''destructive device'' have, respectively, the meanings given those terms in section 921 of this title;

(3) the terms ''controlled substance'' and ''narcotic drug'' have, respectively, the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(4) the term ''prison'' means a Federal correctional, detention, or penal facility or any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 98–473, title II, § 1109(a), Oct. 12, 1984, 98 Stat. 2147; Pub. L. 99–646, § 52(a), Nov. 10, 1986, 100 Stat. 3606; Pub. L. 100–690, title VI, § 6468(a), (b), Nov. 18, 1988, 102 Stat. 4376; Pub. L. 103–322, title IX, § 90101, title XXXIII, § 330003(a), Sept. 13, 1994,108 Stat. 1986, 2140; Pub. L. 104–294, title VI, § 601(m), Oct. 11, 1996, 110 Stat. 3502; Pub. L. 109–162, title XI, § 1178, Jan. 5, 2006, 119 Stat. 3126.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753j, 908 (May 14, 1930, ch. 274, § 11, 46 Stat. 327; May 27, 1930, ch. 339, § 8, 46 Stat. 390).

Section consolidates sections 753j and 908 of title 18, U.S.C., 1940 ed. The section was broadened to include the taking or sending out of contraband from the institution. This was suggested by representatives of the Federal Bureau of Prisons and the Criminal Division of the Department of Justice. In other respects the section was rewritten without change of substance.

The words ''narcotic'', ''drug'', ''weapon'' and ''contraband'' were omitted, since the insertion of the words ''contrary to any rule or regulation promulgated by the attorney general'' preserves the intent of the original statutes.

Words ''guilty of a felony'' were deleted as unnecessary in view of definitive section 1 of this title. (See also reviser's note under section 550 of this title.)

Minor verbal changes also were made.

REFERENCES IN TEXT

Schedules I, II, and III, referred to in subsec. (d)(1)(A), (B), probably mean schedules I to III of the schedules of controlled substances, which are set out in section 812(c) of Title 21, Food and Drugs.

AMENDMENTS

2006—Subsec. (d)(4). Pub. L. 109–162 inserted ''or any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''penal facility''.

1996—Subsec. (c). Pub. L. 104–294 inserted heading.

1994—Subsec. (b)(2) to (5). Pub. L. 103–322, §§ 90101(6), 330003(a), amended subsec. (b) identically, substituting ''(d)'' for ''(c)'' wherever appearing in pars. (2) to (5).

Subsec. (c). Pub. L. 103–322, § 90101(1), inserted at beginning ''Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such a controlled substance.''

Subsec. (d)(1)(A). Pub. L. 103–322, § 90101(2), inserted before semicolon at end ''or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection''.

Subsec. (d)(1)(B). Pub. L. 103–322, § 90101(3), inserted ''marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection,'' before ''ammunition,''.

Subsec. (d)(1)(C). Pub. L. 103–322, § 90101(4), inserted ''methamphetamine, its salts, isomers, and salts of its isomers,'' after ''narcotic drug,''.

Subsec. (d)(1)(D). Pub. L. 103–322, § 90101(5), inserted ''(A), (B), or'' before ''(C)''.

1988—Subsec. (b). Pub. L. 100–690, § 6468(a), added par. (1), redesignated former pars. (1) to (4) as (2) to (5), respectively, and struck out ''or (c)(1)(C)'' after ''subsection (c)(1)(B)'' in par. (3) as redesignated.

Subsecs. (c), (d). Pub. L. 100–690, § 6468(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Pub. L. 99–646 amended section generally. Prior to amendment, section read as follows:

''(a) OFFENSE.—A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto—

''(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility—

''(A) a firearm or destructive device;

''(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

''(C) a narcotic drug as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

''(E) United States currency; or

''(F) any other object; or

''(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or otherwise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

''(b) GRADING.—An offense described in this section is punishable by—

''(1) imprisonment for not more than ten years, a fine of not more than $25,000, or both, if the object is anything set forth in paragraph (1)(A);

''(2) imprisonment for not more than five years, a fine of not more than $10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

''(3) imprisonment for not more than one year, a fine of not more than $5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

''(4) imprisonment for not more than six months, a fine of not more than $1,000, or both, if the object is any other object.

''(c) DEFINITIONS.—As used in this section, 'firearm' and 'destructive device' have the meaning given those terms, respectively, in 18 U.S.C. 921(a)(3) and (4).''

1984—Pub. L. 98–473 substituted provisions relating to providing or possessing contraband in prison, grading of offenses and definitions of ''firearm'' and ''destructive device'' for former provisions relating to traffic in contraband articles.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 52(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect 30 days after the date of the enactment of this Act [Nov. 10, 1986].''

§ 1792. Mutiny and riot prohibited

Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause

any mutiny or riot, at any Federal penal, detention, or correctional facility, shall be imprisoned not more than ten years or fined under this title, or both.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 98–473, title II, § 1109(b), Oct. 12, 1984, 98 Stat. 2148; Pub. L. 99–646, § 53(a), Nov. 10, 1986, 100 Stat. 3607; Pub. L. 103–322, title XXXIII, § 330016(1)(O), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 252 (May 18, 1934, ch. 303, § 1, 48 Stat. 782).

Escape provisions of this section were incorporated in section 752 of this title.

Reference to persons causing, procuring, aiding and assisting was omitted. Such persons are principals under section 2 of this title.

Minor changes were made in translation and phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $25,000''.

1986—Pub. L. 99–646 inserted '', detention,'' after ''penal''.

1984—Pub. L. 98–473 substituted provisions deleting prohibition on bringing dangerous instrumentalities into prison and inserted provision setting forth a maximum $25,000 fine.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 53(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect 30 days after the enactment of this Act [Nov. 10, 1986].''

§ 1793. Trespass on Bureau of Prisons reservations and land

Whoever, without lawful authority or permission, goes upon a reservation, land, or a facility of the Bureau of Prisons shall be fined under this title or imprisoned not more than six months, or both.

(Added Pub. L. 99–646, § 64(a), Nov. 10, 1986, 100 Stat. 3614; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

CHAPTER 88—PRIVACY

Sec.
1801. Video voyeurism.

§ 1801. Video voyeurism

(a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

(b) In this section—

(1) the term ''capture'', with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

(2) the term ''broadcast'' means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

(3) the term ''a private area of the individual'' means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

(4) the term ''female breast'' means any portion of the female breast below the top of the areola; and

(5) the term ''under circumstances in which that individual has a reasonable expectation of privacy'' means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

(c) This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

(Added Pub. L. 108–495, § 2(a), Dec. 23, 2004, 118 Stat. 3999.)

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–495, § 1, Dec. 23, 2004, 118 Stat. 3999, provided that: ''This Act [enacting this chapter] may be cited as the 'Video Voyeurism Prevention Act of 2004'.''

CHAPTER 89—PROFESSIONS AND OCCUPATIONS

Sec.
1821. Transportation of dentures.

§ 1821. Transportation of dentures

Whoever transports by mail or otherwise to or within the District of Columbia or any Possession of the United States or uses the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory any set of artificial teeth or prosthetic dental appliance or other denture, constructed from any cast or impression made by any person other than, or without the authorization or prescription of, a person licensed to practice dentistry under the laws of the place into which such denture is sent or brought, where such laws prohibit;

(1) the taking of impressions or casts of the human mouth or teeth by a person not licensed under such laws to practice dentistry;

(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under such laws to practice dentistry; or

(3) the construction or supply of dentures from impressions or casts made by a person not licensed under such laws to practice dentistry—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 786; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title IV, § 4004(c), Nov. 2, 2002, 116 Stat. 1812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 420f, 420g, and 420h (Dec. 24, 1942, ch. 823, §§ 1, 2, 3, 56 Stat. 1087).

This section consolidates the offense, penalty, and definitive provisions of sections 420f, 420g, and 420h of title 18, U.S.C., 1940 ed., as subsections (a) and (b).

The definition of ''denture'' was omitted as unnecessary in view of the phraseology of the revised section, the context of which makes clear the meaning of dentures referred to.

The definition of ''Territory'' was omitted as unnecessary. The revised section makes clear the places included in the application of the section without the use of definitions.

The definition of ''Interstate Commerce'' was likewise omitted as unnecessary in view of definition of interstate commerce in section 10 of this title.

Changes of phraseology and arrangement were made, but without change of substance.

AMENDMENTS

2002—Pub. L. 107–273 struck out '', the Canal Zone'' after ''the District of Columbia'' in first par.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

CHAPTER 90—PROTECTION OF TRADE SECRETS

Sec.
1831. Economic espionage.
1832. Theft of trade secrets.
1833. Exceptions to prohibitions.
1834. Criminal forfeiture.
1835. Orders to preserve confidentiality.
1836. Civil proceedings to enjoin violations.
1837. Applicability to conduct outside the United States.
1838. Construction with other laws.
1839. Definitions.

AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, § 4002(f)(1), Nov. 2, 2002, 116 Stat. 1811, substituted ''Applicability to conduct'' for ''Conduct'' in item 1837.

§ 1831. Economic espionage

(a) IN GENERAL.—Whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly—

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;

(3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in any of paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined not more than $500,000 or imprisoned not more than 15 years, or both.

(b) ORGANIZATIONS.—Any organization that commits any offense described in subsection (a) shall be fined not more than $10,000,000.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3488.)

§ 1832. Theft of trade secrets

(a) Whoever, with intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly—

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) Any organization that commits any offense described in subsection (a) shall be fined not more than $5,000,000.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3489.)

§ 1833. Exceptions to prohibitions

This chapter does not prohibit—

(1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or

(2) the reporting of a suspected violation of law to any governmental entity of the United States, a State, or a political subdivision of a State, if such entity has lawful authority with respect to that violation.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3489.)

§ 1834. Criminal forfeiture

(a) The court, in imposing sentence on a person for a violation of this chapter, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(2) any of the person's property used, or intended to be used, in any manner or part, to commit or facilitate the commission of such violation, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

(b) Property subject to forfeiture under this section, any seizure and disposition thereof, and

any administrative or judicial proceeding in relation thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsections (d) and (j) of such section, which shall not apply to forfeitures under this section.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3489.)

§ 1835. Orders to preserve confidentiality

In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Evidence, referred to in text, are set out in the Appendix to Title 28.

§ 1836. Civil proceedings to enjoin violations

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) The district courts of the United States shall have exclusive original jurisdiction of civil actions under this section.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490; amended Pub. L. 107–273, div. B, title IV, § 4002(e)(9), Nov. 2, 2002, 116 Stat. 1810.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 4002(e)(9)(A), substituted ''this chapter'' for ''this section''.

Subsec. (b). Pub. L. 107–273, § 4002(e)(9)(B), substituted ''this section'' for ''this subsection''.

§ 1837. Applicability to conduct outside the United States

This chapter also applies to conduct occurring outside the United States if—

(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or

(2) an act in furtherance of the offense was committed in the United States.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490.)

§ 1838. Construction with other laws

This chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret, or to affect the otherwise lawful disclosure of information by any Government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490.)

§ 1839. Definitions

As used in this chapter—

(1) the term ''foreign instrumentality'' means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government;

(2) the term ''foreign agent'' means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) the term ''trade secret'' means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public; and

(4) the term ''owner'', with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.

(Added Pub. L. 104–294, title I, § 101(a), Oct. 11, 1996, 110 Stat. 3490.)

CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

Sec.
1841. Protection of unborn children.

§ 1841. Protection of unborn children

(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

(B) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are the following:

(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 924(j), 930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) As used in this section, the term ''unborn child'' means a child in utero, and the term ''child in utero'' or ''child, who is in utero'' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(Added Pub. L. 108–212, § 2(a), Apr. 1, 2004, 118 Stat. 568.)

REFERENCES IN TEXT

Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283), referred to in subsec. (b)(3), probably means section 235 of the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, title I, as added by Pub. L. 96–295, title II, § 202(a), June 30, 1980, 94 Stat. 786, which is classified to section 2283 of Title 42, The Public Health and Welfare. Section 202 of the Atomic Energy Act of 1954, which related to the authority of the Joint Committee on Atomic Energy, was classified to section 2252 of Title 42 and was repealed by act of Aug. 1, 1946, ch. 724, title I, § 302(a), as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95–110, § 1, 91 Stat. 884; renumbered title I, Oct. 24, 1992, Pub. L. 102–486, title IX, § 902(a)(8), 106 Stat. 2944.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–212, § 1, Apr. 1, 2004, 118 Stat. 568, provided that: ''This Act [enacting this chapter and section 919a of Title 10, Armed Forces] may be cited as the 'Unborn Victims of Violence Act of 2004' or 'Laci and Conner's Law'.''

CHAPTER 91—PUBLIC LANDS

Sec.
1851. Coal depredations.
1852. Timber removed or transported.
1853. Trees cut or injured.
1854. Trees boxed for pitch or turpentine.
1855. Timber set afire.
1856. Fires left unattended and unextinguished.
1857. Fences destroyed; livestock entering.
1858. Survey marks destroyed or removed.
1859. Surveys interrupted.
1860. Bids at land sales.
1861. Deception of prospective purchasers.
[1862. Repealed.]
1863. Trespass on national forest lands.
1864. Hazardous or injurious devices on Federal lands.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3554, Nov. 29, 1990, 104 Stat. 4927, struck out item 1862 ''Trespass on Bull Run National Forest''.

1988—Pub. L. 100–690, title VI, § 6254(g), Nov. 18, 1988, 102 Stat. 4367, added item 1864.

1949—Act May 24, 1949, ch. 139, § 41, 63 Stat. 95, substituted in analysis ''1859'' for ''1959'', and added item 1863.

§ 1851. Coal depredations

Whoever mines or removes coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of, or reserved to the United States, with intent wrongfully to appropriate, sell, or dispose of the same, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not interfere with any right or privilege conferred by existing laws of the United States.

(June 25, 1948, ch. 645, 62 Stat. 787; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 103a, 103b (July 3, 1926, ch. 780, §§ 1, 2, 44 Stat. 891).

Section consolidates sections 103a and 103b of title 18, U.S.C., 1940 ed.

Words ''deemed guilty of misdemeanor'' were deleted as unnecessary in view of definitive section 1 of this title. (See also reviser's note under section 212 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par.

§ 1852. Timber removed or transported

Whoever cuts, or wantonly destroys any timber growing on the public lands of the United States; or

Whoever removes any timber from said public lands, with intent to export or to dispose of the same; or

Whoever, being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber so cut or removed from said lands, or lumber manufactured therefrom—

Shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; nor shall it interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

(June 25, 1948, ch. 645, 62 Stat. 787; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 103 (Mar. 4, 1909, ch. 321, § 49, 35 Stat. 1098).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''motor vehicle or aircraft'' were inserted in third paragraph to remove any doubt as to scope of section in view of rapidly advancing methods of transportation.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in fourth par.

§ 1853. Trees cut or injured

Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 787; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 104 (Mar. 4, 1909, ch. 321, § 50, 35 Stat. 1098; June 25, 1910, ch. 431, § 6, 36 Stat. 857).

Reference to persons aiding or procuring was deleted as unnecessary since such persons are made principals by section 2 of this title.

Maximum fine was increased from $500 to $1,000 to conform to other comparable sections of this chapter. (See sections 1851 and 1852 of this title.)

Minor changes were also made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 1854. Trees boxed for pitch or turpentine

Whoever cuts, chips, chops, or boxes any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance; or

Whoever buys, trades for, or in any manner acquires any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, with knowledge that the same has been so unlawfully obtained—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 788; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 105 (Mar. 4, 1909, ch. 321, § 51, 35 Stat. 1098).

Reference to persons aiding, encouraging, or causing was deleted as unnecessary since such persons are made principals by section 2 of this title.

Maximum fine was increased from $500 to $1,000 to conform to other comparable sections of this chapter. (See sections 1851 and 1852 of this title.)

Minor changes also were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

§ 1855. Timber set afire

Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined under this title or imprisoned not more than five years, or both.

This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment.

(June 25, 1948, ch. 645, 62 Stat. 788; Pub. L. 100–690, title VI, § 6254(j), Nov. 18, 1988, 102 Stat. 4368.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 106 (Mar. 4, 1909, ch. 321, § 52, 35 Stat. 1098; Nov. 15, 1941, ch. 472, § 1, 55 Stat. 763).

Surplus verbiage and unnecessary enumerations were omitted.

Words ''without authority'' were inserted near beginning of section so as to remove any doubt as to scope or meaning of section.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''under this title'' for ''not more than $5,000'' in first par.

§ 1856. Fires left unattended and unextinguished

Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 788; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 107 (Mar. 4, 1909, ch. 321, § 53, 35 Stat. 1908; June 25, 1910, ch. 431, § 6, 36 Stat. 857; Nov. 15, 1941, ch. 472, § 2, 55 Stat. 764).

Words ''without hard labor'' which followed ''six months'' and preceded ''or both'' were omitted as unnecessary. (See reviser's note under section 1 of this title.)

Enumeration of applicable condemnation statutes was deleted and section extended and made applicable to all lands in process of condemnation by the government. This does no violence to the intent of Congress and clarifies the section considerably.

Other changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1857. Fences destroyed; livestock entering

Whoever knowingly and unlawfully breaks, opens, or destroys any gate, fence, hedge, or wall inclosing any lands of the United States reserved or purchased for any public use; or

Whoever drives any cattle, horses, hogs, or other livestock upon any such lands for the purposes of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or

Whoever knowingly permits his cattle, horses, hogs, or other livestock to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other livestock may or can destroy the grass or trees or other property of the United States on the said lands—

Shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to unreserved public lands.

(June 25, 1948, ch. 645, 62 Stat. 788; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 111 (Mar. 4, 1909, ch. 321, § 56, 35 Stat. 1099).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in fourth par.

§ 1858. Survey marks destroyed or removed

Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 789; Pub. L. 103–322, title XXXIII, § 330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 111 (Mar. 4, 1909, ch. 321, § 57, 35 Stat. 1099).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250''.

§ 1859. Surveys interrupted

Whoever, by threats or force, interrupts, hinders, or prevents the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same in conformity with the instructions of the Director of the Bureau of Land Management, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 789; May 24, 1949, ch. 139, § 42, 63 Stat. 95; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 112 (Mar. 4, 1909, ch. 321, § 58, 35 Stat. 1099).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

1949 ACT

This section [section 42] substitutes, in section 1859 of title 18, U.S.C., ''Director of the Bureau of Land Management'' for ''Commissioner of the General Land Office,'' in view of the abolishment of the General Land Office, and the office of Commissioner thereof, by 1946 Reorganization Plan No. 3, § 403, effective July 16, 1946 (11 F.R. 7876). Such plan consolidated the functions of the General Land Office and of the Grazing Service to form a new agency, the Bureau of Land Management, in the Department of the Interior and headed by a Director.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

1949—Act May 24, 1949, substituted ''Director of the Bureau of Land Management'' for ''Commissioner of the General Land Office''.

§ 1860. Bids at land sales

Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or

Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 789.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 113 (Mar. 4, 1909, ch. 321, § 59, 35 Stat. 1099).

Imprisonment provision was reduced from ''two years'' to ''one year,'' thus placing the offense in the category of misdemeanors which may be prosecuted on information. The lesser punishment seems adequate.

Minor changes were made in phraseology and arrangement.

§ 1861. Deception of prospective purchasers

Whoever, for a reward paid or promised to him in that behalf, undertakes to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who willfully and falsely represents to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, falsely represents to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 789; Pub. L. 103–322, title XXXIII, § 330016(1)(F), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 114 (Feb. 23, 1917, ch. 115, 39 Stat. 936).

Words ''deemed guilty of a misdemeanor and'' which preceded ''punished'' were omitted as unnecessary in view of definitive section 1 of this title.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The public-land laws, referred to in text, are classified generally to Title 43, Public Lands.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $300''.

[§ 1862. Repealed. Pub. L. 95–200, § 3(c), Nov. 23, 1977, 91 Stat. 1428]

Section, act June 25, 1948, ch. 645, 62 Stat. 789, imposed a fine of not more than $500 or imprisonment of not more than six months as the penalty for knowingly trespassing upon the reserve known as the Bull Run National Forest in the Cascade Mountains. See note set out under section 482b of Title 16, Conservation, for the remainder of Pub. L. 95–200, including savings provisions therein, which in addition to repealing this section created the Bull Run Watershed Management Unit, Mount Hood National Forest.

§ 1863. Trespass on national forest lands

Whoever, without lawful authority or permission, goes upon any national-forest land while it is closed to the public pursuant to lawful regulation of the Secretary of Agriculture, shall be fined under this title or imprisoned not more than six months, or both.

(Added May 24, 1949, ch. 139, § 43, 63 Stat. 95; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

This section [section 43] incorporates in revised title 18, U.S.C., as section 1863 thereof, and with changes in phraseology, the provisions of act of February 10, 1948 (ch. 51, 62 Stat. 19), which was not incorporated in title 18 when the revision was enacted. The phrase ''without hard labor'' is omitted from the punishment clause as unnecessary, in conformity with the uniform style of such title. (See reviser's note to sec. 1 of such revised title, appearing in H. Rept. No. 304, April 24, 1947, to accompany H.R. 3190, 80th Cong. (pp. A2, A4 of such report).) The concluding proviso that ''nothing herein shall be construed to limit the authority of the Secretary of Agriculture under other law to otherwise provide for regulating the occupancy and use of national-forest lands and lands administered by the Forest Service'', is omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1864. Hazardous or injurious devices on Federal lands

(a) Whoever—

(1) with the intent to violate the Controlled Substances Act,

(2) with the intent to obstruct or harass the harvesting of timber, or

(3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk,

uses a hazardous or injurious device on Federal land, on an Indian reservation, or on an Indian allotment while the title to such allotment is held in trust by the United States or while such allotment remains inalienable by the allottee without the consent of the United States shall be punished under subsection (b).

(b) An individual who violates subsection (a) shall—

(1) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;

(2) if serious bodily injury to any individual results, be fined under this title or imprisoned for not more than 40 years, or both;

(3) if bodily injury to any individual results, be fined under this title or imprisoned for not more than 20 years, or both;

(4) if damage to the property of any individual results or if avoidance costs have been incurred exceeding $10,000, in the aggregate, be fined under this title or imprisoned for not more than 20 years, or both; and

(5) in any other case, be fined under this title or imprisoned for not more than one year.

(c) Any individual who is punished under subsection (b)(5) after one or more prior convictions under any such subsection shall be fined under this title or imprisoned for not more than 20 years, or both.

(d) As used in this section—

(1) the term ''serious bodily injury'' means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; and

(D) protracted loss or impairment of the function of bodily member, organ, or mental faculty;

(2) the term ''bodily injury'' means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary;

(3) the term ''hazardous or injurious device'' means a device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. Such term includes guns attached to trip wires or other triggering mechanisms, ammunition attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump; and

(4) the term ''avoidance costs'' means costs incurred by any individual for the purpose of—

(A) detecting a hazardous or injurious device; or

(B) preventing death, serious bodily injury, bodily injury, or property damage likely to result from the use of a hazardous or injurious device in violation of subsection (a).

(e) Any person injured as the result of a violation of subsection (a) may commence a civil action on his own behalf against any person who is alleged to be in violation of subsection (a). The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, in such civil actions. The court may award, in addition to monetary damages for any injury resulting from an alleged violation of subsection (a), costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate.

(Added Pub. L. 100–690, title VI, § 6254(f), Nov. 18, 1988, 102 Stat. 4366; amended Pub. L. 101–647, title XXXV, § 3555, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103–322, title XXXIII, § 330007, Sept. 13, 1994, 108 Stat. 2142; Pub. L. 104–134, title I, § 101(c) [title III, § 330], Apr. 26, 1996, 110 Stat. 1321–156, 1321–208; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a)(1), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–134, § 101(c) [title III, § 330(1)(A)], substituted ''40'' for ''twenty''.

Subsec. (b)(3). Pub. L. 104–134, § 101(c) [title III, § 330(1)(B)], substituted ''20'' for ''ten''.

Subsec. (b)(4). Pub. L. 104–134, § 101(c) [title III, § 330(1)(C), (D)], substituted ''if damage to the property of any individual results or if avoidance costs have been incurred exceeding $10,000, in the aggregate,'' for ''if damage exceeding $10,000 to the property of any individual results,'' and ''20'' for ''ten''.

Subsec. (c). Pub. L. 104–134, § 101(c) [title III, § 330(2)], substituted ''20'' for ''ten''.

Subsec. (d)(4). Pub. L. 104–134, § 101(c) [title III, § 330(3)], added par. (4).

Subsec. (e). Pub. L. 104–134, § 101(c) [title III, § 330(4)], added subsec. (e).

1994—Subsec. (c). Pub. L. 103–322 substituted ''(b)(5)'' for ''(b)(3), (4), or (5)''.

1990—Subsec. (d)(1)(D), (E). Pub. L. 101–647 struck out ''and'' at end of subpar. (D) and substituted ''; and'' for period at end of subpar. (E).

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

Sec.
1901. Collecting or disbursing officer trading in public property.
1902. Disclosure of crop information and speculation thereon.
1903. Speculation in stocks or commodities affecting crop insurance.
[1904. Repealed.]
1905. Disclosure of confidential information generally.
1906. Disclosure of information from a bank examination report.
1907. Disclosure of information by farm credit examiner.
[1908. Repealed.]
1909. Examiner performing other services.
1910. Nepotism in appointment of receiver or trustee.
1911. Receiver mismanaging property.
1912. Unauthorized fees for inspection of vessels.
1913. Lobbying with appropriated moneys.
[1914. Repealed.]
1915. Compromise of customs liabilities.
1916. Unauthorized employment and disposition of lapsed appropriations.
1917. Interference with civil service examinations.
1918. Disloyalty and asserting the right to strike against the Government.

Sec.
1919. False statement to obtain unemployment compensation for Federal service.
1920. False statement or fraud to obtain Federal employees' compensation.
1921. Receiving Federal employees' compensation after marriage.
1922. False or withheld report concerning Federal employees' compensation.
1923. Fraudulent receipt of payments of missing persons.
1924. Unauthorized removal and retention of classified documents or material.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(b)(44), Oct. 11, 1996, 110 Stat. 3509, substituted ''employees' '' for ''employee's'' in item 1920.

1994—Pub. L. 103–359, title VIII, § 808(b), Oct. 14, 1994, 108 Stat. 3454, added item 1924.

Pub. L. 103–333, title I, § 101(b)(2), Sept. 30, 1994, 108 Stat. 2548, substituted ''or fraud to obtain Federal employee's compensation'' for ''to obtain Federal employees' compensation'' in item 1920.

Pub. L. 103–322, title XXXIII, § 330004(11), Sept. 13, 1994, 108 Stat. 2141, struck out items 1904 ''Disclosure of information or speculation in securities affecting Reconstruction Finance Corporation'' and 1908 ''Disclosure of information by National Agricultural Credit Corporation examiner''.

1990—Pub. L. 101–647, title XXXV, § 3556, Nov. 29, 1990, 104 Stat. 4927, substituted ''from a bank examination report'' for ''by bank examiner'' in item 1906 and struck out item 1914 ''Salary of Government officials and employees payable only by United States''.

1966—Pub. L. 89–554, § 3(c), Sept. 6, 1966, 80 Stat. 608, added items 1916 to 1923.

§ 1901. Collecting or disbursing officer trading in public property

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined under this title or imprisoned not more than one year, or both; and shall be removed from office, and be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 790; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 192 (Mar. 4, 1909, ch. 321, § 103, 35 Stat. 1107).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

§ 1902. Disclosure of crop information and speculation thereon

Whoever, being an officer, employee or person acting for or on behalf of the United States or any department or agency thereof, and having by virtue of his office, employment or position, become possessed of information which might influence or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of such department or agency required to be withheld from publication until a fixed time, willfully imparts, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or agency to receive the same; or, before such information is made public through regular official channels, directly or indirectly speculates in any such product by buying or selling the same in any quantity, shall be fined under this title or imprisoned not more than ten years, or both.

No person shall be deemed guilty of a violation of any such rules, unless prior to such alleged violation he shall have had actual knowledge thereof.

(June 25, 1948, ch. 645, 62 Stat. 790; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 214 (Mar. 4, 1909, ch. 321, § 123, 35 Stat. 1110).

Words ''agency thereof'' were inserted in lieu of ''office thereof'' at beginning of section in conformity with section 6 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in first par.

§ 1903. Speculation in stocks or commodities affecting crop insurance

Whoever, while acting in any official capacity in the administration of any Act of Congress relating to crop insurance or to the Federal Crop Insurance Corporation speculates in any agricultural commodity or product thereof, to which such enactments apply, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 790; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1514(b) of title 7, U.S.C., 1940 ed., Agriculture (Feb. 16, 1938, ch. 30, title V, § 514(b), 52 Stat. 76).

Words ''upon conviction thereof'' were omitted as surplusage since punishment can be imposed only after a conviction.

Minor changes were made in phraseology and translations.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

[§ 1904. Repealed. Pub. L. 103–322, title XXXIII, § 330004(11), Sept. 13, 1994, 108 Stat. 2141]

Section, acts June 25, 1948, ch. 645, 62 Stat. 791; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(L), 108 Stat. 2147, related to disclosure of information or speculation in securities affecting Reconstruction Finance Corporation.

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency

thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(June 25, 1948, ch. 645, 62 Stat. 791; Pub. L. 96–349, § 7(b), Sept. 12, 1980, 94 Stat. 1158; Pub. L. 102–550, title XIII, § 1353, Oct. 28, 1992, 106 Stat. 3970; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–347, title II, § 209(d)(2), Dec. 17, 2002, 116 Stat. 2930.)

HISTORICAL AND REVISION NOTES

Based on section 176b of title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of title 18, U.S.C., 1940 ed.; section 1335 of title 19, U.S.C., 1940 ed., Customs Duties (R.S. § 3167; Aug. 27, 1894, ch. 349, § 24, 28 Stat. 557; Feb. 26, 1926, ch. 27, § 1115, 44 Stat. 117; June 17, 1930, ch. 497, title III, § 335, 46 Stat. 701; Jan. 27, 1938, ch. 11, § 2, 52 Stat. 8).

Section consolidates section 176b of title 15, U.S.C., 1940 ed., Commerce and Trade; section 216 of title 18, U.S.C., 1940 ed., and section 1335 of title 19, U.S.C., 1940 ed., Customs Duties.

Words ''or of any department or agency thereof'' and words ''such department or agency'' were inserted so as to eliminate any possible ambiguity as to scope of section. (See definition of ''department'' and ''agency'' in section 6 of this title.)

References to the offenses as misdemeanors, contained in all of said sections, were omitted in view of definitive section 1 of this title.

The provisions of section 216 of title 18, U.S.C., 1940 ed., relating to publication of income tax data by ''any person'', were omitted as covered by section 55(f)(1) of title 26, U.S.C., 1940 ed., Internal Revenue Code.

Minor changes were made in translations and phraseology.

REFERENCES IN TEXT

The Antitrust Civil Process Act, referred to in text, is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

AMENDMENTS

2002—Pub. L. 107–347 inserted ''or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5,'' after ''(15 U.S.C. 1311–1314),''.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

1992—Pub. L. 102–550 inserted ''any person acting on behalf of the Office of Federal Housing Enterprise Oversight,'' after ''or agency thereof,''.

1980—Pub. L. 96–349 provided for punishment and removal from office of an agent of the Department of Justice as defined in the Antitrust Civil Process Act for disclosure of confidential information.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

§ 1906. Disclosure of information from a bank examination report

Whoever, being an examiner, public or private, or a Government Accountability Office employee with access to bank examination report information under section 714 of title 31, discloses the names of borrowers or the collateral for loans of any member bank of the Federal Reserve System, any bank insured by the Federal Deposit Insurance Corporation, any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or any organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, examined by him or subject to Government Accountability Office audit under section 714 of title 31 to other than the proper officers of such bank, branch, agency, or organization, without first having obtained the express permission in writing from the Comptroller of the Currency as to a national bank or a Federal branch or Federal agency (as such terms are defined in paragraphs (5) and (6) of section 1(b) of the International Banking Act of 1978), the Board of Governors of the Federal Reserve System as to a State member bank, an uninsured State branch or State agency (as such terms are defined in paragraphs (11) and (12) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act, or the Federal Deposit Insurance Corporation as to any other insured bank, including any insured branch (as defined in section 3(s) of the Federal Deposit Insurance Act),,[2] or from the board of directors of such bank or organization, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or either House thereof, or any committee of Congress or either House duly authorized or as authorized by section 714 of title 31 shall be fined under this title or imprisoned not more than one year or both.

(June 25, 1948, ch. 645, 62 Stat. 791; Pub. L. 95–320, § 3, July 21, 1978, 92 Stat. 393; Pub. L. 97–258, § 3(e)(1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 101–647, title XXV, § 2597(k), Nov. 29, 1990, 104 Stat. 4911; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

[1] See References in Text note below.

[2] So in original.

HISTORICAL AND REVISION NOTES

Based on section 594 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22 [second and third sentences of second paragraph], 38 Stat. 272, 273; Sept. 26, 1918, ch. 177, § 5 [22(b), second paragraph], 40 Stat. 970; Aug. 23, 1935, ch. 614, § 326(b), 49 Stat. 716).

Other provisions of section 594 of title 12, U.S.C., 1940 ed., Banks and Banking, were consolidated with similar provisions from other sections, to form section 1909 of this title.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 3(s) of the Federal Deposit Insurance Act, referred to in text, is classified to section 1813(s) of Title 12.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1990—Pub. L. 101–647 substituted ''System, any bank insured'' for ''System, or bank insured'' and inserted '', any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or any organization operating under section 25 or section 25(a) of the Federal Reserve Act,'' after ''by the Federal Deposit Insurance Corporation'', ''branch, agency, or organization,'' after ''proper officers of such bank,'', ''or a Federal branch or Federal agency (as such terms are defined in paragraphs (5) and (6) of section 1(b) of the International Banking Act of 1978)'' after ''national bank'', '', an uninsured State branch or State agency (as such terms are defined in paragraphs (11) and (12) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act'' after ''as to a State member bank'', '', including any insured branch (as defined in section 3(s) of the Federal Deposit Insurance Act),'' after ''any other insured bank'', and ''or organization'' after ''board of directors of such bank''.

1982—Pub. L. 97–258 substituted ''section 714 of title 31'' for ''section 117(e) of the Accounting and Auditing Act of 1950'' wherever appearing.

1978—Pub. L. 95–320 substituted ''from a bank examination report'' for ''by bank examiner'' in section catchline and, in text, substituted ''public or private, or a General Accounting Office employee with access to bank examination report information under section 117(e) of the Accounting and Auditing Act of 1950, discloses'' for ''public or private, discloses'', ''examined by him or subject to General Accounting Office audit under section 117(e) of the Accounting and Auditing Act of 1950 to other than'' for '', examined by him, to other than'', and ''either House duly authorized or as authorized by section 117(e) of the Accounting and Auditing Act of 1950 shall be fined'' for ''either House duly authorized, shall be fined''.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, were not included in transfer of functions of officers, agencies, and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26, of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1907. Disclosure of information by farm credit examiner

Whoever, being a farm credit examiner or any examiner, public or private, discloses the names of borrowers of any Federal land bank association or Federal land bank, or any organization examined by him under the provisions of law relating to Federal intermediate credit banks, to other than the proper officers of such institution or organization, without first having obtained express permission in writing from the Land Bank Commissioner or from the board of directors of such institution or organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined under this title or imprisoned not more than one year, or both; and shall be disqualified from holding office as a farm credit examiner.

(June 25, 1948, ch. 645, 62 Stat. 791; Pub. L. 86–168, title I, § 104(h), Aug. 18, 1959, 73 Stat. 387; Pub. L. 97–297, § 4(c), Oct. 12, 1982, 96 Stat. 1318; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 983 and 1124 of title 12, U.S.C., 1940 ed., Banks and Banking (July 17, 1916, ch. 245, § 31 [third and fourth sentences of third paragraph], 39 Stat. 383; July 17, 1916, ch. 245, § 211(d) [part of first sentence], as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1460; June 16, 1933, ch. 98, § 80(a), 48 Stat. 273).

Section 983 of title 12, U.S.C., 1940 ed., Banks and Banking, does not include the term ''farm credit examiner,'' as used in this section, but it relates thereto as is indicated by sections 951 and 952 of said title.

Section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, which was taken from a chapter in that title dealing with Federal intermediate credit banks, also relates to farm credit examiners as is indicated by section 1093 thereof. Even so, it was deemed advisable to retain the reference to any examiner ''public or private,'' as used in said section 1124.

For clarification, the types of associations, banks, and organizations to which section relates, were enumerated wherever referred to, and words ''examined by him under the provisions of law relating to Federal intermediate credit banks'' were inserted.

In addition, changes were made in phraseology.

The provisions relating to disqualification from holding office as an incident to violation were contained in section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking.

For bribery and other provisions of section 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, see sections 218 and 1909 of this title.

Other provisions of said section 983 of title 12, U.S.C., 1940 ed., were incorporated in section 221 of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1982—Pub. L. 97–297 substituted ''or Federal land bank'' for '', Federal land bank, or joint-stock land bank''.

1959—Pub. L. 86–168 substituted ''Federal land bank associations'' for ''national farm loan association''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86–168.

ABOLITION OF OFFICE OF LAND BANK COMMISSIONER

The office of Land Bank Commissioner was abolished by section 636f of Title 12, Banks and Banking.

[§ 1908. Repealed. Pub. L. 103–322, title XXXIII, § 330004(11), Sept. 13, 1994, 108 Stat. 2141]

Section, acts June 25, 1948, ch. 645, 62 Stat. 792; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330016(1)(K), 108 Stat. 2147, related to disclosure of information by National Agricultural Credit Corporation examiner.

§ 1909. Examiner performing other services

Whoever, being a national-bank examiner, Federal Deposit Insurance Corporation examiner, or farm credit examiner, performs any other service, for compensation, for any bank or banking or loan association, or for any officer, director, or employee thereof, or for any person connected therewith in any capacity, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 792; Pub. L. 103–322, title XXXIII, §§ 330004(12), 330016(1)(K), Sept. 13, 1994, 108 Stat. 2142, 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 594, 656a, 952, 981, 1093, 1124, 1243, and 1314 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 22, fourth sentence of first paragraph, and third sentence of second paragraph, 38 Stat. 272; July 17, 1916, ch. 245, §§ 28, 31 [third sentence of first paragraph], 39 Stat. 381, 383; July 17, 1916, ch. 245, §§ 208(c), 211(d), second sentence, as added Mar. 4, 1923, ch. 252, § 2, 42 Stat. 1459, 1460; Sept. 26, 1918, ch. 177, § 5 [''22(b)''] 40 Stat. 970; Mar. 4, 1923, ch. 252, title II, §§ 209(c), 216(d) [second sentence], 42 Stat. 1468, 1472; Ex. Ord. No. 6084, Mar. 27, 1933; June 16, 1933, ch. 98, § 80(a), 48 Stat. 273; Aug. 23, 1935, ch. 614, § 326(b), 49 Stat. 716; Aug. 19, 1937, ch. 704, § 20, 50 Stat. 710).

Section 594 of title 12, U.S.C., 1940 ed., Banks and Banking, first paragraph, related to national-bank examiners and Federal Deposit Insurance Corporation examiners, and provided punishment for several offenses including the offense of performing services, for compensation, other than their regular duties. Section 656a of said title 12 is authority for the designation ''farm credit examiner'' included in this section, and section 1093 of said title authorizes farm credit examiners to conduct examinations in connection with contemplated transactions of Federal intermediate credit banks, to which section 1124 of said title relates.

Sections 981 and 1124 of title 12, U.S.C., 1940 ed., Banks and Banking, which relate to farm credit examiners, and section 1314 of said title, which relates to National Agricultural Credit Corporation examiners, all prohibit the performance of services, for compensation, other than regular duties. They do not specifically provide punishment for violation of such prohibition, but the provisions of said section 594 of said title, relating to national-bank examiners and Federal Deposit Insurance Corporation examiners, which does provide punishment for the same offense, are extended to the former two types of examiners by sections 952 and 1243 thereof.

The remaining provisions of sections 594, 981, 1124, and 1314 of title 12, U.S.C., 1940 ed., Banks and Banking, relating to unlawful disclosure of the names of borrowers or the collateral for loans, false statements in applications for loans, overvaluation of securities, and acceptance of loans or gratuities, were separated and transferred according to subject matter to sections 218, 1014, 1906–1908 of this title, where, insofar as possible, they were consolidated with similar provisions from other sections.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Pub. L. 103–322, § 330004(12), inserted ''or'' before ''farm credit examiner'' and struck out ''or an examiner of National Agricultural Credit Corporations,'' before ''performs any other service''.

§ 1910. Nepotism in appointment of receiver or trustee

Whoever, being a judge of any court of the United States, appoints as receiver, or trustee, any person related to such judge by consanguinity, or affinity, within the fourth degree—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 792; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 531 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Aug. 25, 1937, ch. 777, 50 Stat. 810).

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

§ 1911. Receiver mismanaging property

Whoever, being a receiver, trustee, or manager in possession of any property in any cause pending in any court of the United States, willfully fails to manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 792; Pub. L. 103–322, title XXXIII, § 330016(1)(J), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based upon section 124 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 65, 36 Stat. 1104).

Word ''trustee'' was inserted after ''receiver'' so as to make it clear that persons holding such office are included in the enumeration of court officers who are subject to the provisions of this section.

Changes were made in phraseology and arrangement, but without change of substance or meaning.

Other provisions of section 124 of title 28, U.S.C., 1940 ed., were retained in that title.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $3,000''.

§ 1912. Unauthorized fees for inspection of vessels

Whoever, being an officer, employee, or agent of the United States or any agency thereof, engaged in inspection of vessels, upon any pretense, receives any fee or reward for his services, except what is allowed to him by law, shall be fined under this title or imprisoned not more than six months, or both; and shall forfeit his office.

(June 25, 1948, ch. 645, 62 Stat. 792; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 196 (Mar. 4, 1909, ch. 321, § 107, 35 Stat. 1107).

The phrase ''officer or employee of the United States or any agency thereof'' was substituted for the phrase ''inspector of steamboats'' in view of 1946 Reorganization Plan No. 3, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, abolishing inspectors and transferring their functions to the Coast Guard.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1913. Lobbying with appropriated moneys

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

(June 25, 1948, ch. 645, 62 Stat. 792; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–273, div. A, title II, § 205(b), Nov. 2, 2002, 116 Stat. 1778.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 201 (July 11, 1919, ch. 6, § 6, 41 Stat. 68).

Reference to ''department'' and ''agency'' was added in three instances after the words ''United States'' to remove doubt as to the scope of the section. (See definitions of ''department'' and ''agency'' in section 6 of this title.)

Reference to the offense as a misdemeanor was omitted as unnecessary in view of the definitive section 1 of this title.

Words ''on conviction thereof'' were omitted as surplusage since punishment can be imposed only after conviction.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''a jurisdiction, or an official of any government, to favor, adopt,'' for ''to favor'', inserted '', law, ratification, policy,'' after ''legislation'' wherever appearing, struck out ''by Congress'' before '', whether before or after'', inserted '', measure,'' before ''or resolution'', substituted ''any such Member or official, at his request,'' for ''Members of Congress on the request of any Member'', inserted ''or such official'' before '', through the proper'', substituted ''for any legislation'' for ''for legislation'', substituted '', or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.'' for period at end of first par., and struck out last par. which read as follows: ''Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.''

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500'' in last par.

[§ 1914. Repealed. Pub. L. 87–849, § 2, Oct. 23, 1962, 76 Stat. 1126]

Section, act June 25, 1948, ch. 645, 62 Stat. 793, related to salary of Government officials and employees payable only by United States. Section was supplanted by section 209 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87–849, set out as an Effective Date note under section 201 of this title.

§ 1915. Compromise of customs liabilities

Whoever, being an officer of the United States, without lawful authority compromises or abates or attempts to compromise or abate any claim of the United States arising under the customs laws for any fine, penalty or forfeiture, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise or baggage therefrom, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 793; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 1616 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 616, 46 Stat. 757).

Designation of the offense as a felony was omitted as unnecessary in view of definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Words ''and upon conviction thereof'' were also omitted as unnecessary, since punishment could not be imposed until after conviction.

Changes were made in phraseology.

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to Title 19, Customs Duties.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 1916. Unauthorized employment and disposition of lapsed appropriations

Whoever—

(1) violates the provision of section 3103 of title 5 that an individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid; or

(2) violates the provision of section 5501 of title 5 that money accruing from lapsed salaries or from unused appropriations for salaries shall be covered into the Treasury of the United States;

shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 608; amended Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title III, § 3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 47 (less so much as relates to removal).	Aug. 23, 1912, ch. 350, § 5 (less so much as relates to removal), 37 Stat. 414.
.....	5 U.S.C. 50 (2d sentence, less so much as relates to removal).	

The statement of the acts prohibited is supplied from section 4 of the Act of Aug. 5, 1882, ch. 389, 22 Stat. 255, as amended June 22, 1906, ch. 3514, §§ 6, 8, 34 Stat. 449, and Sept. 23, 1950, ch. 1010, § 7, 64 Stat. 986, which is codified in sections 3103 and 5501 of title 5, United States Code.

The words ''upon conviction thereof'' are omitted as unnecessary because punishment can be imposed only after conviction.

AMENDMENTS

2002—Pub. L. 107–273 inserted '', or both'' after ''year'' in concluding provisions.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in concluding provisions.

§ 1917. Interference with civil service examinations

Whoever, being a member or employee of the United States Office of Personnel Management or an individual in the public service, willfully and corruptly—

(1) defeats, deceives, or obstructs an individual in respect of his right of examination according to the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by such Office under section 1302(a) of title 5;

(2) falsely marks, grades, estimates, or reports on the examination or proper standing of an individual examined;

(3) makes a false representation concerning the mark, grade, estimate, or report on the examination or proper standing of an individual examined, or concerning the individual examined; or

(4) furnishes to an individual any special or secret information for the purpose of improving or injuring the prospects or chances of an individual examined, or to be examined, being appointed, employed, or promoted;

shall, for each offense, be fined under this title not less than $100 or imprisoned not less than ten days nor more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 609; amended Pub. L. 103–322, title XXXIII, § 330010(2), Sept. 13, 1994, 108 Stat. 2143; Pub. L. 104–294, title VI, § 601(a)(9), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 637.	Jan. 16, 1883, ch. 27, § 5, 22 Stat. 405.

The section is rewritten to conform to the style of title 18. The words ''a member or employee of the United States Civil Service Commission'' are coextensive with and substituted for ''Civil Service Commissioner, examiner, copyist, or messenger''.

The references to actions in concert with others to violate this section are omitted in view of the crime of conspiracy contained in chapter 19 of title 18.

In paragraph (1), the words ''the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by the Commission under section 1302(a) of title 5'' are substituted for ''any such rules or regulations'' to provide the basis of reference.

The words ''be deemed guilty of a misdemeanor'' are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words ''and upon conviction thereof'' are omitted as unnecessary because punishment can be imposed only after conviction.

The words ''or both'' are substituted for ''or by both such fine and imprisonment''.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title not less than $100'' for ''fined not less than $100 nor more than $1,000'' in concluding provisions.

1994—Pub. L. 103–322 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' in introductory provisions and ''such Office'' for ''the Commission'' in par. (1).

§ 1918. Disloyalty and asserting the right to strike against the Government

Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia;

shall be fined under this title or imprisoned not more than one year and a day, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 609; amended Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118r.	Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625.
	[Uncodified.]	June 29, 1956, ch. 479, § 3 (as applicable to the Act of Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625), 70 Stat. 453.

The section is rewritten to conform to the style of title 18. The statement of the acts prohibited is supplied from the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624, which is codified in section 7311 of title 5, United States Code.

The words ''From and after July 1, 1956'', appearing in the Act of June 29, 1956, are omitted as executed.

The words ''shall be guilty of a felony'' are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under section 550 of this title.)

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in concluding provisions.

§ 1919. False statement to obtain unemployment compensation for Federal service

Whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5 or under an agreement thereunder, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 609.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1368(a).	Sept. 1, 1954, ch. 1212, § 4(a) ''Sec. 1508(a)'', 68 Stat. 1135.

The words ''under chapter 85 of title 5'' are substituted for ''under this title'' (Title XV of the Social Security Act, as amended) to reflect the codification of the Title in title 5, United States Code.

§ 1920. False statement or fraud to obtain Federal employees' compensation

Whoever knowingly and willfully falsifies, conceals, or covers up a material fact, or makes a false, fictitious, or fraudulent statement or representation, or makes or uses a false statement or report knowing the same to contain any false, fictitious, or fraudulent statement or entry in connection with the application for or receipt of compensation or other benefit or payment under subchapter I or III of chapter 81 of title 5, shall be guilty of perjury, and on conviction thereof shall be punished by a fine under this title, or by imprisonment for not more than 5 years, or both; but if the amount of the benefits falsely obtained does not exceed $1,000, such person shall be punished by a fine under this title, or by imprisonment for not more than 1 year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 610; amended Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103–333, title I, § 101(b)(1), Sept. 30, 1994, 108 Stat. 2547; Pub. L. 104–294, title VI, § 601(a)(10), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title IV, § 4002(f)(2), Nov. 2, 2002, 116 Stat. 1811.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 789.	Sept. 7, 1916, ch. 458, § 39, 39 Stat. 749.
		Oct. 14, 1949, ch. 691, § 103(b), 63 Stat. 855.

The word ''That'' in the Act of Sept. 7, 1916, is omitted as unnecessary.

The words ''under section 8106 of title 5'' are substituted for ''under section 754 of this title'' to reflect the codification of the section in title 5, United States Code. The words ''a claim for compensation under subchapter I of chapter 81 of title 5'' are substituted for ''any claim for compensation'' for clarity.

The words ''or both'' are substituted for ''or by both such fine and imprisonment''.

Minor changes in phraseology are made to conform to the style of title 18.

AMENDMENTS

2002—Pub. L. 107–273 substituted ''employees'' '' for ''employee's'' in section catchline.

1996—Pub. L. 104–294 substituted ''fine under this title'' the first place it appears for ''fine of not more than $250,000'' and ''fine under this title'' the second place it appears for ''fine of not more than $100,000''.

1994—Pub. L. 103–333 substituted ''False statement or fraud to obtain Federal employee's compensation'' for ''False statement to obtain Federal employees' compensation'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''Whoever makes, in an affidavit or report required by section 8106 of title 5 or in a claim for compensation under subchapter I of chapter 81 of title 5, a statement, knowing it to be false, is guilty of perjury and shall be fined under this title or imprisoned not more than one year, or both.''

Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1921. Receiving Federal employees' compensation after marriage

Whoever, being entitled to compensation under sections 8107–8113 and 8133 of title 5 and whose compensation by the terms of those sections stops or is reduced on his marriage or on the marriage of his dependent, accepts after such marriage any compensation or payment to which he is not entitled shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 610; amended Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 760(L).	Sept. 7, 1916, ch. 458, § 10(L) 39 Stat. 745.
		Oct. 14, 1949, ch. 691, § 106(e), 63 Stat. 860.

The word ''Whoever'' is substituted for ''If any person'' to conform to the style of title 18.

The words ''under sections 8107–8113 and 8133 of title 55'' are substituted for ''under this section or section

755 or 756 of this title'' to reflect the codification of the sections in title 5, United States Code.

The words ''or both'' are substituted for ''or by both such fine and imprisonment''.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1922. False or withheld report concerning Federal employees' compensation

Whoever, being an officer or employee of the United States charged with the responsibility for making the reports of the immediate superior specified by section 8120 of title 5, willfully fails, neglects, or refuses to make any of the reports, or knowingly files a false report, or induces, compels, or directs an injured employee to forego filing of any claim for compensation or other benefits provided under subchapter I of chapter 81 of title 5 or any extension or application thereof, or willfully retains any notice, report, claim, or paper which is required to be filed under that subchapter or any extension or application thereof, or regulations prescribed thereunder, shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 610; amended Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 774(b).	Sept. 13, 1960, Pub. L. 86–767, § 206, 74 Stat. 908.

The words ''the reports of the immediate superior specified in section 8120 of title 5'' are substituted for ''the reports specified in subsection (a) of this section'' to reflect the codification of that subsection in title 5, United States Code.

The words ''subchapter I of chapter 81 of title 5'' and ''that subchapter'' are substituted for ''sections 751–756, 757–781, 783–791, and 793 of this title'' and ''said sections'', respectively, to reflect the codification of the sections in title 5, United States Code.

The words ''shall be guilty of a misdemeanor'' are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser's note under 18 U.S.C. 212, 1964 ed.)

The words ''and upon conviction thereof'' are omitted as unnecessary because punishment can be imposed only after conviction.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 1923. Fraudulent receipt of payments of missing persons

Whoever obtains or receives any money, check, or allotment under—

(1) subchapter VII of chapter 55 of title 5; or

(2) chapter 10 of title 37;

without being entitled thereto, with intent to defraud, shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 89–554, § 3(d), Sept. 6, 1966, 80 Stat. 610; amended Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	50A U.S.C. 1008.	Mar. 7, 1942, ch. 166, § 8, 56 Stat. 145.

Clauses (1) and (2) are substituted for the words ''under this Act'' to reflect the codification of the Act. The portion of the Act which is applicable to civilian officers and employees and their dependents is codified in subchapter VII of chapter 55 of title 5, United States Code. The portion of the Act which is applicable to members of the uniformed services and their dependents is codified in chapter 10 of title 37, United States Code.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 1924. Unauthorized removal and retention of classified documents or material

(a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year, or both.

(b) For purposes of this section, the provision of documents and materials to the Congress shall not constitute an offense under subsection (a).

(c) In this section, the term ''classified information of the United States'' means information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.

(Added Pub. L. 103–359, title VIII, § 808(a), Oct. 14, 1994, 108 Stat. 3453; amended Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(C)(i), Nov. 2, 2002, 116 Stat. 1809.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 substituted ''under this title'' for ''not more than $1,000,''.

CHAPTER 95—RACKETEERING

Sec.
1951. Interference with commerce by threats or violence.
1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.
1953. Interstate transportation of wagering paraphernalia.
1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.
1955. Prohibition of illegal gambling businesses.
1956. Laundering of monetary instruments.
1957. Engaging in monetary transactions in property derived from specified unlawful activity.
1958. Use of interstate commerce facilities in the commission of murder-for-hire.
1959. Violent crimes in aid of racketeering activity.

Sec.
1960. Prohibition of unlicensed money transmitting businesses.

AMENDMENTS

2001—Pub. L. 107–56, title III, § 373(c), Oct. 26, 2001, 115 Stat. 340, substituted ''unlicensed'' for ''illegal'' in item 1960.

1992—Pub. L. 102–550, title XV, § 1512(b), Oct. 28, 1992, 106 Stat. 4058, added item 1960.

1988—Pub. L. 100–690, title VII, § 7053(c), Nov. 18, 1988, 102 Stat. 4402, redesignated items 1952A and 1952B as 1958 and 1959, respectively, and transferred them to the end of the table of sections.

1986—Pub. L. 99–570, title I, § 1352(b), Oct. 27, 1986, 100 Stat. 3207–21, added items 1956 and 1957.

1984—Pub. L. 98–473, title II, § 1002(b), Oct. 12, 1984, 98 Stat. 2137, added items 1952A and 1952B.

1970—Pub. L. 91–452, title VIII, § 803(b), Oct. 15, 1970, 84 Stat. 938, added item 1955.

1962—Pub. L. 87–420, § 17(f), Mar. 20, 1962, 76 Stat. 43, added item 1954.

1961—Pub. L. 87–228, § 1(b), Sept. 13, 1961, 75 Stat. 499, added item 1952.

Pub. L. 87–218, § 1, Sept. 13, 1961, 75 Stat. 492, added item 1953.

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term ''robbery'' means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term ''extortion'' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term ''commerce'' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

(June 25, 1948, ch. 645, 62 Stat. 793; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 420a–420e–1 (June 18, 1934, ch. 569, §§ 1–6, 48 Stat. 979, 980; July 3, 1946, ch. 537, 60 Stat. 420).

Section consolidates sections 420a to 420e–1 of Title 18, U.S.C., 1940 ed., with changes in phraseology and arrangement necessary to effect consolidation.

Provisions designating offense as felony were omitted as unnecessary in view of definitive section 1 of this title. (See reviser's note under section 550 of this title.)

Subsection (c) of the revised section is derived from title II of the 1946 amendment. It substitutes references to specific sections of the United States Code, 1940 ed., in place of references to numerous acts of Congress, in conformity to the style of the revision bill. Subsection (c) as rephrased will preclude any construction of implied repeal of the specified acts of Congress codified in the sections enumerated.

The words ''attempts or conspires so to do'' were substituted for sections 3 and 4 of the 1946 act, omitting as unnecessary the words ''participates in an attempt'' and the words ''or acts in concert with another or with others'', in view of section 2 of this title which makes any person who participates in an unlawful enterprise or aids or assists the principal offender, or does anything towards the accomplishment of the crime, a principal himself.

Words ''shall, upon conviction thereof,'' were omitted as surplusage, since punishment cannot be imposed until a conviction is secured.

REFERENCES IN TEXT

Sections 101–115 of Title 29, referred to in subsec. (c), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 29, Labor, and Tables.

Section 11 of that act, formerly classified to section 111 of Title 29, was repealed and reenacted as section 3692 of this title by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 12 of that act, formerly classified to section 112 of Title 29, was repealed by act June 25, 1948, and is covered by rule 42(b) of the Federal Rules of Criminal Procedure, set out in Appendix to this title.

Section 164 of Title 45, included within the reference in subsec. (c) to sections 151–188 of Title 45, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111. See section 5 of Title 41, Public Contracts.

Section 186 of Title 45, included within the reference in subsec. (c) to sections 151–188 of Title 45, was omitted from the Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

SHORT TITLE

This section is popularly known as the ''Hobbs Act''.

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform—

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) ''unlawful activity'' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

(Added Pub. L. 87–228, §1(a), Sept. 13, 1961, 75 Stat. 498; amended Pub. L. 89–68, July 7, 1965, 79 Stat. 212; Pub. L. 91–513, title II, §701(i)(2), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 99–570, title I, §1365(a), Oct. 27, 1986, 100 Stat. 3207–35; Pub. L. 101–647, title XII, §1205(i), title XVI, §1604, Nov. 29, 1990, 104 Stat. 4831, 4843; Pub. L. 103–322, title XIV, §140007(a), title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2033, 2147; Pub. L. 107–296, title XI, §1112(h), Nov. 25, 2002, 116 Stat. 2277.)

REFERENCES IN TEXT

Section 102(6) of the Controlled Substances Act, referred to in subsec. (b)(i)(1), is classified to section 802(6) of Title 21, Food and Drugs.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Attorney General'' for ''Secretary of the Treasury''.

1994—Pub. L. 103–322, §330016(1)(L), which directed the amendment of this section by substituting ''under this title'' for ''not more than $10,000'', could not be executed because the phrase ''not more than $10,000'' did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 103–322, §140007(a). See below.

Subsec. (a). Pub. L. 103–322, §140007(a), substituted ''and thereafter performs or attempts to perform—'' and subpars. (A) and (B) for former concluding provisions which read as follows: ''and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.''

1990—Subsec. (a). Pub. L. 101–647, §1604, inserted ''the mail or'' after ''uses'' and struck out ''including the mail,'' before ''with intent'' in introductory provisions.

Subsec. (b). Pub. L. 101–647, §1205(i), inserted ''(i)'' after ''As used in this section'' and added cl. (ii).

1986—Subsec. (b)(3). Pub. L. 99–570 added cl. (3).

1970—Subsec. (b)(1). Pub. L. 91–513, §701(i)(2)(A), inserted ''or controlled substances (as defined in section 102(6) of the Controlled Substances Act)''.

Subsec. (c). Pub. L. 91–513, §701(i)(2)(B), struck out reference to investigations involving narcotics.

1965—Subsec. (b)(2). Pub. L. 89–68 made section applicable to travel in aid of arson.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for any violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the former Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, were to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a Savings Provision note under section 321 of Title 21, Food and Drugs.

[§ 1952A. Renumbered § 1958]

[§ 1952B. Renumbered § 1959]

§ 1953. Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, or (5) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a lottery which is authorized by the laws of that foreign country.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) For the purposes of this section (1) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) ''foreign country'' means any em-

pire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(e) For the purposes of this section ''lottery'' means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. ''Lottery'' does not include the placing or accepting of bets or wagers on sporting events or contests.

(Added Pub. L. 87–218, § 1, Sept. 13, 1961, 75 Stat. 492; amended Pub. L. 93–583, § 3, Jan. 2, 1975, 88 Stat. 1916; Pub. L. 96–90, § 2, Oct. 23, 1979, 93 Stat. 698; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1979—Subsec. (b)(5). Pub. L. 96–90, § 2(1), added cl. (5).

Subsecs. (d), (e). Pub. L. 96–90, § 2(2), added subsecs. (d) and (e).

1975—Subsec. (b)(4). Pub. L. 93–583 added cl. (4).

§ 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan

Whoever being—

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined under this title or imprisoned not more than three years, or both: *Provided*, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

As used in this section, the term (a) ''any employee welfare benefit plan'' or ''employee pension benefit plan'' means any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974, and (b) ''employee organization'' and ''administrator'' as defined respectively in sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 87–420, § 17(e), Mar. 20, 1962, 76 Stat. 42; amended Pub. L. 91–452, title II, § 225, Oct. 15, 1970, 84 Stat. 930; Pub. L. 93–406, title I, § 111(a)(2)(C), Sept. 2, 1974, 88 Stat. 852; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Employee Retirement Income Security Act of 1974, referred to in text, is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 3(4) of the Employee Retirement Income Security Act of 1974, referred to in text, is classified to section 1002(4) of Title 29.

Section (3)(16) of the Employee Retirement Income Security Act of 1974, referred to in text, probably means section 3(16) of the Employee Retirement Income Security Act of 1974, which is classified to section 1002(16) of Title 29.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in first par.

1974—Pub. L. 93–406 substituted ''any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974'' for ''any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended'' and ''sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974'' for ''sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended''.

1970—Pub. L. 91–452 struck out letter designation ''(a)'' preceding first sentence and struck out subsec. (b) which related to the immunity from prosecution of any witness compelled to testify or produce evidence after claiming his privilege against self-incrimination. See section 6001 et seq. of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of Title 29, Labor, see section 1031 of Title 29.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under sections 6001 of this title.

EFFECTIVE DATE

Section effective 90 days after Mar. 20, 1962, see section 19 of Pub. L. 87–420, set out as a note under section 664 of this title.

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section—

(1) ''illegal gambling business'' means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) ''gambling'' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

(Added Pub. L. 91–452, title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–322, title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $20,000''.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Pub. L. 104–169, Aug. 3, 1996, 110 Stat. 1482, as amended by Pub. L. 105–30, § 1, July 25, 1997, 111 Stat. 248, established the National Gambling Impact Study Commission to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on Federal, State, local, and Native American tribal governments, as well as on communities and social institutions generally, including individuals, families, and businesses within such communities and institutions, and to submit a report, not later than two years after its first meeting, to the President, the Congress, State Governors, and Native American tribal governments containing the Commission's findings and conclusions, together with any recommendations of the Commission, and further provided for membership of the Commission, meetings, powers and duties of the Commission, personnel matters, contracts for research with the Advisory Commission on Intergovernmental Relations and the National Research Council, definitions, appropriations, and termination of the Commission 60 days after submission of its final report.

PRIORITY OF STATE LAWS

Enactment of this section as not indicating an intent on the part of the Congress to occupy the field in which this section operates to the exclusion of State of local law on the same subject matter, or to relieve any person of any obligation imposed by any State or local law, see section 811 of Pub. L. 91–452, set out as a Priority of State Laws note under section 1511 of this title.

COMMISSION ON REVIEW OF NATIONAL POLICY TOWARD GAMBLING

Sections 804–809 of Pub. L. 91–452 established Commission on Review of National Policy Toward Gambling, provided for its membership and compensation of members and staff, empowered Commission to subpoena witnesses and grant immunity, required Commission to make a study of gambling in United States and existing Federal, State, and local policy and practices with respect to prohibition and taxation of gambling activities and to make a final report of its findings and recommendations to President and to Congress within four years of its establishment, and provided for its termination sixty days after submission of final report.

§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial

transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term ''represented'' means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) PENALTIES.—

(1) IN GENERAL.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) COURT AUTHORITY OVER ASSETS.—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) FEDERAL RECEIVER.—

(A) IN GENERAL.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) APPOINTMENT AND AUTHORITY.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term ''knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity'' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term ''conducts'' includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term ''transaction'' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term ''financial transaction'' means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term ''monetary instruments'' means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term ''financial institution'' includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

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

(7) the term ''specified unlawful activity'' means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));[1]

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to

[1] So in original. The second closing parenthesis probably should not appear.

congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(*l*) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006[2] (relating to fraudulent Federal credit institution entries), 1007[2] (relating to Federal Deposit Insurance transactions), 1014[2] (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032[2] (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)[3]

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which

[2] So in original. Probably should be preceded by ''section''.

[3] So in original. Probably should be followed by a semicolon.

the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) NOTICE OF CONVICTION OF FINANCIAL INSTITUTIONS.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) VENUE.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

(Added Pub. L. 99–570, title I, § 1352(a), Oct. 27, 1986, 100 Stat. 3207–18; amended Pub. L. 100–690, title VI, §§ 6183, 6465, 6466, 6469(a)(1), 6471(a), (b), title VII, § 7031, Nov. 18, 1988, 102 Stat. 4354, 4375, 4377, 4378, 4398; Pub. L. 101–647, title I, §§ 105–108, title XII, § 1205(j), title XIV, §§ 1402, 1404, title XXV, § 2506, title XXXV, § 3557, Nov. 29, 1990, 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927; Pub. L. 102–550, title XV, §§ 1504(c), 1524, 1526(a), 1527(a), 1530, 1531, 1534, 1536, Oct. 28, 1992, 106 Stat. 4055, 4064–4067; Pub. L. 103–322, title XXXII, § 320104(b), title XXXIII, §§ 330008(2), 330011(*l*), 330012, 330019, 330021(1), Sept. 13, 1994, 108 Stat. 2111, 2142, 2145, 2146, 2149, 2150; Pub. L. 103–325, title IV, §§ 411(c)(2)(E), 413(c)(1), (d), Sept. 23, 1994, 108 Stat. 2253–2255; Pub. L. 104–132, title VII, § 726, Apr. 24, 1996, 110 Stat. 1301; Pub. L. 104–191, title II, § 246, Aug. 21, 1996, 110 Stat. 2018; Pub. L. 104–294, title VI, §§ 601(f)(6), 604(b)(38), Oct. 11, 1996, 110 Stat. 3499, 3509; Pub. L. 106–569, title VII, § 709(a), Dec. 27, 2000, 114 Stat. 3018; Pub. L. 107–56, title III, §§ 315, 317, 318, 376, title VIII, § 805(b), title X, § 1004, Oct. 26, 2001, 115 Stat. 308, 310, 311, 342, 378, 392; Pub. L. 107–273, div. B, title IV, §§ 4002(a)(11), (b)(5), (c)(2), 4005(d)(1), (e), Nov. 2, 2002, 116 Stat. 1807, 1809, 1812, 1813; Pub. L. 108–458, title VI, § 6909, Dec. 17, 2004, 118 Stat. 3774; Pub. L. 109–164, title I, § 103(b), Jan. 10, 2006, 119 Stat. 3563; Pub. L. 109–177, title III, § 311(c), title IV, §§ 403(b), (c)(1), 405, 406(a)(2), 409, Mar. 9, 2006, 120 Stat. 242–244, 246.)

REFERENCES IN TEXT

Sections 7201 and 7206 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(A)(ii), are classified, respectively, to sections 7201 and 7206 of Title 26, Internal Revenue Code.

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Controlled Substances Act, referred to in subsec. (c)(7)(B)(i), (D), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Section 422 of the Act is classified to section 863 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Chemical Diversion and Trafficking Act of 1988, referred to in subsec. (c)(7)(D), is subtitle A (§ 6051–6061) of title VI of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4312. For complete classification of subtitle A to the Code, see Short Title of 1988 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

Section 38(c) of the Arms Export Control Act, referred to in subsec. (c)(7)(D), is classified to section 2778(c) of Title 22, Foreign Relations and Intercourse.

Section 11 of the Export Administration Act of 1979, referred to in subsec. (c)(7)(D), is classified to section 2410 of Title 50, Appendix, War and National Defense.

Section 206 of the International Emergency Economic Powers Act, referred to in subsec. (c)(7)(D), is classified to section 1705 of Title 50.

Section 16 of the Trading with the Enemy Act, referred to in subsec. (c)(7)(D), is classified to section 16 of Title 50, Appendix.

Section 15 of the Food Stamp Act of 1977, referred to in subsec. (c)(7)(D), is classified to section 2024 of Title 7, Agriculture.

Section 543(a)(1) of the Housing Act of 1949, referred to in subsec. (c)(7)(D), is classified to section 1490s(a)(1) of Title 42, The Public Health and Welfare.

The Foreign Agents Registration Act of 1938, referred to in subsec. (c)(7)(D), is act June 8, 1938, ch. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (§ 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

The Foreign Corrupt Practices Act, referred to in subsec. (c)(7)(D), probably means the Foreign Corrupt Practices Act of 1977, title I of Pub. L. 95–213, Dec. 19,

1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(7)(E), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Ocean Dumping Act, referred to in subsec. (c)(7)(E), probably means title I of the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1053, as amended, which is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33. For complete classification of title I to the Code, see Tables.

The Act to Prevent Pollution from Ships, referred to in subsec. (c)(7)(E), is Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297, as amended, which is classified principally to chapter 33 (§ 1901 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(7)(E), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Resources Conservation and Recovery Act, referred to in subsec. (c)(7)(E), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–177, § 405, inserted last sentence.

Subsec. (b)(3), (4)(A). Pub. L. 109–177, § 406(a)(2), struck out ''described in paragraph (2)'' after ''A court''.

Subsec. (c)(7)(B)(vii). Pub. L. 109–164 added cl. (vii).

Subsec. (c)(7)(D). Pub. L. 109–177, § 409, inserted '', section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization)'' after ''section 2339A or 2339B (relating to providing material support to terrorists)'' and struck out ''or'' before ''section 2339A or 2339B''.

Pub. L. 109–177, § 403(b), which directed amendment of subsec. (c)(7)(D) by substituting ''any felony violation of the Foreign Corrupt Practices Act'' for ''or any felony violation of the Foreign Corrupt Practices Act'', could not be executed because of the amendment by Pub. L. 108–458, § 6909(3). See 2004 Amendment note below.

Pub. L. 109–177, § 311(c), inserted ''section 554 (relating to smuggling goods from the United States),'' before ''section 641 (relating to public money, property, or records),''.

Subsec. (e). Pub. L. 109–177, § 403(c)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.''

2004—Subsec. (c)(7)(D). Pub. L. 108–458, § 6909(3), struck out ''or'' after ''any felony violation of the Foreign Agents Registration Act of 1938,'' and substituted '', or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)'' for semicolon at end.

Pub. L. 108–458, § 6909(2), which directed the insertion of ''section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices),'' after ''section 2332(b) (relating to international terrorist acts transcending national boundaries),'' was executed by making the insertion after text which contained the words ''section 2332b'' rather than ''section 2332(b)'', to reflect the probable intent of Congress.

Pub. L. 108–458, § 6909(1), inserted ''section 175c (relating to the variola virus),'' before ''section 215''.

2002—Subsec. (c)(6)(B). Pub. L. 107–273, § 4005(d)(1), substituted semicolon for period at end.

Subsec. (c)(7)(B)(ii). Pub. L. 107–273, § 4002(b)(5)(A), realigned margins.

Subsec. (c)(7)(D). Pub. L. 107–273, § 4005(e), repealed Pub. L. 107–56, § 805(b). See 2001 Amendment note below.

Pub. L. 107–273, § 4002(c)(2), substituted ''services),'' for ''services),,'' and ''Code,'' for ''Code,,''.

Pub. L. 107–273, § 4002(b)(5)(B), struck out ''or'' at end.

Pub. L. 107–273, § 4002(a)(11), made technical corrections to directory language of Pub. L. 104–132, § 726(2). See 1996 Amendment note below.

Subsec. (c)(7)(E). Pub. L. 107–273, § 4002(b)(5)(C), substituted ''; or'' for period at end.

Subsec. (c)(7)(F). Pub. L. 107–273, § 4002(b)(5)(D), substituted ''any'' for ''Any'' and semicolon for period at end.

2001—Subsec. (b). Pub. L. 107–56, § 317, inserted subsec. heading, designated existing provisions as par. (1), inserted heading and inserted '', or section 1957'' after ''or (a)(3)'' in introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, and added pars. (2) to (4).

Subsec. (c)(6). Pub. L. 107–56, § 318, added par. (6) and struck out former par. (6) which read as follows: ''the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;''.

Subsec. (c)(7)(B). Pub. L. 107–56, § 315(1), substituted ''destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16)'' for ''or destruction of property by means of explosive or fire'' in cl. (ii), inserted a closing parenthesis after ''1978'' in cl. (iii), and added cls. (iv) to (vi).

Subsec. (c)(7)(D). Pub. L. 107–56, § 376, inserted ''or 2339B'' after ''2339A''. Pub. L. 107–56, § 805(b), which amended subpar. (D) identically, was repealed by Pub. L. 107–273, § 4005(e).

Pub. L. 107–56, § 315(2), inserted ''section 541 (relating to goods falsely classified),'' before ''section 542'', ''section 922(*l*) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking),'' before ''section 956'', ''section 1030 (relating to computer fraud and abuse),'' before ''1032'', and ''any felony violation of the Foreign Agents Registration Act of 1938,'' before ''or any felony violation of the Foreign Corrupt Practices Act''.

Subsec. (i). Pub. L. 107–56, § 1004, added subsec. (i).

2000—Subsec. (c)(7)(D). Pub. L. 106–569 inserted ''any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming),'' after ''coupons having a value of not less than $5,000,''.

1996—Subsec. (c)(7)(B)(ii). Pub. L. 104–132, § 726(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''kidnapping, robbery, or extortion; or''.

Subsec. (c)(7)(B)(iii). Pub. L. 104–294, § 601(f)(6), struck out one closing parenthesis after ''1978''.

Subsec. (c)(7)(D). Pub. L. 104–294, § 604(b)(38), amended directory language of Pub. L. 103–322, § 320104(b). See 1994 Amendment note below.

Pub. L. 104–132, § 726(2), as amended by Pub. L. 107–273, § 4002(a)(11), inserted ''section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member),'' after ''an offense under'', ''section 351 (relating to congressional or Cabinet officer assassination),'' after ''section 215 (relating to commissions or gifts for procuring loans),'', ''section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),'' after ''798 (relating to espionage),'', ''section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),'' after ''section 875 (relating to interstate communications),'', ''section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),'' after ''1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution),'', ''section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),'' after ''section 1203 (relating to hostage taking),'', ''section 1751 (relating to Presidential assassination),'' after ''1708 (theft from the mail),'', ''section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),'' after ''2114 (relating to bank and postal robbery and theft),'', and substituted ''section 2320'' for ''or section 2320'' and '', section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,'' for ''of this title''.

Subsec. (c)(7)(F). Pub. L. 104–191 added subpar. (F).

1994—Subsec. (a)(2). Pub. L. 103–325, § 413(c)(1)(A)(ii), substituted ''transfer'' for ''transfer.'' in concluding provisions and two times in subpar. (B).

Pub. L. 103–322, § 330019(a)(3), and Pub. L. 103–325, § 413(c)(1)(A)(i), amended par. (2) identically, inserting ''not more than'' before ''$500,000'' in concluding provisions.

Subsec. (b). Pub. L. 103–325, § 413(c)(1)(B), inserted ''or (a)(3)'' after ''(a)(1)'' and substituted ''transfer'' for ''transfer.''

Subsec. (c)(7)(B)(ii). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping''.

Subsec. (c)(7)(B)(iii). Pub. L. 103–322, § 330019(a)(1), and Pub. L. 103–325, § 413(c)(1)(C), each amended cl. (iii) by inserting a closing parenthesis after ''1978''.

Subsec. (c)(7)(D). Pub. L. 103–322, § 330019(b), and Pub. L. 103–325, § 413(c)(1)(D), amended subpar. (D) identically, substituting ''section 15 of the Food Stamp Act of 1977'' for ''section 9(c) of the Food Stamp Act of 1977''.

Pub. L. 103–322, § 330011(*l*), and Pub. L. 103–325, § 413(d), made identical amendments repealing Pub. L. 101–647, § 3557(2)(E). See 1990 Amendment note below.

Pub. L. 103–322, § 320104(b), as amended by Pub. L. 104–294, § 604(b)(38), substituted ''section 2319 (relating to copyright infringement), or section 2320 (relating to trafficking in counterfeit goods and services),'' for ''or section 2319 (relating to copyright infringement)''.

Subsec. (c)(7)(E). Pub. L. 103–322, § 330012, and Pub. L. 103–325, § 413(c)(1)(E), amended subpar. (E) identically, striking out second period at end.

Subsec. (e). Pub. L. 103–322, § 330008(2), and Pub. L. 103–325, § 413(c)(1)(F), amended subsec. (e) identically, substituting ''Environmental Protection Agency'' for ''Evironmental Protection Agency''.

Subsec. (g). Pub. L. 103–325, § 411(c)(2)(E), in subsec. (g) relating to notice of conviction of financial institutions, substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

Pub. L. 103–322, § 330019(a)(2), and Pub. L. 103–325, § 413(c)(1)(G), made identical amendments redesignating subsec. (g) relating to penalty for money laundering conspiracies as (h).

Subsec. (h). Pub. L. 103–322, § 330019(a)(2), and Pub. L. 103–325, § 413(c)(1)(G), made identical amendments redesignating subsec. (g) relating to penalty for money laundering conspiracies as (h).

1992—Subsec. (a)(2). Pub. L. 102–550, § 1531(a), substituted ''transportation, transmission, or transfer.'' for ''transportation'' wherever appearing in subpar. (B) and concluding provisions.

Subsec. (a)(3). Pub. L. 102–550, § 1531(b), in concluding provisions, substituted ''property represented to be the proceeds'' for ''property represented by a law enforcement officer to be the proceeds''.

Subsec. (b). Pub. L. 102–550, § 1531(a), substituted ''transportation, transmission, or transfer.'' for ''transportation'' in introductory provisions.

Subsec. (c)(3). Pub. L. 102–550, § 1527(a)(2), inserted ''use of a safe deposit box,'' before ''or any other payment''.

Subsec. (c)(4)(A). Pub. L. 102–550, § 1527(a)(1), added clause (iii), struck out ''which in any way or degree affects interstate or foreign commerce,'' after ''or aircraft,'' and inserted ''which in any way or degree affects interstate or foreign commerce'' after ''(A) or transaction''.

Subsec. (c)(6). Pub. L. 102–550, § 1526(a), substituted ''or the regulations'' for ''and the regulations''.

Subsec. (c)(7)(B). Pub. L. 102–550, § 1536, designated part of existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (c)(7)(D). Pub. L. 102–550, §§ 1524, 1534(1), (2), struck out ''1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),'' after ''hostage taking),'', inserted ''section 1708 (theft from the mail),'' before ''section 2113'', substituted ''section 422 of the Controlled Substances Act'' for ''section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207–51; 21 U.S.C. 857)'', and struck out ''or'' before ''section 16''.

Pub. L. 102–550, § 1534(3), which directed insertion of '', any felony violation of section 9(c) of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act'' before semicolon, was executed by making insertion before semicolon at end to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 102–550, § 1530, added subsec. (g) relating to penalty for money laundering conspiracies.

Pub. L. 102–550, § 1504(c), added subsec. (g) relating to notice of conviction of financial institutions.

1990—Subsec. (a)(2). Pub. L. 101–647, § 108(1), inserted at end ''For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.''

Subsec. (a)(3). Pub. L. 101–647, § 108(2), inserted ''and paragraph (2)'' after ''this paragraph'' in last sentence.

Subsec. (c)(1). Pub. L. 101–647, § 106, substituted ''State, Federal, or foreign'' for ''State or Federal''.

Subsec. (c)(4). Pub. L. 101–647, § 1402, inserted ''(A)'' before ''a transaction'' the first place it appears, ''(B)'' before ''a transaction'' the second place it appears, ''(i)'' before ''involving'' the first place it appears, and ''(ii)'' before ''involving'' the second place it appears.

Subsec. (c)(5). Pub. L. 101–647, § 105, amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers'' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;''.

Subsec. (c)(7)(A). Pub. L. 101–647, § 3557(1), substituted ''subchapter II of chapter 53 of title 31'' for ''the Currency and Foreign Transactions Reporting Act''.

Subsec. (c)(7)(C). Pub. L. 101–647, § 1404(a)(1), struck out ''or'' at end.

Subsec. (c)(7)(D). Pub. L. 101–647, § 3557(2)(A)–(D), substituted ''section 2113'' for ''or section 2113'', substituted ''theft), or'' for ''theft) of this title,'', inserted ''of this title'' after ''2319 (relating to copyright infringement)'', and substituted ''paraphernalia'' for ''paraphenalia''.

Pub. L. 101–647, § 3557(2)(E), which directed the amendment of subpar. (D) by striking the final period, was repealed by Pub. L. 103–322, § 330011(*l*), and Pub. L. 103–325, § 413(d).

Pub. L. 101–647, § 2506(2), inserted ''section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution,'' after ''section 1203 (relating to hostage taking),''.

Pub. L. 101–647, § 2506(1), inserted ''section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution),'' after ''section 875 (relating to interstate communications),''.

Pub. L. 101–647, § 1404(a)(2), inserted ''; or'' after ''Trading with the Enemy Act'' at end.

Pub. L. 101–647, § 107, substituted ''a felony violation of the Chemical Diversion and Trafficking Act of 1988'' for ''section 310 of the Controlled Substances Act (21 U.S.C. 830)''.

Subsec. (c)(7)(E). Pub. L. 101–647, § 1404(a)(2), amended par. (7) by inserting ''; or'' and subpar. (E) before the period.

Subsec. (c)(8). Pub. L. 101–647, § 1205(j), added par. (8).

Subsec. (e). Pub. L. 101–647, § 1404(b), inserted at end ''Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Evironmental [sic] Protection Agency.''

1988—Subsec. (a)(1)(A). Pub. L. 100–690, § 6471(a), amended subpar. (A) generally, designating existing provisions as cl. (i) and adding cl. (ii).

Subsec. (a)(2). Pub. L. 100–690, § 6471(b), substituted ''transports, transmits, or transfers, or attempts to transport, transmit, or transfer'' for ''transports or attempts to transport'' in introductory provisions.

Subsec. (a)(3). Pub. L. 100–690, § 6465, added par. (3).

Subsec. (c)(7)(D). Pub. L. 100–690, § 7031, substituted ''section 513'' for ''section 511'' and ''section 545'' for ''section 543'' and inserted ''section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies),''.

Pub. L. 100–690, § 6466, inserted ''section 542 (relating to entry of goods by means of false statements),'', ''section 549 (relating to removing goods from Customs custody),'', and ''section 2319 (relating to copyright infringement), section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207–51; 21 U.S.C. 857) (relating to transportation of drug paraphenalia [sic]),''.

Pub. L. 100–690, § 6183, substituted ''section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, or section 16 (relating to offenses and punishment) of the Trading with the Enemy Act.'' for ''section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3)''.

Subsec. (e). Pub. L. 100–690, § 6469(a)(1), substituted ''and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.'' for ''. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(a)(11), Nov. 2, 2002, 116 Stat. 1807, provided that the amendment made by section 4002(a)(11) is effective Apr. 24, 1996.

Pub. L. 107–273, div. B, title IV, § 4005(e), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(e) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(38) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 330011(*l*) of Pub. L. 103–322 and section 413(d) of Pub. L. 103–325 provided that the repeal of section 3557(2)(E) of Pub. L. 101–647 made by those sections is effective as of the date of enactment of Pub. L. 101–647, which was approved Nov. 29, 1990.

§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such spe-

cial jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term ''monetary transaction'' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term ''criminally derived property'' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term ''specified unlawful activity'' has the meaning given that term in section 1956 of this title.

(Added Pub. L. 99–570, title I, § 1352(a), Oct. 27, 1986, 100 Stat. 3207–21; amended Pub. L. 100–690, title VI, §§ 6182, 6184, 6469(a)(2), Nov. 18, 1988, 102 Stat. 4354, 4377; Pub. L. 102–550, title XV, §§ 1526(b), 1527(b), Oct. 28, 1992, 106 Stat. 4065; Pub. L. 103–322, title XXXIII, § 330020, Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103–325, title IV, § 413(c)(2), Sept. 23, 1994, 108 Stat. 2255; Pub. L. 109–177, title IV, § 403(c)(2), Mar. 9, 2006, 120 Stat. 243.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–177 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.''

1994—Subsec. (f)(1). Pub. L. 103–322, § 330020, and Pub. L. 103–325, § 413(c)(2), amended par. (1) identically, striking out second comma after ''(as defined in section 1956 of this title)''.

1992—Subsec. (f)(1). Pub. L. 102–550 substituted ''section 1956 of this title'' for ''section 5312 of title 31'' and inserted '', including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title,'' before ''but such term does not include''.

1988—Subsec. (e). Pub. L. 100–690, § 6469(a)(2), substituted ''and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.'' for ''. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.''

Subsec. (f)(1). Pub. L. 100–690, §§ 6182, 6184, substituted ''in section 1956(c)(5) of this title'' for ''for the purposes of subchapter II of chapter 53 of title 31'' and inserted '', but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution''.

§ 1958. Use of interstate commerce facilities in the commission of murder-for-hire

(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so, shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both.

(b) As used in this section and section 1959—

(1) ''anything of pecuniary value'' means anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage;

(2) ''facility of interstate or foreign commerce'' includes means of transportation and communication; and

(3) ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 98–473, title II, § 1002(a), Oct. 12, 1984, 98 Stat. 2136, § 1952A; renumbered § 1958 and amended Pub. L. 100–690, title VII, §§ 7053(a), 7058(b), Nov. 18, 1988, 102 Stat. 4402, 4403; Pub. L. 101–647, title XII, § 1205(k), title XXXV, § 3558, Nov. 29, 1990, 104 Stat. 4831, 4927; Pub. L. 103–322, title VI, § 60003(a)(11), title XIV, § 140007(b), title XXXII, § 320105, title XXXIII, § 330016(1)(L), (N), (Q), Sept. 13, 1994, 108 Stat. 1969, 2033, 2111, 2147, 2148; Pub. L. 104–294, title VI, §§ 601(g)(3), 605(a), Oct. 11, 1996, 110 Stat. 3500, 3509; Pub. L. 108–458, title VI, § 6704, Dec. 17, 2004, 118 Stat. 3766.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458, § 6704(1), substituted ''facility of'' for ''facility in''.

Subsec. (b)(2). Pub. L. 108–458, § 6704(2), inserted ''or foreign'' after ''interstate''.

1996—Subsec. (a). Pub. L. 104–294 substituted comma for ''or who conspires to do so'' after ''or who conspires to do so'' and substituted ''this title or imprisoned'' for ''this title and imprisoned'' before ''for not more than twenty years''.

1994—Pub. L. 103–322, § 330016(1)(Q), which directed the amendment of this section by substituting ''under this title'' for ''not more than $50,000'', could not be executed because the phrase ''not more than $50,000'' did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 103–322, § 60003(a)(11). See below.

Subsec. (a). Pub. L. 103–322, § 330016(1)(N), substituted ''fined under this title'' for ''fined not more than $20,000'' after ''injury results, shall be''.

Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' before ''or imprisoned for not more than ten years''.

Pub. L. 103–322, §§ 140007(b), 320105, each amended subsec. (a) by inserting ''or who conspires to do so'' after ''anything of pecuniary value,''.

Pub. L. 103–322, § 60003(a)(11), substituted ''and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both'' for ''and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both'' before period at end.

1990—Subsec. (b). Pub. L. 101–647, § 3558, substituted ''section 1959'' for ''section 1952B'' in introductory provisions.

Subsec. (b)(3). Pub. L. 101–647, § 1205(k), added par. (3).

1988—Pub. L. 100–690, § 7053(a), renumbered section 1952A of this title as this section.

Subsec. (a). Pub. L. 100–690, § 7058(b), substituted ''ten years'' for ''five years''.

§ 1959. Violent crimes in aid of racketeering activity

(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

(1) for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine under this title, or both;

(2) for maiming, by imprisonment for not more than thirty years or a fine under this title, or both;

(3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine under this title, or both;

(4) for threatening to commit a crime of violence, by imprisonment for not more than five years or a fine under this title, or both;

(5) for attempting or conspiring to commit murder or kidnapping, by imprisonment for not more than ten years or a fine under this title, or both; and

(6) for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, by imprisonment for not more than three years or a fine of[1] under this title, or both.

(b) As used in this section—

(1) ''racketeering activity'' has the meaning set forth in section 1961 of this title; and

(2) ''enterprise'' includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.

(Added Pub. L. 98–473, title II, § 1002(a), Oct. 12, 1984, 98 Stat. 2137, § 1952B; renumbered § 1959, Pub. L. 100–690, title VII, § 7053(b), Nov. 18, 1988, 102 Stat. 4402; Pub. L. 103–322, title VI, § 60003(a)(12), title XXXIII, §§ 330016(1)(J), (2)(C), 330021(1), Sept. 13, 1994, 108 Stat. 1969, 2147, 2148, 2150.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $250,000'' in two places.

Pub. L. 103–322, § 60003(a)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) for murder or kidnaping, by imprisonment for any term of years or for life or a fine of not more than $50,000, or both;''.

Subsec. (a)(2) to (4). Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $30,000'' in par. (2), ''fine of not more than $20,000'' in par. (3), and ''fine of not more than $5,000'' in par. (4).

Subsec. (a)(5). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping''.

Pub. L. 103–322, § 330016(2)(C), substituted ''fine under this title'' for ''fine of not more than $10,000''.

Subsec. (a)(6). Pub. L. 103–322, § 330016(1)(J), substituted ''under this title'' for ''not more than $3,000'' after ''fine of''.

1988—Pub. L. 100–690 renumbered section 1952B of this title as this section.

§ 1960. Prohibition of unlicensed money transmitting businesses

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term ''unlicensed money transmitting business'' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to

[1] So in original. The word ''of'' probably should not appear.

the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term ''money transmitting'' includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term ''State'' means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 102–550, title XV, § 1512(a), Oct. 28, 1992, 106 Stat. 4057; amended Pub. L. 103–325, title IV, § 408(c), Sept. 23, 1994, 108 Stat. 2252; Pub. L. 107–56, title III, § 373(a), Oct. 26, 2001, 115 Stat. 339; Pub. L. 109–162, title XI, § 1171(a)(2), Jan. 5, 2006, 119 Stat. 3123.)

AMENDMENTS

2006—Subsec. (b)(1)(C). Pub. L. 109–162 substituted ''to be used'' for ''to be used to be used''.

2001—Pub. L. 107–56 amended section catchline and text generally, substituting provisions relating to prohibition of unlicensed money transmitting businesses for similar provisions relating to prohibition of illegal money transmitting businesses.

1994—Subsec. (b)(1). Pub. L. 103–325 amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) the term 'illegal money transmitting business' means a money transmitting business that affects interstate or foreign commerce in any manner or degree and which is knowingly operated in a State—

''(A) without the appropriate money transmitting State license; and

''(B) where such operation is punishable as a misdemeanor or a felony under State law;''.

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.
1961. Definitions.
1962. Prohibited activities.
1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3559, Nov. 29, 1990, 104 Stat. 4927, struck out ''racketeering'' after ''Prohibited'' in item 1962.

1970—Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

§ 1961. Definitions

As used in this chapter—

(1) ''racketeering activity'' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons).,[1] section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor

[1] So in original.

vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) ''person'' includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) ''enterprise'' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) ''pattern of racketeering activity'' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) ''unlawful debt'' means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) ''racketeering investigator'' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) ''racketeering investigation'' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) ''documentary material'' includes any book, paper, document, record, recording, or other material; and

(10) ''Attorney General'' includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941; amended Pub. L. 95–575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95–598, title III, § 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 98–473, title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98–547, title II, § 205, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 99–570, title I, § 1365(b), Oct. 27, 1986, 100 Stat. 3207–35; Pub. L. 99–646, § 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100–690, title VII, §§ 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub. L. 101–73, title IX, § 968, Aug. 9, 1989, 103 Stat. 506; Pub. L. 101–647, title XXXV, § 3560, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103–322, title IX, § 90104, title XVI, § 160001(f), title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub. L. 103–394, title III, § 312(b), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 104–132, title IV, § 433, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104–153, § 3, July 2, 1996, 110 Stat. 1386; Pub. L. 104–208, div. C, title II, § 202, Sept. 30, 1996, 110 Stat. 3009–565; Pub. L. 104–294, title VI, §§ 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506; Pub. L. 107–56, title VIII, § 813, Oct. 26, 2001, 115 Stat. 382; Pub. L. 107–273, div. B, title IV, § 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–193, § 5(b), Dec. 19, 2003, 117 Stat. 2879; Pub. L. 108–458, title VI, § 6802(e), Dec. 17, 2004, 118 Stat. 3767; Pub. L. 109–164, title I, § 103(c), Jan. 10, 2006, 119 Stat. 3563; Pub. L. 109–177, title IV, § 403(a), Mar. 9, 2006, 120 Stat. 243.)

REFERENCES IN TEXT

Section 102 of the Controlled Substances Act, referred to in par. (1)(A), (D), is classified to section 802 of Title 21, Food and Drugs.

The Currency and Foreign Transactions Reporting Act, referred to in par. (1)(E), is title II of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1118, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31.

The Immigration and Nationality Act, referred to in par. (1)(F), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. Sections 274, 277, and 278 of the Act are classified to sections 1324, 1327, and 1328 of Title 8, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The effective date of this chapter, referred to in par. (5), is Oct. 15, 1970.

AMENDMENTS

2006—Par. (1)(B). Pub. L. 109–177 inserted ''section 1960 (relating to illegal money transmitters),'' before ''sections 2251''.

Pub. L. 109–164 substituted ''1581–1592'' for ''1581–1591''.

2004—Par. (1)(B). Pub. L. 108–458 inserted ''sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),'' before ''(C) any act which is indictable under title 29''.

2003—Par. (1)(B). Pub. L. 108–193, which directed amendment of par. (1)(A) of this section by substituting ''sections 1581–1591 (relating to peonage, slavery, and trafficking in persons).'' for ''sections 1581–1588 (relating to peonage and slavery)'', was executed by making the substitution in par. (1)(B) to reflect the probable intent of Congress.

2002—Par. (1)(G). Pub. L. 107–273 made technical amendment to directory language of Pub. L. 107–56. See 2001 Amendment note below.

2001—Par. (1)(G). Pub. L. 107–56, as amended by Pub. L. 107–273, which directed addition of cl. (G) before period at end, was executed by making the addition before the semicolon at end to reflect the probable intent of Congress.

1996—Par. (1)(B). Pub. L. 104–294, § 604(b)(6), amended directory language of Pub. L. 103–322, § 160001(f). See 1994 Amendment note below.

Pub. L. 104–294, § 601(i)(3), substituted ''2260'' for ''2258''.

Pub. L. 104–208 struck out ''if the act indictable under section 1028 was committed for the purpose of financial gain'' before '', section 1029'', inserted ''section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers),'' after ''section 1344 (relating to financial institution fraud),'', struck out ''if the act indictable under section 1542 was committed for the purpose of financial gain'' before '', section 1543'', ''if the act indictable under section 1543 was committed for the purpose of financial gain'' before '', section 1544'', ''if the act indictable under section 1544 was committed for the purpose of financial gain'' before '', section 1546'', and ''if the act indictable under section 1546 was committed for the purpose of financial gain'' before '', sections 1581–1588''.

Pub. L. 104–153 inserted '', section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)'' after ''sections 2314 and 2315 (relating to interstate transportation of stolen property)''.

Pub. L. 104–132, § 433(1), (2), inserted ''section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain,'' before ''section 1029'' and ''section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery),'' after ''section 1513 (relating to retaliating against a witness, victim, or an informant),''.

Par. (1)(D). Pub. L. 104–294, § 601(b)(3), substituted ''section 157 of this title'' for ''section 157 of that title''.

Par. (1)(F). Pub. L. 104–132, § 433(3), (4), which directed addition of cl. (F) before period at end, was executed by making the addition before the semicolon at end to reflect the probable intent of Congress.

1994—Par. (1)(A). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping''.

Pub. L. 103–322, § 90104, substituted ''a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)'' for ''narcotic or other dangerous drugs''.

Par. (1)(B). Pub. L. 103–322, § 160001(f), as amended by Pub. L. 104–294, § 604(b)(6), substituted ''2251, 2251A, 2252, and 2258'' for ''2251–2252''.

Par. (1)(D). Pub. L. 103–394 inserted ''(except a case under section 157 of that title)'' after ''title 11''.

Pub. L. 103–322, § 90104, substituted ''a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)'' for ''narcotic or other dangerous drugs''.

1990—Par. (1)(B). Pub. L. 101–647 substituted ''section 1029 (relating to'' for ''section 1029 (relative to'' and struck out ''sections 2251 through 2252 (relating to sexual exploitation of children),'' before '', section 1958''.

1989—Par. (1). Pub. L. 101–73 inserted ''section 1344 (relating to financial institution fraud),'' after ''section 1343 (relating to wire fraud),''.

1988—Par. (1)(B). Pub. L. 100–690, § 7514, inserted ''sections 2251 through 2252 (relating to sexual exploitation of children),''.

Pub. L. 100–690, § 7054, inserted '', section 1029 (relative to fraud and related activity in connection with access devices)'' and '', section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251–2252 (relating to sexual exploitation of children)''.

Pub. L. 100–690, § 7032, substituted ''section 2321'' for ''section 2320''.

Pub. L. 100–690, § 7013, made technical amendment to directory language of Pub. L. 99–646. See 1986 Amendment note below.

Par. (10). Pub. L. 100–690, § 7020(c), inserted ''the Associate Attorney General of the United States,'' after ''Deputy Attorney General of the United States,''.

1986—Par. (1)(B). Pub. L. 99–646, as amended by Pub. L. 100–690, § 7013, inserted ''section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant),'' after ''section 1511 (relating to the obstruction of State or local law enforcement),''.

Pub. L. 99–570 inserted ''section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),''.

1984—Par. (1)(A). Pub. L. 98–473, § 1020(1), inserted ''dealing in obscene matter,'' after ''extortion,''.

Par. (1)(B). Pub. L. 98–547 inserted ''sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),'' and ''section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts),''.

Pub. L. 98–473, § 1020(2), inserted ''sections 1461–1465 (relating to obscene matter),''.

Par. (1)(E). Pub. L. 98–473, § 901(g), added cl. (E).

1978—Par. (1)(B). Pub. L. 95–575 inserted ''sections 2341–2346 (relating to trafficking in contraband cigarettes),''.

Par. (1)(D). Pub. L. 95–598 substituted ''fraud connected with a case under title 11'' for ''bankruptcy fraud''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(f)(1) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(6) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–575 effective Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as an Effective Date note under section 2341 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 301 of chapter III (§§ 301–322) of title II of Pub. L. 98–473 provided that: ''This title [probably means this chapter, enacting sections 1589, 1600, 1613a, and 1616 of Title 19, Customs Duties and sections 853, 854, and 970 of Title 21, Food and Drugs, amending section 1963 of this title and sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, 1619, and 1644 of Title 19, sections 824, 848, and 881 of Title 21, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing section 7607 of Title 26, Internal Revenue Code] may be cited as the 'Comprehensive Forfeiture Act of 1984'.''

SHORT TITLE

Section 1 of Pub. L. 91–452 provided in part: ''That this Act [enacting this section, sections 841 to 848, 1511, 1623, 1955, 1962 to 1968, 3331 to 3334, 3503, 3504, 3575 to 3578, and 6001 to 6005 of this title, and section 1826 of Title 28, Judiciary and Judicial Procedure, amending sections 835, 1073, 1505, 1954, 2424, 2516, 2517, 3148, 3486, and 3500 of this title, sections 15, 87f, 135c, 499m, and 2115 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 49, 77v, 78u, 79r, 80a–41, 80b–9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, section 161 of Title 29, Labor, section 506 of Title 33, Navigation and Navigable Waters, sections 405 and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, section 1124 of former Title 46, Shipping, section 409 of Title 47, Telegraphs, Telephones, and Radio telegraphs, sections 9, 43, 46, 916, 1017, and 1484 of former Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and former section 2155 of Title 50, Appendix, repealing sections 837, 895, 1406, and 2514 of this title, sections 32 and 33 of Title 15; sections 4874 and 7493 of Title 26, Internal Revenue Code, section 827 of former Title 46, sections 47 and 48 of former Title 49, and sections 121 to 144 of Title 50, enacting provisions set out as notes under this section and sections 841, 1511, 1955, preceding 3331, preceding 3481, 3504, and 6001 of this title, and repealing provisions set out as a note under section 2510 of this title] may be cited as the 'Organized Crime Control Act of 1970'.''

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

SEPARABILITY

Section 1301 of Pub. L. 91–452 provided that: ''If the provisions of any part of this Act [see Short Title note set out above] or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.''

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91–452 provided in part that:

''The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

''It is the purpose of this Act [see Short Title note above] to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.''

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDURE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Section 904 of title IX of Pub. L. 91–452 provided that:

''(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.

''(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

''(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

''(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

''(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

''(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.''

PRESIDENT'S COMMISSION ON ORGANIZED CRIME; TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

Pub. L. 98–368, July 17, 1984, 98 Stat. 490, provided for the Commission established by Ex. Ord. No. 12435, formerly set out below, authority relating to taking of testimony, receipt of evidence, subpoena power, testimony of persons in custody, immunity, service of process, witness fees, access to other records and information, Federal protection for members and staff, closure of meetings, rules, and procedures, for the period of July 17, 1984, until the earlier of 2 years or the expiration of the Commission.

EXECUTIVE ORDER NO. 12435

Ex. Ord. No. 12435, July 28, 1983, 48 F.R. 34723, as amended Ex. Ord. No. 12507, Mar. 22, 1985, 50 F.R. 11835, which established and provided for the administration of the President's Commission on Organized Crime, was revoked by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942; amended Pub. L. 100–690, title VII, § 7033, Nov. 18, 1988, 102 Stat. 4398.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–690 substituted ''subsection'' for ''subsections''.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (*l*) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of

this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (*l*), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(*l*)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98–473, title II, §§ 302, 2301(a)–(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub. L. 99–570, title I, § 1153(a), Oct. 27, 1986, 100 Stat. 3207–13; Pub. L. 99–646, § 23, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 100–690, title VII, §§ 7034, 7058(d), Nov. 18, 1988, 102 Stat. 4398, 4403; Pub. L. 101–647, title XXXV, § 3561, Nov. 29, 1990, 104 Stat. 4927.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 substituted ''or both'' for ''or both.'' in introductory provisions.

1988—Subsec. (a). Pub. L. 100–690, § 7058(d), substituted ''shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both.'' for ''shall be fined not more than $25,000 or imprisoned not more than twenty years, or both''.

Subsecs. (m), (n). Pub. L. 100–690, § 7034, redesignated former subsec. (n) as (m) and substituted ''act or omission'' for ''act of omission''.

1986—Subsecs. (c) to (m). Pub. L. 99–646 substituted ''(*l*)'' for ''(m)'' in subsec. (c), redesignated subsecs. (e) to (m) as (d) to (*l*), respectively, and substituted ''(*l*)'' for ''(m)'' in subsec. (i) as redesignated.

Subsec. (n). Pub. L. 99–570 added subsec. (n).

1984—Subsec. (a). Pub. L. 98–473, § 2301(a), inserted ''In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.'' following par. (3).

Pub. L. 98–473, § 302, amended subsec. (a) generally, designating existing provisions as pars. (1) and (2), inserting par. (3), and provisions following par. (3) relating to power of the court to order forfeiture to the United States.

Subsec. (b). Pub. L. 98–473, § 302, amended subsec. (b) generally, substituting provisions relating to property subject to forfeiture, for provisions relating to jurisdiction of the district courts of the United States.

Subsec. (c). Pub. L. 98–473, § 302, amended subsec. (c) generally, substituting provisions relating to transfer of rights, etc., in property to the United States, or to other transferees, for provisions relating to seizure and transfer of property to the United States and procedures related thereto.

Subsec. (d). Pub. L. 98–473, § 2301(b), struck out subsec. (d) which provided: ''If any of the property described in subsection (a): (1) cannot be located; (2) has been transferred to, sold to, or deposited with, a third party; (3) has been placed beyond the jurisdiction of the court; (4) has been substantially diminished in value by any act or omission of the defendant; or (5) has been commingled with other property which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).''

Pub. L. 98–473, § 302, added subsec. (d).

Subsecs. (e) to (m). Pub. L. 98–473, § 302, added subsecs. (d) to (m).

Subsec. (m)(1). Pub. L. 98–473, § 2301(c), struck out ''for at least seven successive court days'' after ''dispose of the property''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98–620, title IV, § 402(24)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 104–67, title I, § 107, Dec. 22, 1995, 109 Stat. 758.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–67 inserted before period at end '', except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final''.

1984—Subsec. (b). Pub. L. 98–620 struck out provision that in any action brought by the United States under

this section, the court had to proceed as soon as practicable to the hearing and determination thereof.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–67 not to affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104–67, set out as a note under section 77*l* of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104–67 to be deemed to create or ratify any implied right of action, or to prevent Securities and Exchange Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104–67, set out as a Construction note under section 78j–1 of Title 15, Commerce and Trade.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944; amended Pub. L. 98–620, title IV, § 402(24)(B), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98–620 struck out provision that the judge so designated had to assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States

in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person main-

tains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub. L. 91–452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

CHAPTER 97—RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR

Sec.
1991. Entering train to commit crime.
1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.

HISTORICAL AND REVISION NOTES

This chapter does not include motor busses, interstate trucking facilities or airplanes within the protection of existing law. Motor busses and trucks already carry a huge amount of interstate commerce. It is reasonable to presume that much interstate freight and express will soon be carried by air.

Attention is directed to the consideration of the extension of the laws now applicable only to railroads to these other interstate facilities. 80th Congress House Report No. 304.

AMENDMENTS

2006—Pub. L. 109–177, title I, § 110(b)(1), Mar. 9, 2006, 120 Stat. 208, substituted ''RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR'' for ''RAILROADS'' in chapter heading, added item 1992, and struck out former items 1992 ''Wrecking trains'' and 1993 ''Terrorist attacks and other acts of violence against public transportation systems''.

2005—Pub. L. 109–59, title III, § 3042(b), Aug. 10, 2005, 119 Stat. 1640, substituted ''public transportation'' for ''mass transportation'' in item 1993.

2001—Pub. L. 107–56, title VIII, § 801(f), Oct. 26, 2001, 115 Stat. 376, added item 1993.

§ 1991. Entering train to commit crime

Whoever, in any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States, willfully and maliciously trespasses upon or enters upon any railroad train, railroad car, or railroad locomotive, with the intent to commit murder or robbery, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, within such jurisdiction, willfully and maliciously trespasses upon or enters upon any railroad train, railroad car, or railroad locomotive, with intent to commit any unlawful violence upon or against any passenger on said train, or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train or in any car thereof, or to commit any crime or offense against any person or property thereon, shall be fined under this title or imprisoned not more than one year, or both.

Upon the trial of any person charged with any offense set forth in this section, it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person.

(June 25, 1948, ch. 645, 62 Stat. 794; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 522 (Mar. 4, 1909, ch. 321, § 322, 35 Stat. 1150).

After the word ''Whoever'' the following was inserted: ''in any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States'' as based upon the express provisions of title 18, U.S.C., 1940 ed., § 511, wherein this section is made applicable only ''in any Territory or District, or within or upon any place within the exclusive jurisdiction of the United States.''

Words ''whoever shall counsel, aid, abet, or assist in the perpetration of any of the offenses set forth in this section shall be deemed to be a principal therein'' were omitted as unnecessary. Such persons are made principals by section 2 of this title.

Minor changes also were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in second par.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in first par.

§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air

(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly and without lawful authority or permission—

(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

(2) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;

(3) places or releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (4), with intent to endanger the safety of any person, or with reckless disregard for the safety of human life;

(4) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, and with intent to, or knowing or having reason to know,[1] such activity would likely, derail, disable, or wreck railroad on-track equipment; or

(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know,[1] such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;

(5) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;

(6) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;

(7) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on property described in subparagraph (A) or (B) of paragraph (4);

(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in paragraphs (1) through (6);

(9) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage in a violation of this subsection; or

(10) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (9),

shall be fined under this title or imprisoned not more than 20 years, or both, and if the offense results in the death of any person, shall be imprisoned for any term of years or for life, or subject to death, except in the case of a violation of paragraph (8), (9), or (10).

(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—

(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense; or

(3) the offense was committed with the intent to endanger the safety of any person, or with a reckless disregard for the safety of any person, and the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations,

shall be fined under this title or imprisoned for any term of years or life, or both, and if the offense resulted in the death of any person, the person may be sentenced to death.

(c) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce.

(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

(d) DEFINITIONS.—In this section—

(1) the term ''biological agent'' has the meaning given to that term in section 178(1);

(2) the term ''dangerous weapon'' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

(3) the term ''destructive device'' has the meaning given to that term in section 921(a)(4);

(4) the term ''destructive substance'' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term ''radioactive device'' does not include any radioactive device or material used solely for

[1] So in original. The comma probably should not appear.

medical, industrial, research, or other peaceful purposes;

(5) the term ''hazardous material'' has the meaning given to that term in chapter 51 of title 49;

(6) the term ''high-level radioactive waste'' has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(7) the term ''mass transportation'' has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation and passenger vessel as that term is defined in section 2101(22) of title 46, United States Code;

(8) the term ''on-track equipment'' means a carriage or other contrivance that runs on rails or electromagnetic guideways;

(9) the term ''railroad on-track equipment'' means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

(10) the term ''railroad'' has the meaning given to that term in chapter 201 of title 49;

(11) the term ''railroad carrier'' has the meaning given to that term in chapter 201 of title 49;

(12) the term ''serious bodily injury'' has the meaning given to that term in section 1365;

(13) the term ''spent nuclear fuel'' has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

(14) the term ''State'' has the meaning given to that term in section 2266;

(15) the term ''toxin'' has the meaning given to that term in section 178(2); and

(16) the term ''vehicle'' means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.

(Added Pub. L. 109–177, title I, § 110(a), Mar. 9, 2006, 120 Stat. 205.)

PRIOR PROVISIONS

A prior section 1992, acts June 25, 1948, ch. 645, 62 Stat. 794; Pub. L. 103–322, title VI, § 60003(a)(8), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 1969, 2147; Pub. L. 104–88, title IV, § 402(b), Dec. 29, 1995, 109 Stat. 955; Pub. L. 107–56, title VIII, § 811(e), Oct. 26, 2001, 115 Stat. 381; Pub. L. 107–273, div. B, title IV, § 4002(a)(6), Nov. 2, 2002, 116 Stat. 1807, related to penalties for wrecking a train used by a railroad in interstate or foreign commerce, prior to repeal by Pub. L. 109–177, title I, § 110(a), Mar. 9, 2006, 120 Stat. 205.

[§ 1993. Repealed. Pub. L. 109–177, title I, § 110(a), Mar. 9, 2006, 120 Stat. 205]

Section, added Pub. L. 107–56, title VIII, § 801, Oct. 26, 2001, 115 Stat. 374; amended Pub. L. 108–21, title VI, § 609, Apr. 30, 2003, 117 Stat. 692; Pub. L. 109–59, title III, § 3042(a), Aug. 10, 2005, 119 Stat. 1639, related to terrorist attacks and other acts of violence against public transportation systems. See section 1992 of this title.

[CHAPTER 99—REPEALED]

[§§ 2031, 2032. Repealed. Pub. L. 99–646, § 87(c)(1), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(a)(1), Nov. 14, 1986, 100 Stat. 3663]

Section 2031, act June 25, 1948, ch. 645, 62 Stat. 795, prescribed penalties for commission of rape within special maritime and territorial jurisdiction.

Section 2032, act June 25, 1948, ch. 645, 62 Stat. 795, prescribed penalties for carnal knowledge of female under 16 within special maritime and territorial jurisdiction.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99–646 and Pub. L. 99–654 effective, respectively, 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87 of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

CHAPTER 101—RECORDS AND REPORTS

Sec.
2071. Concealment, removal, or mutilation generally.
2072. False crop reports.
2073. False entries and reports of moneys or securities.
2074. False weather reports.
2075. Officer failing to make returns or reports.
2076. Clerk of United States District Court.

§ 2071. Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term ''office'' does not include the office held by any person as a retired officer of the Armed Forces of the United States.

(June 25, 1948, ch. 645, 62 Stat. 795; Pub. L. 101–510, div. A, title V, § 552(a), Nov. 5, 1990, 104 Stat. 1566; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 234, 235 (Mar. 4, 1909, ch. 321, §§ 128, 129, 35 Stat. 1111, 1112).

Section consolidates sections 234 and 235 of title 18, U.S.C., 1940 ed.

Reference in subsection (a) to intent to steal was omitted as covered by section 641 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' in subsecs. (a) and (b).

1990—Subsec. (b). Pub. L. 101–510 inserted at end ''As used in this subsection, the term 'office' does not include the office held by any person as a retired officer of the Armed Forces of the United States.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 552(b) of Pub. L. 101–510 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 1989.''

§ 2072. False crop reports

Whoever, being an officer or employee of the United States or any of its agencies, whose duties require the compilation or report of statistics or information relating to the products of the soil, knowingly compiles for issuance, or issues, any false statistics or information as a report of the United States or any of its agencies, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 795; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 215 (Mar. 4, 1909, ch. 321, § 124, 35 Stat. 1111).

Words ''or any of its agencies'' were inserted after ''United States'' so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

§ 2073. False entries and reports of moneys or securities

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 795; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 189 (Mar. 4, 1911, ch. 270, 36 Stat. 1355).

Words ''or any of its agencies'' were inserted after ''United States'' so as to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

References to persons aiding and abetting were omitted. Such persons are principals under section 2 of this title.

Minor verbal changes were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

§ 2074. False weather reports

Whoever knowingly issues or publishes any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined under this title or imprisoned not more than ninety days, or both.

(June 25, 1948, ch. 645, 62 Stat. 795; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 117 (Mar. 4, 1909, ch. 321, § 61, 35 Stat. 1100).

Minor verbal changes were made.

REFERENCES IN TEXT

The United States Signal Service, referred to in text, is now the Signal Corps which is a branch of the Army, see section 3063 of Title 10, Armed Forces.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

TRANSFER OF FUNCTIONS

Weather Bureau of Department of Commerce consolidated with Coast and Geodetic Survey to form a new agency in Department of Commerce to be known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All functions of Bureau transferred to Secretary of Commerce by the Plan.

Environmental Science Services Administration abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees, which created National Oceanic and Atmospheric Administration in Department of Commerce. By Department Organization Order 25–5A, republished 39 F.R. 27486, Secretary of Commerce delegated to NOAA his functions relating to Weather Bureau. By order of Acting Associate Administrator of NOAA, the organization name of Weather Bureau was changed to National Weather Service. For further details, see Codification note under section 311 of Title 15, Commerce and Trade.

§ 2075. Officer failing to make returns or reports

Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 796; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(C)(ii), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 188, (Mar. 4, 1909, ch. 321, § 101, 35 Stat. 1107).

AMENDMENTS

2002—Pub. L. 107–273 substituted ''under this title'' for ''not more than $1,000''.

§ 2076. Clerk of United States District Court

Whoever, being a clerk of a district court of the United States, willfully refuses or neglects to make or forward any report, certificate, statement, or document as required by law, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 796; Pub. L. 104–294, title VI, § 601(a)(11), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on section 522 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Feb. 22, 1875, ch. 95, § 6, 18 Stat. 334).

The reference to the offense as a misdemeanor was omitted as unnecessary in view of the definition of ''misdemeanor'' in section 1 of this title.

The last sentence providing that conviction should not be a condition precedent to removal from office was omitted as unnecessary.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title or imprisoned not more than one year, or both'' for ''fined not more than $1,000 or imprisoned not more than one year'' before period at end.

CHAPTER 102—RIOTS

Sec.
2101. Riots.
2102. Definitions.

AMENDMENTS

1968—Pub. L. 90–284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 75, added chapter 102 and items 2101 and 2102.

§ 2101. Riots

(a) Whoever travels in interstate or foreign commerce or uses any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television, with intent—

(1) to incite a riot; or

(2) to organize, promote, encourage, participate in, or carry on a riot; or

(3) to commit any act of violence in furtherance of a riot; or

(4) to aid or abet any person in inciting or participating in or carrying on a riot or committing any act of violence in furtherance of a riot;

and who either during the course of any such travel or use or thereafter performs or attempts to perform any other overt act for any purpose specified in subparagraph (A), (B), (C), or (D) of this paragraph—[1]

Shall be fined under this title, or imprisoned not more than five years, or both.

(b) In any prosecution under this section, proof that a defendant engaged or attempted to engage in one or more of the overt acts described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subsection (a)[2] and (1) has traveled in interstate or foreign commerce, or (2) has use of or used any facility of interstate or foreign commerce, including but not limited to, mail, telegraph, telephone, radio, or television, to communicate with or broadcast to any person or group of persons prior to such overt acts, such travel or use shall be admissible proof to establish that such defendant traveled in or used such facility of interstate or foreign commerce.

(c) A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

(d) Whenever, in the opinion of the Attorney General or of the appropriate officer of the Department of Justice charged by law or under the instructions of the Attorney General with authority to act, any person shall have violated this chapter, the Department shall proceed as speedily as possible with a prosecution of such person hereunder and with any appeal which may lie from any decision adverse to the Government resulting from such prosecution.

(e) Nothing contained in this section shall be construed to make it unlawful for any person to travel in, or use any facility of, interstate or foreign commerce for the purpose of pursuing the legitimate objectives of organized labor, through orderly and lawful means.

(f) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section; nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law.

(Added Pub. L. 90–284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 75; amended Pub. L. 99–386, title I, § 106, Aug. 22, 1986, 100 Stat. 822; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(f)(15), Oct. 11, 1996, 110 Stat. 3500.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 struck out par. (1) designation and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

1994—Subsec. (a)(1). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1986—Subsec. (d). Pub. L. 99–386 struck out ''; or in the alternative shall report in writing, to the respective Houses of the Congress, the Department's reason for not so proceeding'' after ''such prosecution''.

§ 2102. Definitions

(a) As used in this chapter, the term ''riot'' means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of imme-

[1] So in original. Probably should be ''paragraph (1), (2), (3), or (4) of this subsection—''.

[2] So in original. Probably should be ''paragraph (1), (2), (3), or (4) of subsection (a)''.

diate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.

(b) As used in this chapter, the term ''to incite a riot'', or ''to organize, promote, encourage, participate in, or carry on a riot'', includes, but is not limited to, urging or instigating other persons to riot, but shall not be deemed to mean the mere oral or written (1) advocacy of ideas or (2) expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness of, or the right to commit, any such act or acts.

(Added Pub. L. 90–284, title I, § 104(a), Apr. 11, 1968, 82 Stat. 76.)

CHAPTER 103—ROBBERY AND BURGLARY

Sec.
2111. Special maritime and territorial jurisdiction.
2112. Personal property of United States.
2113. Bank robbery and incidental crimes.
2114. Mail, money, or other property of United States.
2115. Post office.
2116. Railway or steamboat post office.
2117. Breaking or entering carrier facilities.
2118. Robberies and burglaries involving controlled substances.
2119. Motor vehicles.

AMENDMENTS

1992—Pub. L. 102–519, title I, § 101(c), Oct. 25, 1992, 106 Stat. 3384, added item 2119.

1984—Pub. L. 98–305, § 3, May 31, 1984, 98 Stat. 222, added item 2118.

1966—Pub. L. 89–654, § 2(d), Oct. 14, 1966, 80 Stat. 904, substituted ''Breaking or entering carrier facilities'' for ''Railroad car entered or seal broken'' in item 2117.

§ 2111. Special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

(June 25, 1948, ch. 645, 62 Stat. 796; Pub. L. 103–322, title XXXII, § 320903(a)(1), Sept. 13, 1994, 108 Stat. 2124.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 463 (Mar. 4, 1909, ch. 321, § 284, 35 Stat. 1144).

Words ''within the special maritime and territorial jurisdiction of the United States'' were added to restrict the place of the offense to those places described in section 451 of title 18, U.S.C., 1940 ed., now section 7 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 inserted ''or attempts to take'' after ''takes''.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–217, § 1, Oct. 1, 1996, 110 Stat. 3020, provided that: ''This Act [amending section 2119 of this title] may be cited as the 'Carjacking Correction Act of 1996'.''

§ 2112. Personal property of United States

Whoever robs or attempts to rob another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years.

(June 25, 1948, ch. 645, 62 Stat. 796; Pub. L. 103–322, title XXXII, § 320903(a)(2), Sept. 13, 1994, 108 Stat. 2124.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 99 (Mar. 4, 1909, ch. 321, § 46, 35 Stat. 1097).

That portion of said section 99 relating to felonious taking was omitted as covered by section 641 of this title.

The punishment by fine of not more than $5,000 or imprisoned not more than 10 years, or both, was changed to harmonize with section 2111 of this title. The 15–year penalty is not excessive for an offense of this type.

Minor verbal change was made.

AMENDMENTS

1994—Pub. L. 103–322 inserted ''or attempts to rob'' after ''robs''.

§ 2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen shall be subject to the punishment provided in subsection (b) for the taker.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or if death results shall be punished by death or life imprisonment.

(f) As used in this section the term ''bank'' means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, including a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), and any institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

(g) As used in this section the term ''credit union'' means any Federal credit union and any State-chartered credit union the accounts of which are insured by the National Credit Union Administration Board, and any ''Federal credit union'' as defined in section 2 of the Federal Credit Union Act. The term ''State-chartered credit union'' includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(h) As used in this section, the term ''savings and loan association'' means—

(1) a Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) having accounts insured by the Federal Deposit Insurance Corporation; and

(2) a corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) that is operating under the laws of the United States.

(June 25, 1948, ch. 645, 62 Stat. 796; Aug. 3, 1950, ch. 516, 64 Stat. 394; Apr. 8, 1952, ch. 164, 66 Stat. 46; Pub. L. 86–354, § 2, Sept. 22, 1959, 73 Stat. 639; Pub. L. 91–468, § 8, Oct. 19, 1970, 84 Stat. 1017; Pub. L. 98–473, title II, § 1106, Oct. 12, 1984, 98 Stat. 2145; Pub. L. 99–646, § 68, Nov. 10, 1986, 100 Stat. 3616; Pub. L. 101–73, title IX, § 962(a)(7), (d), Aug. 9, 1989, 103 Stat. 502, 503; Pub. L. 101–647, title XXV, § 2597(*l*), Nov. 29, 1990, 104 Stat. 4911; Pub. L. 103–322, title VI, § 60003(a)(9), title XXXII, § 320608, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 1969, 2120, 2147; Pub. L. 104–294, title VI, §§ 606(a), 607(d), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(C)(ii), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on sections 588a, 588b, 588c, of title 12, U.S.C., 1940 ed., Banks and Banking (May 18, 1934, ch. 304, §§ 1, 2, 3, 48 Stat. 783; Aug. 23, 1935, ch. 614, § 333, 49 Stat. 720; Aug. 24, 1937, ch. 747, 50 Stat. 749; June 29, 1940, ch. 455, 54 Stat. 695).

Section consolidates sections 588a, 588b, and 588c of title 12, U.S.C., 1940 ed., Banks and Banking, as suggested by United States Attorney Clyde O. Eastus, of Fort Worth, Tex.

Words ''felony or larceny'' in subsection (a) were changed to ''felony affecting such bank and in violation of any statute of the United States, or any larceny''.

Use of term ''felony'' without limitation caused confusion as to whether a common law, State, or Federal felony was intended. Change conforms with *Jerome v. U.S.* (1943, 63 S. Ct. 483, 318 U.S. 101, 87 L. Ed. 640): ''§ 2(a) [§ 588b(a) of title 12, U.S.C., 1940 ed., Banks and Banking] is not deprived of vitality if it is interpreted to exclude State felonies and to include only those Federal felonies which affect banks protected by the Act.''

Minimum punishment provisions were omitted from subsection (c). (See reviser's note under section 203 of this title.) Also the provisions of subsection (b) measuring the punishment by the amount involved were extended and made applicable to the receiver as well as the thief. There seems no good reason why the thief of less than $100 should be liable to a maximum of imprisonment for one year and the receiver subject to 10 years.

The figures ''100'' were substituted for ''50'' in view of the fact that the present worth of $100 is less than the value of $50 when that sum was fixed as the dividing line between petit larceny and grand larceny.

The attention of Congress is directed to the mandatory minimum punishment provisions of sections 2113(e) and 2114 of this title. These were left unchanged because of the controversial question involved. Such legislative attempts to control the discretion of the sentencing judge are contrary to the opinions of experienced criminologists and criminal law experts. They are calculated to work manifest injustice in many cases.

Necessary minor translations of section references, and changes in phraseology, were made.

REFERENCES IN TEXT

Section 1(b) of the International Banking Act of 1978, referred to in subsec. (f), is classified to section 3101 of Title 12, Banks and Banking.

Section 2 of the Federal Credit Union Act, referred to in subsec. (g), is classified to section 1752 of Title 12.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 substituted ''under this title'' for ''not more than $1,000'' in last par.

1996—Subsec. (b). Pub. L. 104–294, § 606(a), substituted ''exceeding $1,000'' for ''exceeding $100'' in two places.

Subsec. (g). Pub. L. 104–294, § 607(d), inserted at end ''The term 'State-chartered credit union' includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.''

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000'' in last par. of subsec. (a) and first par. of subsec. (b).

Subsec. (d). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

Subsec. (e). Pub. L. 103–322, § 60003(a)(9), substituted ''or if death results shall be punished by death or life imprisonment'' for ''or punished by death if the verdict of the jury shall so direct''.

Subsec. (h). Pub. L. 103–322, § 320608, added subsec. (h).

1990—Subsec. (f). Pub. L. 101–647 inserted ''including a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978),'' after ''operating under the laws of the United States,''.

1989—Subsec. (f). Pub. L. 101–73, § 962(d)(1), substituted ''any institution the deposits of which'' for ''any bank the deposits of which''.

Subsecs. (g), (h). Pub. L. 101–73, § 962(a)(7), (d)(2), (3), redesignated subsec. (h) as (g), substituted ''National

Credit Union Administration Board, and any 'Federal credit union' as defined in section 2 of the Federal Credit Union Act'' for ''Administrator of the National Credit Union Administration'', and struck out former subsec. (g) which read as follows: ''As used in this section the term 'savings and loan association' means any Federal savings and loan association and any 'insured institution' as defined in section 401 of the National Housing Act, as amended, and any 'Federal credit union' as defined in section 2 of the Federal Credit Union Act.''

1986—Subsec. (a). Pub. L. 99–646 inserted '', or obtains or attempts to obtain by extortion'' after ''presence of another'' in first par.

1984—Subsec. (c). Pub. L. 98–473 amended subsec. (c) generally, substituting ''which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen'' for ''knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section''.

1970—Subsecs. (a) to (c). Pub. L. 91–468, § 8(1), inserted reference to ''credit union'' after ''bank,'' each place it appears.

Subsec. (h). Pub. L. 91–468, § 8(2), added subsec. (h).

1959—Subsec. (g). Pub. L. 86–354 included Federal credit unions in definition of ''savings and loan association''.

1952—Subsec. (g). Act Apr. 8, 1952, broadened definition of ''savings and loan association'' by including any insured institution as defined in section 401 of the National Housing Act, as amended.

1950—Act Aug. 3, 1950, brought within section State-chartered savings and loan associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

§ 2114. Mail, money, or other property of United States

(a) ASSAULT.—A person who assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years.

(b) RECEIPT, POSSESSION, CONCEALMENT, OR DISPOSAL OF PROPERTY.—A person who receives, possesses, conceals, or disposes of any money or other property that has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 10 years, fined under this title, or both.

(June 25, 1948, ch. 645, 62 Stat. 797; Pub. L. 98–473, title II, § 223(d), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 101–647, title XXXV, § 3562, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103–322, title XXXII, §§ 320602, 320903(a)(3), Sept. 13, 1994, 108 Stat. 2115, 2124; Pub. L. 104–294, title VI, § 604(b)(17), Oct. 11, 1996, 110 Stat. 3507.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 320 (Mar. 4, 1909, ch. 321, § 197, 35 Stat. 1126; Aug. 26, 1935, ch. 694, 49 Stat. 867).

The attention of Congress is directed to the mandatory minimum punishment provisions of sections 2113(e) and 2114 of this title. These were left unchanged because of the controversial question involved. Such legislative attempts to control the discretion of the sentencing judge are contrary to the opinions of experienced criminologists and criminal law experts. They are calculated to work manifest injustice in many cases.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 amended Pub. L. 103–322, § 320602. See 1994 Amendment note below.

1994—Pub. L. 103–322, § 320903(a)(3), inserted ''or attempts to rob'' after ''robs'' in subsec. (a).

Pub. L. 103–322, § 320602, as amended by Pub. L. 104–294, § 604(b)(17), designated existing provisions as subsec. (a), inserted heading, substituted ''A person who'' for ''Whoever'', and added subsec. (b).

1990—Pub. L. 101–647 inserted a comma after ''money'' in section catchline.

1984—Pub. L. 98–473, which directed insertion of ''not more than'' after ''imprisoned'', was executed by making the insertion after ''imprisoned'' the second time appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 2115. Post office

Whoever forcibly breaks into or attempts to break into any post office, or any building used in whole or in part as a post office, with intent to commit in such post office, or building or part thereof, so used, any larceny or other depredation, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 797; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 315 (Mar. 4, 1909, ch. 321, § 192, 335 Stat. 1125).

Mandatory punishment provisions were rephrased in the alternative.

Minor change in phraseology was made.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2116. Railway or steamboat post office

Whoever, by violence, enters a post-office car, or any part of any car, steamboat, or vessel, assigned to the use of the mail service, or willfully or maliciously assaults or interferes with any postal clerk in the discharge of his duties in connection with such car, steamboat, vessel, or apartment thereof, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 797; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 316 (Mar. 4, 1909, ch. 321, § 193, 35 Stat. 1125).

Reference to persons aiding or assisting was deleted as unnecessary because such persons are made principals by section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2117. Breaking or entering carrier facilities

Whoever breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing interstate or foreign shipments of freight or express or other property, or enters any such vehicle or pipeline system with intent in either case to commit larceny therein, shall be fined under this title or imprisoned not more than ten years, or both.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. Nothing contained in this section shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

(June 25, 1948, ch. 645, 62 Stat. 797; May 24, 1949, ch. 139, § 44, 63 Stat. 96; Pub. L. 89–654, § 2(a)–(c), Oct. 14, 1966, 80 Stat. 904; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 409 (Feb. 13, 1913, ch. 50, § 1, 37 Stat. 670; Jan. 28, 1925, ch. 102, 43 Stat. 793; Jan. 21, 1933, ch. 16, 47 Stat. 773; July 24, 1946, ch. 606, 60 Stat. 656).

Other provisions of section 409 of title 18, U.S.C., 1940 ed., were incorporated in sections 659 and 660 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 44] conforms section 2117 of title 18, U.S.C., more closely with the original law from which it was derived, and with section 659 of such title.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of section 2217 of this title by substituting ''under this title'' for ''not more than $5,000'', was executed by making the substitution in the first par. of this section, to reflect the probable intent of Congress, because this title does not contain a section 2217.

1966—Pub. L. 89–654 substituted ''Breaking or entering carrier facilities'' for ''Railroad car entered or seal broken'' as section catchline, inserted reference to ''pipeline system'', substituted ''freight or express or other property'' for ''freight or express'', and prohibited any construction which might indicate a Congressional intent to occupy the field or invalidate State law.

1949—Act May 24, 1949, inserted last par.

EXECUTIVE ORDER NO. 11836

Ex. Ord. No. 11836, Jan. 27, 1975, 40 F.R. 4255, which assigned responsibilities to Federal departments and agencies with respect to the National Cargo Security Program, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 2118. Robberies and burglaries involving controlled substances

(a) Whoever takes or attempts to take from the person or presence of another by force or violence or by intimidation any material or compound containing any quantity of a controlled substance belonging to or in the care, custody, control, or possession of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) shall, except as provided in subsection (c), be fined under this title or imprisoned not more than twenty years, or both, if (1) the replacement cost of the material or compound to the registrant was not less than $500, (2) the person who engaged in such taking or attempted such taking traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such taking or attempt, or (3) another person was killed or suffered significant bodily injury as a result of such taking or attempt.

(b) Whoever, without authority, enters or attempts to enter, or remains in, the business premises or property of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) with the intent to steal any material or compound containing any quantity of a controlled substance shall, except as provided in subsection (c), be fined under this title or imprisoned not more than twenty years, or both, if (1) the replacement cost of the controlled substance to the registrant was not less than $500, (2) the person who engaged in such entry or attempted such entry or who remained in such premises or property traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such entry or attempt or to facilitate remaining in such premises or property, or (3) another person was killed or suffered significant bodily injury as a result of such entry or attempt.

(c)(1) Whoever in committing any offense under subsection (a) or (b) assaults any person, or puts in jeopardy the life of any person, by the use of a dangerous weapon or device shall be fined under this title and imprisoned for not more than twenty-five years.

(2) Whoever in committing any offense under subsection (a) or (b) kills any person shall be fined under this title or imprisoned for any term of years or life, or both.

(d) If two or more persons conspire to violate subsection (a) or (b) of this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than ten years or both.

(e) For purposes of this section—

(1) the term ''controlled substance'' has the meaning prescribed for that term by section 102 of the Controlled Substances Act;

(2) the term ''business premises or property'' includes conveyances and storage facilities; and

(3) the term ''significant bodily injury'' means bodily injury which involves a risk of

death, significant physical pain, protracted and obvious disfigurement, or a protracted loss or impairment of the function of a bodily member, organ, or mental or sensory faculty.

(Added Pub. L. 98–305, § 2, May 31, 1984, 98 Stat. 221; amended Pub. L. 103–322, title XXXIII, § 330016(1)(O)–(Q), Sept. 13, 1994, 108 Stat. 2148.)

REFERENCES IN TEXT

Section 102 of the Controlled Substances Act, referred to in subsec. (e)(1), is classified to section 802 of Title 21, Food and Drugs.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000''.

Subsec. (c)(1). Pub. L. 103–322, § 330016(1)(P), substituted ''fined under this title'' for ''fined not more than $35,000''.

Subsec. (c)(2). Pub. L. 103–322, § 330016(1)(Q), substituted ''fined under this title'' for ''fined not more than $50,000''.

Subsec. (d). Pub. L. 103–322, § 330016(1)(O), substituted ''fined under this title'' for ''fined not more than $25,000''.

SHORT TITLE

Section 1 of Pub. L. 98–305 provided: ''That this Act [enacting this section and provisions set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Controlled Substance Registrant Protection Act of 1984'.''

REPORT TO CONGRESS

Attorney General, for first three years after May 31, 1984, to submit to Congress an annual report with respect to enforcement activities relating to offenses under this section, see section 4 of Pub. L. 98–305, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

§ 2119. Motor vehicles

Whoever, with the intent to cause death or serious bodily harm[1] takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—

(1) be fined under this title or imprisoned not more than 15 years, or both,

(2) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and

(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.

(Added Pub. L. 102–519, title I, § 101(a), Oct. 25, 1992, 106 Stat. 3384; amended Pub. L. 103–322, title VI, § 60003(a)(14), Sept. 13, 1994, 108 Stat. 1970; Pub. L. 104–217, § 2, Oct. 1, 1996, 110 Stat. 3020.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–217 inserted '', including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title'' after ''section 1365 of this title''.

1994—Pub. L. 103–322, § 60003(a)(14), which directed the amendment of section 2119(3) of title 18 by substituting '', with the intent to cause death or serious bodily harm'' for '', possessing a firearm as defined in section 921 of this title,'', was executed by making the substitution in introductory provisions rather than in par. (3), to reflect the probable intent of Congress.

Par. (3). Pub. L. 103–322, § 60003(a)(14), inserted before period at end '', or sentenced to death''.

FEDERAL COOPERATION TO PREVENT ''CARJACKING'' AND MOTOR VEHICLE THEFT

Section 101(b) of Pub. L. 102–519 provided that: ''In view of the increase of motor vehicle theft with its growing threat to human life and to the economic well-being of the Nation, the Attorney General, acting through the Federal Bureau of Investigation and the United States Attorneys, is urged to work with State and local officials to investigate car thefts, including violations of section 2119 of title 18, United States Code, for armed carjacking, and as appropriate and consistent with prosecutorial discretion, prosecute persons who allegedly violate such law and other relevant Federal statutes.''

CHAPTER 105—SABOTAGE

Sec.
2151. Definitions.
2152. Fortifications, harbor defenses, or defensive sea areas.
2153. Destruction of war material, war premises or war utilities.[1]
2154. Production of defective war material, war premises or war utilities.[1]
2155. Destruction of national-defense materials, national-defense premises, or national-defense utilities.
2156. Production of defective national-defense material, national-defense premises, or national-defense utilities.
[2157. Repealed.]

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 601(f)(11), Oct. 11, 1996, 110 Stat. 3500, substituted '', or'' for ''or'' in items 2155 and 2156.

1994—Pub. L. 103–322, title XXXIII, § 330004(13), Sept. 13, 1994, 108 Stat. 2142, struck out item 2157 ''Temporary extension of sections 2153 and 2154''.

1954—Act Sept. 3, 1954, ch. 1261, § 106, 68 Stat. 1219, amended items 2153 to 2156 generally.

1953—Act June 30, 1953, ch. 175, § 1, 67 Stat. 133, added item 2157.

§ 2151. Definitions

As used in this chapter:

The words ''war material'' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words ''war premises'' include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards,

[1] So in original. Probably should be followed by a comma.

[1] So in original. Does not conform to section catchline.

camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words ''war utilities'' include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

The words ''associate nation'' mean any nation at war with any nation with which the United States is at war.

The words ''national-defense material'' include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words ''national-defense premises'' include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words ''national-defense utilities'' include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

(June 25, 1948, ch. 645, 62 Stat. 798; June 30, 1953, ch. 175, § 2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, § 101, 68 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Based on sections 101, 104, of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, §§ 1, 4, 40 Stat. 533; Nov. 30, 1940, ch. 926, 54 Stat. 1220; Aug. 21, 1941, ch. 388, 55 Stat. 655; Dec. 24, 1942, ch. 824, 56 Stat. 1087).

Section consolidated definitive sections 101 and 104 of title 50, U.S.C., 1940 ed., War and National Defense.

Words ''As used in this chapter'' were inserted at beginning for brevity.

Definition of ''United States'', was omitted as covered by section 5 of this title.

Minor changes were made in phraseology and translations.

AMENDMENTS

1954—Act Sept. 3, 1954, redefined and enlarged definitions.

1953—Act June 30, 1953, inserted ''or defense activities'' after ''conduct of war'' in definition of ''war material''.

SHORT TITLE

Section 1 of act Sept. 3, 1954, provided that: ''This Act [amending this section and sections 794 and 2153 to 2156 of this title] may be cited as the 'Espionage and Sabotage Act of 1954'.''

REPEALS

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 134, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, formerly cited as credits to this section and also formerly set out as a note under this section.

§ 2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 799; Pub. L. 103–322, title XXXIII, §330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §96 (Mar. 4, 1909, ch. 321, §44, 35 Stat. 1097; Mar. 4, 1917, ch. 180, 39 Stat. 1194; May 22, 1917, ch. 20, §19, 40 Stat. 89).

Jurisdiction and venue provisions were omitted as unnecessary and inconsistent with Rule 18 of the Federal Rules of Criminal Procedure providing for prosecution where the offense is committed, and section 3238 of this title providing that trial of offenses committed outside any district shall be in the district where the offender is found, or into which he is first brought.

Words ''on conviction thereof'' were omitted as surplusage as punishment cannot be imposed until conviction is had.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

EXECUTIVE ORDER NO. 10361

Ex. Ord. No. 10361, June 12, 1952, 17 F.R. 5357, formerly set out under this section, which established the Whittier Defensive Sea Area, Alaska, was revoked by Ex. Ord. No. 11549, July 28, 1970, 35 F.R. 12191.

§2153. Destruction of war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined under this title or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; June 30, 1953, ch. 175, §2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, §102, 68 Stat. 1217; Pub. L. 103–322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 102 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, §2, 40 Stat. 534).

''As herein defined'' was deleted as surplusage.

The conspiracy provisions are new. Their addition to the section was strongly urged by the Criminal Division of the Department of Justice, considering the gravity of the substantive offense as evidenced by the prescribed punishment therefor. The punishment provisions of the general conspiracy statute, section 371 of this title, are inadequate.

Words ''upon conviction thereof'' were omitted as unnecessary since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1954—Act Sept. 3, 1954, made section applicable in time of national emergency as well as war, and recognized the possibility of bacteriological warfare by making ''contamination'' a crime.

1953—Subsec. (a). Act June 30, 1953, inserted ''or defense activities'' after ''carrying on the war''.

REPEALS

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 134, repealed Joint Res. July 3, 1952, ch. 570, §1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, formerly cited as credits to this section and also formerly set out as a note under this section.

§2154. Production of defective war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined under this title or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; June 30, 1953, ch. 175, §2, 67 Stat. 133; Sept. 3, 1954, ch. 1261, title I, §103, 68 Stat. 1218; Pub. L. 103–322, title XXXIII, §330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 103 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, §3, 40 Stat. 534).

The conspiracy provisions are new. Their addition to the section was strongly urged by the Criminal Division of the Department of Justice, considering the gravity of the substantive offense as evidenced by the prescribed punishment therefor. The punishment provisions of the general conspiracy statute, section 371 of this title, are inadequate.

Words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1954—Act Sept. 3, 1954, made section applicable in time of national emergency, and enlarged its scope by

bringing ''war premises, or war utilities'' within jurisdiction of section.

1953—Subsec. (a). Act June 30, 1953, inserted ''or defense activities'' after ''carrying on the war''.

REPEALS

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 134, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, formerly cited as credits to this section and also formerly set out as a note under this section.

§ 2155. Destruction of national-defense materials, national-defense premises, or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined under this title or imprisoned not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 799; Sept. 3, 1954, ch. 1261, title I, § 104, 68 Stat. 1218; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(f)(12), Oct. 11, 1996, 110 Stat. 3500; Pub. L. 107–56, title VIII, § 810(e), Oct. 26, 2001, 115 Stat. 380.)

HISTORICAL AND REVISION NOTES

Based on section 105 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 5, as added Nov. 30, 1940, ch. 926, 54 Stat. 1221).

Words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–56 substituted ''20 years'' for ''ten years'' and inserted '', and, if death results to any person, shall be imprisoned for any term of years or for life'' before period at end.

1996—Pub. L. 104–294 substituted '', or'' for ''or'' in section catchline.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1954—Act Sept. 3, 1954, inserted conspiracy provisions.

§ 2156. Production of defective national-defense material, national-defense premises, or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined under this title or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

(June 25, 1948, ch. 645, 62 Stat. 800; Sept. 3, 1954, ch. 1261, title I, § 105, 68 Stat. 1218; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 601(f)(12), Oct. 11, 1996, 110 Stat. 3500.)

HISTORICAL AND REVISION NOTES

Based on section 106 of title 50, U.S.C., 1940 ed., War and National Defense (Apr. 20, 1918, ch. 59, § 6, as added Nov. 30, 1940, ch. 926, 54 Stat. 1221).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted '', or'' for ''or'' in section catchline.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1954—Act Sept. 3, 1954, inserted conspiracy provisions.

[§ 2157. Repealed. Pub. L. 103–322, title XXXIII, § 330004(13), Sept. 13, 1994, 108 Stat. 2142]

Section, added June 30, 1953, ch. 175, § 2, 67 Stat. 133, related to temporary extension of sections 2153 and 2154 of this title.

CHAPTER 107—SEAMEN AND STOWAWAYS

Sec.
2191. Cruelty to seamen.
2192. Incitation of seamen to revolt or mutiny.
2193. Revolt or mutiny of seamen.
2194. Shanghaiing sailors.
2195. Abandonment of sailors.
2196. Drunkenness or neglect of duty by seamen.
2197. Misuse of Federal certificate, license or document.
[2198. Repealed.]
2199. Stowaways on vessels or aircraft.

AMENDMENTS

1990—Pub. L. 101–647, title XII, § 1207(b), Nov. 29, 1990, 104 Stat. 4832, struck out item 2198 ''Seduction of female passenger''.

§ 2191. Cruelty to seamen

Whoever, being the master or officer of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, flogs, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any corporal or other cruel and unusual punishment, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 482 and section 712 of title 46, U.S.C., 1940 ed., Shipping (Dec. 21, 1898, ch. 28, § 22, 30 Stat. 761; Mar. 4, 1909, ch. 321, § 291, 35 Stat. 1145).

Section consolidates section 482 of title 18, U.S.C., 1940 ed., and the following language from section 712 of title 46, U.S.C., 1940 ed., Shipping, prohibiting flogging and corporal punishment: ''and any master or other officer thereof who shall violate the aforesaid provisions of this section, or either thereof, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not less than three months nor more than two years.'' That language was the basis for the addition of the word ''flogs'' and the words ''any corporal or other'' for the word ''any.'' The punishment imposed by section 482 was adopted as that was the later statute as incorporated in 1909 Criminal Code.

Words ''shall be deemed guilty of a misdemeanor,'' contained in said section 712 of title 46, were omitted in view of definitive section 1 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2192. Incitation of seamen to revolt or mutiny

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect his proper duty on board thereof, or to betray his proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 483 (Mar. 4, 1909, ch. 321, § 292, 35 Stat. 1146).

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2193. Revolt or mutiny of seamen

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 800; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 484 (Mar. 4, 1909, ch. 321, § 293, 35 Stat. 1146).

Punishment provision for mandatory fine and imprisonment was rephrased in the alternative so as to vest power in the court to impose either a fine, or imprisonment, or both, in its discretion.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 2194. Shanghaiing sailors

Whoever, with intent that any person shall perform service or labor of any kind on board of any vessel engaged in trade and commerce among the several States or with foreign nations, or on board of any vessel of the United States engaged in navigating the high seas or any navigable water of the United States, procures or induces, or attempts to procure or induce, another, by force or threats or by representations which he knows or believes to be untrue, or while the person so procured or induced is intoxicated or under the influence of any drug, to go on board of any such vessel, or to sign or in anywise enter into any agreement to go on board of any such vessel to perform service or labor thereon; or

Whoever knowingly detains on board of any such vessel any person so procured or induced to go on board, or to enter into any agreement to go on board, by any means herein defined—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 800; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 144 (Mar. 4, 1909, ch. 321, § 82, 35 Stat. 1103).

Reference to persons aiding or abetting was omitted as unnecessary as such persons are made principals by section 2 of this title.

Minor changes were made in phraseology and arrangement.

AMENDMENTS

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

§ 2195. Abandonment of sailors

Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 801; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 486 (Mar. 4, 1909, ch. 321, § 295, 35 Stat. 1146).

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $500''.

§ 2196. Drunkenness or neglect of duty by seamen

Whoever, being a master, officer, radio operator, seaman, apprentice or other person employed on any merchant vessel, by willful breach of duty, or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage to, such vessel, or tending immediately to endanger the life or limb of any person belonging to or on board of such vessel; or, by willful breach of duty or by neglect of duty or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such vessel from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall be imprisoned not more than one year.

(June 25, 1948, ch. 645, 62 Stat. 801.)

HISTORICAL AND REVISION NOTES

Based on section 704 of title 46, U.S.C., 1940 ed., Shipping (R.S. § 4602).

Words ''officer, radio operator,'' and ''or other person employed on'' were inserted at beginning of section to insure clarity and scope of section. Section 701 of title 46, U.S.C., 1940 ed., Shipping, is very similar to this section as revised, and has been applied to mates [*Morris v. Cornell*, D.C. Mass. 1843, Fed. Cas. No. 9,829; *Gladding v. Constant*, D.C. Mass. 1844, Fed. Cas. No. 5,468; *Foye v. Dabney*, D.C. Mass. 1853, Fed. Cas. No. 5,022; *Foye v. Lickie*, D.C. Mass. 1853, Fed. Cas. No. 5,023; *The Sylvia De Grasse*, D.C.N.Y. 1843, Fed. Cas. No. 12,676; *The Sadie C. Sumner*, D.C. Mass. 1905, 142 F. 611], as well as engineers, assistant engineers and cooks. (See notes of decisions under section 701, of title 46, U.S.C., Shipping.)

Words ''be guilty of a misdemeanor'' were omitted as unnecessary in view of general definition of ''misdemeanor'' in section 1 of this title.

Minor changes were made in phraseology including substitution of ''one year'' for ''twelve months'' at end of section.

§ 2197. Misuse of Federal certificate, license or document

Whoever, not being lawfully entitled thereto, uses, exhibits, or attempts to use or exhibit, or, with intent unlawfully to use the same, receives or possesses any certificate, license, or document issued to vessels, or officers or seamen by any officer or employee of the United States authorized by law to issue the same; or

Whoever, without authority, alters or attempts to alter any such certificate, license, or document by addition, interpolation, deletion, or erasure; or

Whoever forges, counterfeits, or steals, or attempts to forge, counterfeit, or steal, any such certificate, license, or document; or unlawfully possesses or knowingly uses any such altered, changed, forged, counterfeit, or stolen certificate, license, or document; or

Whoever, without authority, prints or manufactures any blank form of such certificate, license, or document, or

Whoever possesses without lawful excuse, and with intent unlawfully to use the same, any blank form of such certificate, license, or document; or

Whoever, in any manner, transfers or negotiates such transfer of, any blank form of such certificate, license, or document, or any such altered, forged, counterfeit, or stolen certificate, license, or document, or any such certificate, license, or document to which the party transferring or receiving the same is not lawfully entitled—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 801; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 710a of title 46, U.S.C., 1940 ed., Shipping (June 25, 1936, ch. 816, § 6, 49 Stat. 1936).

The phrase ''the Bureau of Marine Inspection and Navigation,'' identifying the agency issuing the certificate, license or document, was omitted without change of substance. The functions of the Bureau of Marine Inspection and Navigation were transferred to the Bureau of Customs and the Coast Guard by Executive Order 9083 Feb. 28, 1942, title 50, App. U.S.C., 1940 ed., following § 601. Such transfer is temporary under section 621 of title 50, App., U.S.C., 1940 ed. (First War Powers Act).

As revised the section is broad enough to embrace certificates, licenses and documents issued by the officers or employees of the Coast Guard and Customs Service, as the case may be.

Reference to persons causing, procuring, aiding or abetting was omitted as such persons are principals under section 2 of this title.

Words ''upon conviction thereof'' were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

Changes were made in phraseology and arrangement.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000'' in last par.

[§ 2198. Repealed. Pub. L. 101–647, title XII, § 1207(b), Nov. 29, 1990, 104 Stat. 4832]

Section, act June 25, 1948, ch. 645, 62 Stat. 802, related to penalties for seducing a female passenger on an American vessel by employees of the vessel.

§ 2199. Stowaways on vessels or aircraft

Whoever, without the consent of the owner, charterer, master, or person in command of any vessel, or aircraft, with intent to obtain transportation, boards, enters or secretes himself aboard such vessel or aircraft and is thereon at the time of departure of said vessel or aircraft from a port, harbor, wharf, airport or other place within the jurisdiction of the United States; or

Whoever, with like intent, having boarded, entered or secreted himself aboard a vessel or aircraft at any place within or without the jurisdiction of the United States, remains aboard after the vessel or aircraft has left such place and is thereon at any place within the jurisdiction of the United States; or

Whoever, with intent to obtain a ride or transportation, boards or enters any aircraft owned or operated by the United States without the consent of the person in command or other duly authorized officer or agent—

(1) shall be fined under this title, imprisoned not more than 5 years, or both;

(2) if the person commits an act proscribed by this section, with the intent to commit serious bodily injury, and serious bodily injury occurs (as defined under section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242) to any person other than a participant as a result of a violation of this section, shall be fined under this title or imprisoned not more than 20 years, or both; and

(3) if an individual commits an act proscribed by this section, with the intent to cause death, and if the death of any person other than a participant occurs as a result of a violation of this section, shall be fined under this title, imprisoned for any number of years or for life, or both.

The word ''aircraft'' as used in this section includes any contrivance for navigation or flight in the air.

(June 25, 1948, ch. 645, 62 Stat. 802; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 109–177, title III, § 308, Mar. 9, 2006, 120 Stat. 241.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 469–474 (June 11, 1940, ch. 326, §§ 1–3, 54 Stat. 306; Mar. 4, 1944, ch. 82, §§ 1–4, 58 Stat. 111; Apr. 10, 1944, ch. 162, 58 Stat. 188).

Sections consolidated and rewritten with changes of phraseology and substance.

In section 469 of title 18, U.S.C., 1940 ed., the element of intent not to pay for transportation was omitted as unnecessary since the payment of transportation will invariably remove the stowaway from the operation of the section by purchasing the master's ''consent''.

In section 472 of title 18, U.S.C., 1940 ed., the enumerations of State, Territory, Possession, District of Columbia, and The Canal Zone, was omitted as adequately covered by ''place within the jurisdiction of the United States.''

The punishment provision is the same as in sections 470, 472, and 473 of title 18, U.S.C., 1940 ed., but the fine is $500 more than the maximum fine provided by said section 469. There seemed no point, however, in preserving a differential in favor of the stowaway as against the aider and abettor of $500. The court can be trusted to exercise a wise discretion within the slightly larger limits provided by the revised section.

The provision for punishment of aiders and abettors in section 470 of title 18, U.S.C., 1940 ed., was omitted as unnecessary since they are punishable as principals by section 2 of this title.

Sections 471 and 474 of title 18, U.S.C., 1940 ed., were omitted as obviously unnecessary.

AMENDMENTS

2006—Pub. L. 109–177 added pars. (1) to (3) and struck out former fourth undesignated par. which read as follows: ''Shall be fined under this title or imprisoned not more than one year, or both.''

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000'' in fourth undesignated par.

CHAPTER 109—SEARCHES AND SEIZURES

Sec.
2231. Assault or resistance.
2232. Destruction or removal of property to prevent seizure.
2233. Rescue of seized property.
2234. Authority exceeded in executing warrant.
2235. Search warrant procured maliciously.
2236. Searches without warrant.
2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information.

AMENDMENTS

2006—Pub. L. 109–177, title III, § 303(b), Mar. 9, 2006, 120 Stat. 234, added item 2237.

§ 2231. Assault or resistance

(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard thereto or on account of the performance of such duties, shall be fined under this title or imprisoned not more than three years, or both; and—

(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 121, 253, 254, 628 (Mar. 4, 1909, ch. 321, § 65, 35 Stat. 1100; June 15, 1917, ch. 30, title XI, § 18, 40 Stat. 230; May 18, 1934, ch. 299, §§ 1, 2, 48 Stat. 780, 781; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, § 3, 49 Stat. 1940; Reorg. Plan No. II, § 4(f), eff. July 1, 1939, 4 Fed. Reg. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391).

Section consolidates section 628 of title 18, U.S.C., 1940 ed., and the portion of section 121 of said title relating to resistance of persons authorized to make searches.

Punishment provided by section 121 of title 18, U.S.C., 1940 ed., was $2,000 fine and imprisonment for 1 year. Section 628 of said title was part of Espionage Act of June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231, prescribing fine of not more than $1,000 and imprisonment not exceeding 2 years for resisting service, execution of search warrant, or assaulting an officer.

Section 253 of title 18, U.S.C., 1940 ed., enumerated United States marshals, deputies, and assistants, Federal Bureau of Investigation agents, and numerous other officers, the killing of whom is denounced as a Federal offense.

Section 254 of title 18, U.S.C., 1940 ed., denounced the assaulting of such officers and prescribed punishment therefor without regard to nature of duties involved or performed.

In other words sections 253 and 254 of title 18, U.S.C., 1940 ed., were not limited to officers executing search warrants.

Officers enumerated in section 253 of title 18, U.S.C., 1940 ed., were substantially all those who serve or execute search warrants. Therefore, the language and punishment under section 254 of said title constitute basis of this revised section. No change in legislative intent is involved, as the amendments of sections 253 and 254 of said title are the latest enactments.

The provisions of section 121 of title 18, U.S.C., 1940 ed., relating to rescue of property from seizing officer or its destruction to prevent seizure, are incorporated in sections 2232 and 2233 of this title.

Minor changes were made in translation and phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 2232. Destruction or removal of property to prevent seizure

(a) DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.—Whoever, before, during, or after any search for or seizure of property by any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) IMPAIRMENT OF IN REM JURISDICTION.—Whoever, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, knowingly and without authority from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court's continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) NOTICE OF SEARCH OR EXECUTION OF SEIZURE WARRANT OR WARRANT OF ARREST IN REM.—Whoever, having knowledge that any person authorized to make searches and seizures, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorized seizing or securing of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, to any person shall be fined under this title or imprisoned not more than 5 years, or both.

(d) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

(e) FOREIGN INTELLIGENCE SURVEILLANCE.—Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802; Pub. L. 98–473, title II, § 1103, Oct. 12, 1984, 98 Stat. 2143; Pub. L. 99–508, title I, § 109, Oct. 21, 1986, 100 Stat. 1858; Pub. L. 99–646, § 33, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 100–690, title VII, § 7066, Nov. 18, 1988, 102 Stat. 4404; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 106–185, § 12, Apr. 25, 2000, 114 Stat. 218.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 121 (Mar. 4, 1909, ch. 321, § 65, 35 Stat. 1100).

Section was formed from the words following the first semicolon and ending with the second semicolon, in section 121 of title 18, U.S.C., 1940 ed.

The remaining provisions of section 121 of title 18, U.S.C., 1940 ed., relating to assaulting, resisting, or interfering with customs officers, revenue officers, or other persons, and to the rescue of seized property, constitute, along with provisions from other sections, sections 2231 and 2233 of this title.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (e), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

AMENDMENTS

2000—Pub. L. 106–185 added subsecs. (a) to (c), redesignated first and second pars. of former subsec. (c) as subsecs. (d) and (e), respectively, inserted subsec. (e) heading, and struck out former subsecs. (a) and (b) which related to physical interference with search and notice of search, respectively.

1994—Subsecs. (a), (b). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1988—Subsec. (c). Pub. L. 100–690 inserted ''of 1978'' after ''Surveillance Act''.

1986—Pub. L. 99–646 directed the designation of first and second pars. as subsecs. (a) and (b), respectively, which had been previously so designated by Pub. L. 99–508, and substituted ''imprisoned not'' for ''imprisoned'' in subsec. (a).

Pub. L. 99–508 designated first and second pars. as subsecs. (a) and (b), respectively, and inserted headings, and added subsec. (c).

1984—Pub. L. 98–473, § 1103(a), substituted provisions raising the maximum fine from $2,000 to $10,000 and raising the maximum term of imprisonment from two years to five years.

Pub. L. 98–473, § 1103(b), inserted paragraph relating to the penalties for warning the subject of a search.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

§ 2233. Rescue of seized property

Whoever forcibly rescues, dispossesses, or attempts to rescue or dispossess any property, articles, or objects after the same shall have been taken, detained, or seized by any officer or other

person under the authority of any revenue law of the United States, or by any person authorized to make searches and seizures, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 121, 128 (Mar. 4, 1909, ch. 321, §§ 65, 71, 35 Stat. 1100, 1101).

Section consolidates that portion of section 121 of title 18, U.S.C., 1940 ed., relating to rescue of seized property, with section 128 of title 18, U.S.C., 1940 ed.

The remaining provisions of section 121 of present title 18, U.S.C., 1940 ed., relating to assaulting, resisting, or interfering with customs officers, revenue officers, or other persons, and to the destruction or removal of property to prevent seizure, constitute sections 2231 and 2232 of this title, the former provisions being consolidated with certain provisions of other sections.

Said section 121 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than $2,000 or imprisonment of not more than 1 year, or both, of persons rescuing, attempting to rescue, or causing to be rescued, ''any property'' which has been seized by ''any person'' authorized to make searches and seizures.

Said section 128 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than $300 and imprisonment for not more than 1 year of persons dispossessing, rescuing, or attempting to dispossess or rescue, or aiding or assisting in dispossessing or rescuing, ''any property taken or detained by any officer or other person under the authority of any revenue law of the United States.''

This revised section adopts the maximum fine provisions of section 121 of title 18, U.S.C., 1940 ed., and extends the maximum term of imprisonment to 2 years. This was deemed advisable so that uniformity of punishment would be established and the provisions would be sufficiently broad to impose punishment commensurate with the gravity of the offense. (See section 3601(c)(2) of title 26, U.S.C., 1940 ed., Internal Revenue Code.)

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000''.

§ 2234. Authority exceeded in executing warrant

Whoever, in executing a search warrant, willfully exceeds his authority or exercises it with unnecessary severity, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title III, § 3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 631 (June 15, 1917, ch. 30, title XI, § 21, 40 Stat. 230).

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 inserted '', or both'' after ''year''.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2235. Search warrant procured maliciously

Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title III, § 3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 630 (June 15, 1917, ch. 30, title XI, § 20, 40 Stat. 230).

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 inserted '', or both'' after ''year''.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2236. Searches without warrant

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined under this title for a first offense; and, for a subsequent offense, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to any person—

(a) serving a warrant of arrest; or

(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

(c) making a search at the request or invitation or with the consent of the occupant of the premises.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104–294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–273, div. B, title IV, § 4002(d)(1)(C)(iii), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 53a (Aug. 27, 1935, ch. 740, § 201, 49 Stat. 877).

Words ''or any department or agency thereof'' were inserted to avoid ambiguity as to scope of section. (See definitive section 6 of this title.)

The exception in the case of an invitation or the consent of the occupant, was inserted to make the section complete and remove any doubt as to the application of this section to searches which have uniformly been upheld.

Reference to misdemeanor was omitted in view of definitive section 1 of this title. (See reviser's note under section 212 of this title.)

Words ''upon conviction thereof shall be'' were omitted as surplusage, since punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 inserted ''under this title'' after ''warrant, shall be fined'' and struck out ''not more than $1,000'' after ''for a first offense''.

1996—Pub. L. 104–294 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information

(a)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.

(2) It shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to—

(A) forcibly resist, oppose, prevent, impede, intimidate, or interfere with a boarding or other law enforcement action authorized by any Federal law or to resist a lawful arrest; or

(B) provide materially false information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew.

(b) Any person who intentionally violates this section shall be fined under this title or imprisoned for not more than 5 years, or both.

(c) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 (19 U.S.C. 1581), or any other provision of law enforced or administered by the Secretary of the Treasury or the Secretary of Homeland Security, or the authority of any Federal law enforcement officer under any law of the United States, to order a vessel to stop or heave to.

(d) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the designee of the Secretary of State.

(e) In this section—

(1) the term ''Federal law enforcement officer'' has the meaning given the term in section 115(c);

(2) the term ''heave to'' means to cause a vessel to slow, come to a stop, or adjust its course or speed to account for the weather conditions and sea state to facilitate a law enforcement boarding;

(3) the term ''vessel subject to the jurisdiction of the United States'' has the meaning given the term in section 2[1] of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903); and

(4) the term ''vessel of the United States'' has the meaning given the term in section 2[1] of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903).

(Added Pub. L. 109–177, title III, § 303(a), Mar. 9, 2006, 120 Stat. 233.)

REFERENCES IN TEXT

Section 2 of the Maritime Drug Law Enforcement Act, referred to in subsec. (e)(3), (4), probably means section 3 of the Maritime Drug Law Enforcement Act, Pub. L. 96–350, which was classified to section 1903 of former Title 46, Appendix, Shipping, and was repealed and restated in sections 70502 to 70506 of Title 46, Shipping, by Pub. L. 109–304, §§ 10(2), 19, Oct. 6, 2006, 120 Stat. 1683, 1710. The terms ''vessel of the United States'' and ''vessel subject to the jurisdiction of the United States'' are defined in subsecs. (b) and (c), respectively, of section 70502 of Title 46.

[1] See References in Text note below.

CHAPTER 109A—SEXUAL ABUSE

Sec.
2241. Aggravated sexual abuse.
2242. Sexual abuse.
2243. Sexual abuse of a minor or ward.
2244. Abusive sexual contact.
2245. Sexual abuse resulting in death.[1]
2246. Definitions for chapter.
2247. Repeat offenders.
2248. Mandatory restitution.

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical chapters 109A.

AMENDMENTS

1994—Pub. L. 103–322, title IV, §§ 40111(c), 40113(a)(2), title VI, § 60010(b), Sept. 13, 1994, 108 Stat. 1903, 1907, 1973, redesignated item 2245 as 2246 and added items 2245, 2247, and 2248.

§ 2241. Aggravated sexual abuse

(a) BY FORCE OR THREAT.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly causes another person to engage in a sexual act—

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) BY OTHER MEANS.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly—

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

[1] Section catchline amended by Pub. L. 109–248 without corresponding amendment of chapter analysis.

(c) WITH CHILDREN.—Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

(Added Pub. L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3620, and Pub. L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3660; amended Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[7(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–31; Pub. L. 105–314, title III, § 301(a), Oct. 30, 1998, 112 Stat. 2978; Pub. L. 109–162, title XI, § 1177(a)(1), (2), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, §§ 206(a)(1), 207(2), July 27, 2006, 120 Stat. 613, 615.)

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2241.

AMENDMENTS

2006—Subsecs. (a), (b). Pub. L. 109–248, § 207(2), inserted comma after ''Attorney General'' in introductory provisions.

Pub. L. 109–162, § 1177(a)(1), inserted ''or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''in a Federal prison,'' in introductory provisions.

Subsec. (c). Pub. L. 109–248 inserted comma after ''Attorney General'' and substituted ''and imprisoned for not less than 30 years or for life'' for '', imprisoned for any term of years or life, or both'' in first sentence.

Pub. L. 109–162, § 1177(a)(2), inserted ''or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''in a Federal prison,'' in first sentence.

1998—Subsec. (c). Pub. L. 105–314 substituted ''younger than the person so engaging'' for ''younger than that person''.

1996—Subsec. (c). Pub. L. 104–208 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.''

1994—Subsec. (a)(2). Pub. L. 103–322 substituted ''kidnapping'' for ''kidnaping''.

EFFECTIVE DATE

Section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654 provided, respectively, that: ''This section and the amendments made by this section [see Short Title note below] shall take effect 30 days after the date of the enactment of this Act [Nov. 10, 1986].'' and ''This Act and the amendments made by this Act [see Short Title note below] shall take effect 30 days after the date of the enactment of this Act [Nov. 14, 1986].''

SHORT TITLE OF 1996 AMENDMENT

Section 101(a) [title I, § 121[7(a)]] of Pub. L. 104–208 provided that: ''This section [probably means subsec. 7 of section 121 of Pub. L. 104–208, div. A, title I, § 101(a), which amended sections 2241 and 2243 of this title] may be cited as the 'Amber Hagerman Child Protection Act of 1996'.''

SHORT TITLE

Section 87(a) of Pub. L. 99–646 and section 1 of Pub. L. 99–654 provided, respectively, that: ''This section [enacting this chapter, amending sections 113, 1111, 1153, and 3185 of this title, sections 300w–3, 300w–4, and 9511 of Title 42, The Public Health and Welfare, and section 1472 of former Title 49, Transportation, and repealing chapter 99 of this title] may be cited as the 'Sexual Abuse Act of 1986'.'' and ''This Act [enacting this chapter, amending sections 113, 1111, 1153, and 3185 of this title, sections 300w–3, 300w–4, and 9511 of Title 42, and section 1472 of former Title 49, Transportation, and repealing chapter 99 of this title] may be cited as the 'Sexual Abuse Act of 1986'.''

§ 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly—

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is—

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

(Added Pub. L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3621, and Pub. L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3661; amended Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub. L. 109–162, title XI, § 1177(a)(3), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, §§ 205, 207(2), July 27, 2006, 120 Stat. 613, 615.)

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2242.

AMENDMENTS

2006—Pub. L. 109–248 inserted comma after ''Attorney General'' in introductory provisions and substituted

''and imprisoned for any term of years or for life'' for '', imprisoned not more than 20 years, or both'' in concluding provisions.

Pub. L. 109–162 inserted ''or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''in a Federal prison,'' in introductory provisions.

1994—Par. (1). Pub. L. 103–322 substituted ''kidnapping'' for ''kidnaping''.

§ 2243. Sexual abuse of a minor or ward

(a) OF A MINOR.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who—

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) OF A WARD.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who is—

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(c) DEFENSES.—(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

(Added Pub. L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3621, and Pub. L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3661; amended Pub. L. 101–647, title III, § 322, Nov. 29, 1990, 104 Stat. 4818; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[7(c)]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–31; Pub. L. 105–314, title III, § 301(b), Oct. 30, 1998, 112 Stat. 2979; Pub. L. 109–162, title XI, § 1177(a)(4), (b)(1), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, § 207, July 27, 2006, 120 Stat. 615.)

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2243.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 207(2), inserted comma after ''Attorney General'' in introductory provisions.

Pub. L. 109–162, § 1177(a)(4), inserted ''or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''in a Federal prison,'' in introductory provisions.

Subsec. (b). Pub. L. 109–248 inserted comma after ''Attorney General'' in introductory provisions and substituted ''15 years'' for ''five years'' in concluding provisions.

Pub. L. 109–162, § 1177(a)(4), (b)(1), inserted ''or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General'' after ''in a Federal prison,'' in introductory provisions and substituted ''five years'' for ''one year'' in concluding provisions.

1998—Subsec. (a). Pub. L. 105–314 struck out ''crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or'' after ''Whoever'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–208 inserted ''crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or'' after ''Whoever'' in introductory provisions.

1990—Subsec. (a). Pub. L. 101–647 substituted ''15 years'' for ''five years'' in concluding provisions.

§ 2244. Abusive sexual contact

(a) SEXUAL CONDUCT IN CIRCUMSTANCES WHERE SEXUAL ACTS ARE PUNISHED BY THIS CHAPTER.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

(1) subsection (a) or (b) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both;

(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or

(5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for any term of years or for life.

(b) IN OTHER CIRCUMSTANCES.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in sexual contact with another person without that other

person's permission shall be fined under this title, imprisoned not more than two years, or both.

(c) OFFENSES INVOLVING YOUNG CHILDREN.—If the sexual contact that violates this section (other than subsection (a)(5)) is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.

(Added Pub. L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3622, and Pub. L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3661; amended Pub. L. 100–690, title VII, § 7058(a), Nov. 18, 1988, 102 Stat. 4403; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 105–314, title III, § 302, Oct. 30, 1998, 112 Stat. 2979; Pub. L. 109–162, title XI, § 1177(a)(5), (b)(2), Jan. 5, 2006, 119 Stat. 3125; Pub. L. 109–248, title II, §§ 206(a)(2), 207(2), July 27, 2006, 120 Stat. 613, 615.)

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical sections 2244.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 207(2), inserted comma after "Attorney General" in introductory provisions.

Pub. L. 109–162, § 1177(a)(5), inserted "or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General" after "in a Federal prison," in introductory provisions.

Subsec. (a)(1). Pub. L. 109–248, § 206(a)(2)(A)(i), inserted "subsection (a) or (b) of" before "section 2241 of this title".

Subsec. (a)(4). Pub. L. 109–162, § 1177(b)(2), substituted "two years" for "six months".

Subsec. (a)(5). Pub. L. 109–248, § 206(a)(2)(A)(ii)–(iv), added par. (5).

Subsec. (b). Pub. L. 109–248, § 207(2), inserted comma after "Attorney General".

Pub. L. 109–162, § 1177(a)(5), (b)(2), inserted "or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General" after "in a Federal prison," and substituted "two years" for "six months".

Subsec. (c). Pub. L. 109–248, § 206(a)(2)(B), inserted "(other than subsection (a)(5))" after "violates this section".

1998—Subsec. (c). Pub. L. 105–314 added subsec. (c).

1994—Subsecs. (a)(4), (b). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

1988—Subsec. (a). Pub. L. 100–690 substituted "ten years" for "five years" in par. (1) and "two years" for "one year" in par. (3).

§ 2245. Offenses resulting in death

(a)[1] IN GENERAL.—A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life.

(Added Pub. L. 103–322, title VI, § 60010(a)(2), Sept. 13, 1994, 108 Stat. 1972; amended Pub. L. 109–248, title II, § 206(a)(3), July 27, 2006, 120 Stat. 613.)

PRIOR PROVISIONS

A prior section 2245 was renumbered section 2246 of this title.

[1] So in original. No subsec. (b) has been enacted.

AMENDMENTS

2006—Pub. L. 109–248 amended section catchline and text generally. Prior to amendment, text read as follows: "A person who, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life."

§ 2246. Definitions for chapter

As used in this chapter—

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means—

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency; and

(6) the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

(Added Pub. L. 99–646, § 87(b), Nov. 10, 1986, 100 Stat. 3622, § 2245, and Pub. L. 99–654, § 2, Nov. 14, 1986, 100 Stat. 3662, § 2245; renumbered § 2246 and amended Pub. L. 103–322, title IV, § 40502, title VI, § 60010(a)(1), Sept. 13, 1994, 108 Stat. 1945, 1972; Pub. L. 105–314, title III, § 301(c), Oct. 30, 1998, 112 Stat. 2979.)

CODIFICATION

Pub. L. 99–646 and Pub. L. 99–654 added identical sections.

AMENDMENTS

1998—Par. (6). Pub. L. 105–314 added par. (6).

1994—Pub. L. 103–322, § 60010(a)(1), renumbered section 2245 of this title as this section.

Par. (2)(D). Pub. L. 103–322, § 40502, added subpar. (D).

§ 2247. Repeat offenders

(a) MAXIMUM TERM OF IMPRISONMENT.—The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter, unless section 3559(e) applies.

(b) PRIOR SEX OFFENSE CONVICTION DEFINED.—In this section, the term ''prior sex offense conviction'' has the meaning given that term in section 2426(b).

(Added Pub. L. 103–322, title IV, § 40111(a), Sept. 13, 1994, 108 Stat. 1903; amended Pub. L. 105–314, title III, § 303, Oct. 30, 1998, 112 Stat. 2979; Pub. L. 108–21, title I, § 106(b), Apr. 30, 2003, 117 Stat. 655.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–21 inserted '', unless section 3559(e) applies'' before period at end.

1998—Pub. L. 105–314 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''Any person who violates a provision of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact have become final, is punishable by a term of imprisonment up to twice that otherwise authorized.''

§ 2248. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) DEFINITION.—For purposes of this subsection, the term ''full amount of the victim's losses'' includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) DEFINITION.—For purposes of this section, the term ''victim'' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, § 40113(a)(1), Sept. 13, 1994, 108 Stat. 1904; amended Pub. L. 104–132, title II, § 205(b), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 205(b)(1), inserted ''or 3663A'' after ''3663''.

Subsec. (b)(1). Pub. L. 104–132, § 205(b)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The order of restitution under this section shall direct that—

''(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

''(B) the United States Attorney enforce the restitution order by all available and reasonable means.''

Subsec. (b)(2). Pub. L. 104–132, § 205(b)(2)(B), struck out ''by victim'' after ''Enforcement'' in heading and amended text generally. Prior to amendment, text read as follows: ''An order of restitution also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.''

Subsec. (b)(4)(C), (D). Pub. L. 104–132, § 205(b)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, § 205(b)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–132, § 205(b)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104–132, § 205(b)(3), struck out subsecs. (d) and (e) which read as follows:

''(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

''(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.''

Subsec. (f). Pub. L. 104–132, § 205(b)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 211 of title II of Pub. L. 104–132 provided that: ''The amendments made by this subtitle [subtitle A (§§ 201–211) of title II of Pub. L. 104–132, see Short Title of 1996 Amendment note set out under section 3551 of this title] shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act [Apr. 24, 1996].''

CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

Sec.
2250. Failure to register.

§ 2250. Failure to register

(a) IN GENERAL.—Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) AFFIRMATIVE DEFENSE.—In a prosecution for a violation under subsection (a), it is an affirmative defense that—

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(c) CRIME OF VIOLENCE.—

(1) IN GENERAL.—An individual described in subsection (a) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) ADDITIONAL PUNISHMENT.—The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a).

(Added Pub. L. 109–248, title I, § 141(a)(1), July 27, 2006, 120 Stat. 602.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (a)(1), (2)(A), (3), is title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

The Uniform Code of Military Justice, referred to in subsecs. (a)(2)(A) and (c)(1), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec.
2251. Sexual exploitation of children.
2251A. Selling or buying of children.
2252. Certain activities relating to material involving the sexual exploitation of minors.
2252A. Certain activities relating to material constituting or containing child pornography.
2252B. Misleading domain names on the Internet.
2252C. Misleading words or digital images on the Internet.
2253. Criminal forfeiture.
2254. Civil forfeiture.
2255. Civil remedy for personal injuries.
2256. Definitions for chapter.
2257. Record keeping requirements.
2257A. Recordkeeping requirements for simulated sexual conduct.[1]
2258. Failure to report child abuse.
2259. Mandatory restitution.
2260. Production of sexually explicit depictions of a minor for importation into the United States.
2260A. Increased penalties for registered sex offenders.[1]

AMENDMENTS

2006—Pub. L. 109–248, title V, § 503(b), title VII, §§ 702(b), 703(b), July 27, 2006, 120 Stat. 629, 648, 649, added items 2252C, 2257A, and 2260A.

2003—Pub. L. 108–21, title V, § 521(b), Apr. 30, 2003, 117 Stat. 686, added item 2252B.

1996—Pub. L. 104–294, title VI, § 601(i)(2), Oct. 11, 1996, 110 Stat. 3501, redesignated item 2258, relating to production of sexually explicit depictions of a minor, as 2260.

Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[3(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30, added item 2252A.

1994—Pub. L. 103–322, title IV, § 40113(b)(2), title XVI, § 160001(b)(1), Sept. 13, 1994, 108 Stat. 1910, 2037, added items 2258, relating to production of sexually explicit depictions of a minor, and 2259.

1990—Pub. L. 101–647, title II, § 226(g)(2), Nov. 29, 1990, 104 Stat. 4808, inserted ''AND OTHER ABUSE'' after ''EXPLOITATION'' in chapter heading and added item 2258.

1988—Pub. L. 100–690, title VII, §§ 7512(c), 7513(b), Nov. 18, 1988, 102 Stat. 4487, 4488, added items 2251A and 2257.

1986—Pub. L. 99–500, § 101(b), [title VII, § 703(b)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–75, and Pub. L. 99–591, § 101(b) [title VII, § 703(b)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–75, added item 2255 and redesignated former item 2255 as 2256.

1984—Pub. L. 98–292, § 7, May 21, 1984, 98 Stat. 206, added items 2253 and 2254 and redesignated former item 2253 as 2255.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage

[1] So in original. Does not conform to section catchline.

in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.

(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

(Added Pub. L. 95–225, § 2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98–292, § 3, May 21, 1984, 98 Stat. 204; Pub. L. 99–500, § 101(b) [title VII, § 704(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–75, and Pub. L. 99–591, § 101(b) [title VII, § 704(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–75; Pub. L. 99–628, §§ 2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100–690, title VII, § 7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101–647, title XXXV, § 3563, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103–322, title VI, § 60011, title XVI, § 160001(b)(2), (c), (e), title XXXIII, § 330016(1)(S)–(U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[4]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30; Pub. L. 105–314, title II, § 201, Oct. 30, 1998, 112 Stat. 2977; Pub. L. 108–21, title I, § 103(a)(1)(A), (b)(1)(A), title V, §§ 506, 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109–248, title II, § 206(b)(1), July 27, 2006, 120 Stat. 614.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–248 inserted ''section 1591,'' after ''one prior conviction under this chapter,'' and substituted ''aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production,

possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography'' for ''the sexual exploitation of children'' and ''not less than 30 years or for life'' for ''any term of years or for life''.

2003—Subsecs. (a), (b). Pub. L. 108–21, § 506(1), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (c). Pub. L. 108–21, § 506(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108–21, § 506(1), substituted ''subsection (e)'' for ''subsection (d)'' in concluding provisions.

Subsec. (d). Pub. L. 108–21, § 506(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 108–21, § 103(a)(1)(A), (b)(1)(A), substituted ''and imprisoned not less than 15'' for ''or imprisoned not less than 10'', ''30 years'' for ''20 years'', ''25 years'' for ''15 years'', ''more than 50 years'' for ''more than 30 years'', and ''35 years nor more than life'' for ''30 years nor more than life'', and struck out ''and both,'' before ''but if such person has one''.

Subsec. (e). Pub. L. 108–21, § 507, inserted ''chapter 71,'' before ''chapter 109A,'' in two places and ''or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),'' before ''or under the laws'' in two places.

Pub. L. 108–21, § 506(2), redesignated subsec. (d) as (e).

1998—Subsec. (a). Pub. L. 105–314, § 201(a), inserted ''if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,'' before ''or if''.

Subsec. (b). Pub. L. 105–314, § 201(b), inserted '', if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,'' before ''or if''.

Subsec. (d). Pub. L. 105–314, § 201(c), substituted '', chapter 109A, or chapter 117'' for ''or chapter 109A'' in two places.

1996—Subsec. (d). Pub. L. 104–208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title, imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this chapter or chapter 109A, such individual shall be fined under this title, imprisoned not less than five years nor more than 15 years, or both. Any organization which violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.''

1994—Pub. L. 103–322, § 330016(1)(S)–(U), which directed the amendment of this section by substituting ''under this title'' for ''not more than $100,000'', ''not more than $200,000'', and ''not more than $250,000'', could not be executed because those phrases did not appear in text subsequent to amendment of subsec. (d) by Pub. L. 103–322, § 160001(b)(2). See below.

Subsec. (d). Pub. L. 103–322, § 160001(e), inserted '', or attempts or conspires to violate,'' after ''violates'' in two places.

Pub. L. 103–322, § 160001(c), substituted ''conviction under this chapter or chapter 109A'' for ''conviction under this section''.

Pub. L. 103–322, § 160001(b)(2)(C), substituted ''fined under this title'' for ''fined not more than $250,000'' in penultimate sentence.

Pub. L. 103–322, § 160001(b)(2)(B), substituted ''fined under this title,'' for ''fined not more than $200,000, or'' before ''imprisoned not less than five years''.

Pub. L. 103–322, § 160001(b)(2)(A), substituted ''fined under this title,'' for ''fined not more than $100,000, or'' before ''imprisoned not more than 10 years''.

Pub. L. 103–322, § 60011, inserted at end ''Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.''

1990—Subsec. (a). Pub. L. 101–647 substituted ''person to engage in,'' for ''person to engage in,,''.

1988—Subsec. (c)(2)(A), (B). Pub. L. 100–690 inserted ''by any means including by computer'' after ''commerce''.

1986—Subsec. (a). Pub. L. 99–628, §§ 2(1), (3), inserted '', or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in,'' after ''assist any other person to engage in,'' and substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (b). Pub. L. 99–628, § 2(2), substituted ''subsection (d)'' for ''subsection (c)''.

Subsecs. (c), (d). Pub. L. 99–628, § 2(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 99–500 and Pub. L. 99–591 substituted ''five years'' for ''two years'' in subsec. (c).

1984—Subsecs. (a), (b). Pub. L. 98–292, § 3(1), (2), substituted ''visual depiction'' for ''visual or print medium'' in three places and substituted ''of'' for ''depicting'' before ''such conduct''.

Subsec. (c). Pub. L. 98–292, § 3(3)–(6), substituted ''individual'' for ''person'' in three places, ''$100,000'' for ''$10,000'', and ''$200,000'' for ''$15,000'', and inserted ''Any organization which violates this section shall be fined not more than $250,000.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–248, title VII, § 707(a), July 27, 2006, 120 Stat. 650, provided that: ''This section [amending section 2255 of this title] may be cited as 'Masha's Law'.''

SHORT TITLE OF 1996 AMENDMENT

Section 101(a) [title I, § 121] of div. A of Pub. L. 104–208 provided in part that: ''This section [enacting section 2252A of this title, amending this section, sections 2241, 2243, 2252, and 2256 of this title, and section 2000aa of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2241 of this title] may be cited as the 'Child Pornography Prevention Act of 1996'.''

SHORT TITLE OF 1990 AMENDMENT

Section 301(a) of title III of Pub. L. 101–647 provided that: ''This title [amending sections 1460, 2243, 2252, and 2257 of this title and enacting provisions set out as notes under section 2257 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Child Protection Restoration and Penalties Enhancement Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Section 7501 of title VII of Pub. L. 100–690 provided that: ''This subtitle [subtitle N (§§ 7501–7526) of title VII of Pub. L. 100–690, enacting sections 1460, 1466 to 1469, 2251A, and 2257 of this title, amending this section, sections 1465, 1961, 2252 to 2254, 2256, and 2516 of this title, section 1305 of Title 19, Customs Duties, and section 223 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions set out as a note under section 2257 of this title] may be cited as the 'Child Protection and Obscenity Enforcement Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENTS

Section 1 of Pub. L. 99–628 provided that: ''This Act [enacting sections 2421 to 2423 of this title, amending this section and sections 2255 and 2424 of this title, and repealing former sections 2421 to 2423 of this title] may be cited as the 'Child Sexual Abuse and Pornography Act of 1986'.''

Section 101(b) [title VII, § 701] of Pub. L. 99–500 and Pub. L. 99–591 provided that: ''This title [enacting section 2255 of this title, amending this section and section 2252 of this title, redesignating former section 2255 of this title as 2256, and enacting provisions set out as notes under this section] may be cited as the 'Child Abuse Victims' Rights Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–292 provided: ''That this Act [enacting sections 2253 and 2254 of this title, amending this section and sections 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Child Protection Act of 1984'.''

SHORT TITLE

Section 1 of Pub. L. 95–225 provided: ''That this Act [enacting this chapter and amending section 2423 of this title] may be cited as the 'Protection of Children Against Sexual Exploitation Act of 1977'.''

SEVERABILITY

Section 101(a) [title I, § 121[8]] of Pub. L. 104–208 provided that: ''If any provision of this Act [probably means section 121 of Pub. L. 104–208, div. A, title I, § 101(a), see Short Title of 1996 Amendment note above], including any provision or section of the definition of the term child pornography, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, including any other provision or section of the definition of the term child pornography, the amendments made by this Act, and the application of such to any other person or circumstance shall not be affected thereby.''

Section 4 of Pub. L. 95–225 provided that: ''If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

CONGRESSIONAL FINDINGS

Pub. L. 109–248, title V, § 501, July 27, 2006, 120 Stat. 623, provided that: ''Congress makes the following findings:

''(1) The effect of the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

''(A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in section 2256(8) of title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.

''(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.

''(C) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

''(D) Intrastate incidents of production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:

''(i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, thereby stimulating demand in the interstate market in child pornography.

''(ii) When the persons described in subparagraph (D)(i) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise, or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.

''(iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence.

''(E) Prohibiting the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of custody of children for the production of child pornography, will cause some persons engaged in such intrastate activities to cease all such activities, thereby reducing both supply and demand in the interstate market for child pornography.

''(F) Federal control of the intrastate incidents of the production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of children for the production of child pornography, is essential to the effective control of the interstate market in child pornography.

''(2) The importance of protecting children from repeat exploitation in child pornography:

''(A) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and related media.

''(B) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited.

''(C) The government has a compelling State interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

''(D) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse.

''(E) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys.

''(F) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense.''

Pub. L. 108–21, title V, § 501, Apr. 30, 2003, 117 Stat. 676, provided that: ''Congress finds the following:

''(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

''(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. 'The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,' New York v. Ferber, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

''(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. 'The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.' Ferber, 458 U.S. at 760.

''(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to—

''(A) computer generate depictions of children that are indistinguishable from depictions of real children;

''(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or

''(C) disguise pictures of real children being abused by making the image look computer-generated.

''(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer-generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

''(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

''(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the decision in Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

''(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

''(9) The impact of the Free Speech Coalition decision on the Government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

''(10) Since the Supreme Court's decision in Free Speech Coalition, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

''(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is—and for the foreseeable future will remain—prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

''(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

''(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

''(14) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

''(15) The Supreme Court's 1982 Ferber v. New York decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and notorious trafficking in such materials does not reappear, and even increase, on the Internet.''

Section 101(a) [title I, § 121[1]] of Pub. L. 104–208 provided that: ''Congress finds that—

''(1) the use of children in the production of sexually explicit material, including photographs, films,

videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;

''(2) where children are used in its production, child pornography permanently records the victim's abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years;

''(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children 'having fun' participating in such activity;

''(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become acceptable to and even preferred by the viewer;

''(5) new photographic and computer imagining [sic] technologies make it possible to produce by electronic, mechanical, or other means, visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct;

''(6) computers and computer imaging technology can be used to—

''(A) alter sexually explicit photographs, films, and videos in such a way as to make it virtually impossible for unsuspecting viewers to identify individuals, or to determine if the offending material was produced using children;

''(B) produce visual depictions of child sexual activity designed to satisfy the preferences of individual child molesters, pedophiles, and pornography collectors; and

''(C) alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct;

''(7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child's privacy and reputational interests, since images that are created showing a child's face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;

''(8) the effect of visual depictions of child sexual activity on a child molester or pedophile using that material to stimulate or whet his own sexual appetites, or on a child where the material is being used as a means of seducing or breaking down the child's inhibitions to sexual abuse or exploitation, is the same whether the child pornography consists of photographic depictions of actual children or visual depictions produced wholly or in part by electronic, mechanical, or other means, including by computer, which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children;

''(9) the danger to children who are seduced and molested with the aid of child sex pictures is just as great when the child pornographer or child molester uses visual depictions of child sexual activity produced wholly or in part by electronic, mechanical, or other means, including by computer, as when the material consists of unretouched photographic images of actual children engaging in sexually explicit conduct;

''(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and

''(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;

''(11)(A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and

''(B) this sexualization of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;

''(12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

''(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct.''

Section 101(b) [title VII, § 702] of Pub. L. 99–500 and Pub. L. 99–591 provided that: ''The Congress finds that—

''(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

''(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

''(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

''(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.''

Section 2 of Pub. L. 98–292 provided that: ''The Congress finds that—

''(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

''(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

''(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.''

REPORT BY ATTORNEY GENERAL

Section 101(b) [title VII, § 705] of Pub. L. 99–500 and Pub. L. 99–591 required Attorney General, within one year after Oct. 18, 1986, to submit a report to Congress detailing possible changes in Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

ANNUAL REPORT TO CONGRESS

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 9 of Pub. L. 98–292, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

§ 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that—

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

(Added Pub. L. 100–690, title VII, § 7512(a), Nov. 18, 1988, 102 Stat. 4486; amended Pub. L. 108–21, title I, § 103(b)(1)(B), Apr. 30, 2003, 117 Stat. 653.)

AMENDMENTS

2003—Subsecs. (a), (b). Pub. L. 108–21 substituted ''30 years'' for ''20 years'' in concluding provisions.

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means, including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using

materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(Added Pub. L. 95–225, § 2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98–292, § 4, May 21, 1984, 98 Stat. 204; Pub. L. 99–500, § 101(b) [title VII, § 704(b)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–75, and Pub. L. 99–591, § 101(b) [title VII, § 704(b)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–75; Pub. L. 100–690, title VII, § 7511(b), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101–647, title III, § 323(a), (b), Nov. 29, 1990, 104 Stat. 4818, 4819; Pub. L. 103–322, title XVI, § 160001(d), (e), title XXXIII, § 330010(8), Sept. 13, 1994, 108 Stat. 2037, 2143; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[5]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30; Pub. L. 105–314, title II, §§ 202(a), 203(a), Oct. 30, 1998, 112 Stat. 2977, 2978; Pub. L. 108–21, title I, § 103(a)(1)(B), (C), (b)(1)(C), (D), title V, § 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109–248, title II, § 206(b)(2), July 27, 2006, 120 Stat. 614.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–248 substituted ''paragraph (1)'' for ''paragraphs (1)'' and inserted ''section 1591,'' after ''this chapter,'' and '', or sex trafficking of children'' after ''pornography''.

2003—Subsec. (b)(1). Pub. L. 108–21, § 507, inserted ''chapter 71,'' before ''chapter 109A,'' and ''or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),'' before ''or under the laws''.

Pub. L. 108–21, § 103(a)(1)(B), (C), substituted ''and imprisoned not less than 5 years and'' for ''or imprisoned'', ''20 years'' for ''15 years'', ''40 years'' for ''30 years'', and ''15 years'' for ''5 years'' and struck out ''or both,'' before ''but if such person has a prior''.

Subsec. (b)(2). Pub. L. 108–21, § 507, inserted ''chapter 71,'' before ''chapter 109A,'' and ''or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),'' before ''or under the laws''.

Pub. L. 108–21, § 103(a)(1)(C), (D), substituted ''more than 10 years'' for ''more than 5 years'', ''less than 10 years'' for ''less than 2 years'', and ''20 years'' for ''10 years''.

1998—Subsec. (a)(4)(A), (B). Pub. L. 105–314, § 203(a)(1), substituted ''1 or more'' for ''3 or more''.

Subsec. (b). Pub. L. 105–314, § 202(a), substituted '', chapter 109A, or chapter 117'' for ''or chapter 109A'' in pars. (1) and (2) and substituted ''aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography'' for ''the possession of child pornography'' in par. (2).

Subsec. (c). Pub. L. 105–314, § 203(a)(2), added subsec. (c).

1996—Subsec. (b). Pub. L. 104–208 added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this chapter or chapter 109A, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

''(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both.''

1994—Subsec. (a)(3)(B). Pub. L. 103–322, § 330010(8), substituted ''materials'' for ''materails'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–322, § 160001(d), (e), inserted '', or attempts or conspires to violate,'' after ''violates'' and substituted ''conviction under this chapter or chapter 109A'' for ''conviction under this section''.

Subsec. (b)(2). Pub. L. 103–322, § 160001(e), inserted '', or attempts or conspires to violate,'' after ''violates''.

1990—Subsec. (a). Pub. L. 101–647, § 323(a), (b), struck out ''or'' at end of par. (1), substituted ''that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer,'' for ''that has been transported or shipped in interstate or foreign commerce by any means including by computer or mailed'' in par. (2), struck out at end ''shall be punished as provided in subsection (b) of this section.'', and added pars. (3) and (4) and concluding provisions.

Subsec. (b). Pub. L. 101–647, § 323(a)(2), added subsec. (b) and struck out former subsec. (b) which read as fol-

lows: ''Any individual who violates this section shall be fined not more than $100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than $200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than $250,000.''

1988—Subsec. (a)(1), (2). Pub. L. 100–690 inserted ''by any means including by computer'' after ''commerce'' in introductory provisions.

1986—Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591 substituted ''five years'' for ''two years''.

1984—Subsec. (a)(1). Pub. L. 98–292, § 4(1), (3), (4), substituted ''any visual depiction'' for ''for the purpose of sale or distribution for sale, any obscene visual or print medium'' in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 98–292, § 4(4), substituted ''visual depiction'' for ''visual or print medium''.

Subsec. (a)(1)(B). Pub. L. 98–292, § 4(4), (5), substituted ''visual depiction is of'' for ''visual or print medium depicts''.

Subsec. (a)(2). Pub. L. 98–292, § 4(2)–(4), (6), (7), substituted '', or distributes, any visual depiction'' for ''for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium'' and inserted ''or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails'' in provisions preceding subpar. (A).

Subsec. (a)(2)(A). Pub. L. 98–292, § 4(4), substituted ''visual depiction'' for ''visual or print medium''.

Subsec. (a)(2)(B). Pub. L. 98–292, § 4(4), (5), substituted ''visual depiction is of'' for ''visual or print medium depicts''.

Subsec. (b). Pub. L. 98–292, § 4(8)–(11), substituted ''individual'' for ''person'' in three places, ''$100,000'' for ''$10,000'', and ''$200,000'' for ''$15,000'', and inserted ''Any organization which violates this section shall be fined not more than $250,000.''

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

Section 160003(a) of Pub. L. 103–322 provided that:

''(a) DECLARATION.—The Congress declares that in enacting sections 2252 and 2256 of title 18, United States Code, it was and is the intent of Congress that—

''(1) the scope of 'exhibition of the genitals or pubic area' in section 2256(2)(E), in the definition of 'sexually explicit conduct', is not limited to nude exhibitions or exhibitions in which the outlines of those areas were discernible through clothing; and

''(2) the requirements in section 2252(a)(1)(A), (2)(A), (3)(B)(i), and (4)(B)(i) that the production of a visual depiction involve the use of a minor engaging in 'sexually explicit conduct' of the kind described in section 2256(2)(E) are satisfied if a person photographs a minor in such a way as to exhibit the child in a lascivious manner.''

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who—

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

(3) knowingly—

(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

(5) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal.[1]

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that—

(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(B) each such person was an adult at the time the material was produced; or

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) CIVIL REMEDIES.—

(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) CHILD EXPLOITATION ENTERPRISES.—

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

(Added Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[3(a)]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–28; amended Pub. L. 105–314, title II, §§ 202(b), 203(b), Oct. 30, 1998, 112 Stat. 2978; Pub. L. 107–273, div. B, title IV, § 4003(a)(5), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 108–21, title I,

[1] So in original.

§ 103(a)(1)(D), (E), (b)(1)(E), (F), title V, §§ 502(d), 503, 505, 507, 510, Apr. 30, 2003, 117 Stat. 652, 653, 679, 680, 682–684; Pub. L. 109–248, title II, § 206(b)(3), title VII, § 701, July 27, 2006, 120 Stat. 614, 647.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–248, § 206(b)(3), inserted ''section 1591,'' after ''this chapter,'' and '', or sex trafficking of children'' after ''pornography''.

Subsec. (g). Pub. L. 109–248, § 701, added subsec. (g).

2003—Subsec. (a)(3). Pub. L. 108–21, § 503(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''knowingly reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer;''.

Subsec. (a)(6). Pub. L. 108–21, § 503(1)(B)–(D), added par. (6).

Subsec. (b)(1). Pub. L. 108–21, § 507, inserted ''chapter 71,'' before ''chapter 109A,'' and ''or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),'' before ''or under the laws''.

Pub. L. 108–21, § 503(2), which directed the substitution of ''paragraph (1), (2), (3), (4), or (6)'' for ''paragraphs (1), (2), (3), or (4)'', was executed by making the substitution for ''paragraph (1), (2), (3), or (4)'', to reflect the probable intent of Congress.

Pub. L. 108–21, § 103(a)(1)(D), (b)(1)(E), substituted ''20 years'' for ''15 years'', ''and imprisoned not less than 5 years and'' for ''or imprisoned'', ''15 years'' for ''5 years'', and ''40 years'' for ''30 years'' and struck out ''or both,'' before ''but, if such person''.

Subsec. (b)(2). Pub. L. 108–21, § 507, inserted ''chapter 71,'' before ''chapter 109A,'' and ''or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),'' before ''or under the laws''.

Pub. L. 108–21, § 103(a)(1)(E), (F), substituted ''more than 10 years'' for ''more than 5 years'', ''less than 10 years'' for ''less than 2 years'', and ''20 years'' for ''10 years''.

Subsec. (c). Pub. L. 108–21, § 502(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), or (4) of subsection (a) that—

''(1) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;

''(2) each such person was an adult at the time the material was produced; and

''(3) the defendant did not advertise, promote, present, describe, or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.''

Subsec. (e). Pub. L. 108–21, § 505, added subsec. (e).

Subsec. (f). Pub. L. 108–21, § 510, added subsec. (f).

2002—Subsecs. (b)(1), (c). Pub. L. 107–273 substituted ''paragraph'' for ''paragraphs''.

1998—Subsec. (a)(5)(A), (B). Pub. L. 105–314, § 203(b)(1), substituted ''an image'' for ''3 or more images''.

Subsec. (b). Pub. L. 105–314, § 202(b), substituted '', chapter 109A, or chapter 117'' for ''or chapter 109A'' in pars. (1) and (2) and substituted ''aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography'' for ''the possession of child pornography'' in par. (2).

Subsec. (d). Pub. L. 105–314, § 203(b)(2), added subsec. (d).

§ 2252B. Misleading domain names on the Internet

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 10 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as ''sex'' or ''porn'', is not misleading.

(d) For the purposes of this section, the term ''material that is harmful to minors'' means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

(1) predominantly appeals to a prurient interest of minors;

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term ''sex'' means acts of masturbation, sexual intercourse, or physcial[1] contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Added Pub. L. 108–21, title V, § 521(a), Apr. 30, 2003, 117 Stat. 686; amended Pub. L. 109–248, title II, § 206(b)(4), July 27, 2006, 120 Stat. 614.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–248 substituted ''10 years'' for ''4 years''.

§ 2252C. Misleading words or digital images on the Internet

(a) IN GENERAL.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title and imprisoned for not more than 10 years.

(b) MINORS.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title and imprisoned for not more than 20 years.

(c) CONSTRUCTION.—For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as ''sex'' or ''porn'', is not misleading.

(d) DEFINITIONS.—As used in this section—

(1) the terms ''material that is harmful to minors'' and ''sex'' have the meaning given such terms in section 2252B; and

(2) the term ''source code'' means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

[1] So in original. Probably should be ''physical''.

(Added Pub. L. 109–248, title VII, § 703(a), July 27, 2006, 120 Stat. 648.)

§ 2253. Criminal forfeiture

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense under this chapter involving a visual depiction described in section 2251, 2251A, 2252, 2252A, or 2260 of this chapter or who is convicted of an offense under section 2252B of this chapter,,[1] or who is convicted of an offense under chapter 109A, shall forfeit to the United States such person's interest in—

(1) any visual depiction described in section 2251, 2251A, or 2252[2] 2252A, 2252B, or 2260 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.

(b) Section 413 of the Controlled Substances Act (21 U.S.C. 853) with the exception of subsections (a) and (d), applies to the criminal forfeiture of property pursuant to subsection (a).

(Added Pub. L. 98–292, § 6, May 21, 1984, 98 Stat. 205; amended Pub. L. 100–690, title VII, § 7522(c), Nov. 18, 1988, 102 Stat. 4494; Pub. L. 101–647, title XXXV, § 3564, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103–322, title XXXIII, § 330011(m)(1), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105–314, title VI, § 602, Oct. 30, 1998, 112 Stat. 2982; Pub. L. 109–248, title V, § 505(b), (c), July 27, 2006, 120 Stat. 630.)

PRIOR PROVISIONS

A prior section 2253 was redesignated section 2256 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 505(b)(1), inserted ''or who is convicted of an offense under section 2252B of this chapter,'' after ''2260 of this chapter'' and substituted ''an offense under chapter 109A'' for ''an offense under section 2421, 2422, or 2423 of chapter 117'' in introductory provisions.

Subsec. (a)(1). Pub. L. 109–248, § 505(b)(2), inserted ''2252A, 2252B, or 2260'' after ''2252''.

Subsec. (a)(3). Pub. L. 109–248, § 505(b)(3), inserted ''or any property traceable to such property'' before period at end.

Subsecs. (b) to (*o*). Pub. L. 109–248, § 505(c), added subsec. (b) and struck out former subsecs. (b) to (*o*) which related, respectively, to third party transfers, protective orders, warrant of seizure, order of forfeiture, execution of order, disposition of property, authority of Attorney General, applicability of civil forfeiture provisions, bar on intervention, jurisdiction to enter orders, depositions, third party interests, construction of section, and substitute assets.

1998—Subsec. (a). Pub. L. 105–314 substituted ''2252, 2252A, or 2260 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117,'' for ''or 2252 of this chapter''.

1994—Subsec. (a). Pub. L. 103–322, § 330011(m)(1), amended directory language of Pub. L. 101–647, § 3564(1). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–647, § 3564(1), as amended by Pub. L. 103–322, § 330011(m)(1), substituted ''section 2251'' for ''sections 2251'' in introductory provisions and in par. (1).

Subsec. (h)(4). Pub. L. 101–647, § 3564(2), substituted ''under section 616 of the Tariff Act of 1930'' for ''in accordance with the provisions of section 1616, title 19, United States Code''.

1988—Pub. L. 100–690 amended section generally, substituting subsecs. (a) to (*o*) for former subsecs. (a) to (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

§ 2254. Civil forfeiture

Any property subject to forfeiture pursuant to section 2253 may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46.

(Added Pub. L. 98–292, § 6, May 21, 1984, 98 Stat. 205; amended Pub. L. 99–500, § 101(m) [title II, § 201(a), (c)], Oct. 18, 1986, 100 Stat. 1783–308, 1783–314, and Pub. L. 99–591, § 101(m) [title II, § 201(a), (c)], Oct. 30, 1986, 100 Stat. 3341–308, 3341–314; Pub. L. 100–690, title VII, § 7522(c), Nov. 18, 1988, 102 Stat. 4498; Pub. L. 101–647, title XX, § 2003, title XXXV, § 3565, Nov. 29, 1990, 104 Stat. 4855, 4928; Pub. L. 103–322, title XXXIII, § 330011(m)(2), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105–314, title VI, § 603, Oct. 30, 1998, 112 Stat. 2982; Pub. L. 106–185, § 2(c)(4), Apr. 25, 2000, 114 Stat. 211; Pub. L. 107–273, div. B, title IV, § 4003(a)(6), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 109–248, title V, § 505(d), July 27, 2006, 120 Stat. 630.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2006—Pub. L. 109–248 amended section generally. Prior to amendment, section related to civil forfeiture of certain types of property described in this chapter and laws applicable to civil forfeiture proceedings.

2002—Subsec. (a)(3). Pub. L. 107–273 struck out comma before period at end.

2000—Subsec. (a)(2), (3). Pub. L. 106–185 struck out before period at end '', except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner''.

1998—Subsec. (a)(2). Pub. L. 105–314, § 603(1), substituted ''2252, 2252A, or 2260 of this chapter, or used or intended to be used to commit or to promote the commission of an offense under section 2421, 2422, or 2423 of chapter 117,'' for ''or 2252 of this chapter''.

Subsec. (a)(3). Pub. L. 105–314, § 603(2), substituted ''2252, 2252A, or 2260 of this chapter, or obtained from a violation of section 2421, 2422, or 2423 of chapter 117,'' for ''or 2252 of this chapter''.

1994—Subsec. (f). Pub. L. 103–322, § 330011(m)(2), amended directory language of Pub. L. 101–647, § 3565(3)(A). See 1990 Amendment note below.

1990—Subsec. (a)(1) to (3). Pub. L. 101–647, § 3565(1), substituted ''section 2251'' for ''sections 2251''.

Subsec. (e). Pub. L. 101–647, § 3565(2), inserted heading.

Subsec. (f). Pub. L. 101–647, § 3565(3)(A), as amended by Pub. L. 103–322, § 330011(m)(2), substituted ''section'' for

[1] So in original. The extra comma probably should follow ''2260 of this chapter''.

[2] So in original. Probably should be ''2251A, 2252,''.

''subchapter'' after ''forfeited under this'' in two places in concluding provisions.

Subsec. (f)(1). Pub. L. 101–647, § 3565(3)(B), substituted ''under section 616 of the Tariff Act of 1930'' for ''pursuant to section 1616 of title 19''.

Subsec. (f)(2). Pub. L. 101–647, § 2003, inserted '', by public sale or any other commercially feasible means,'' after ''sell''.

1988—Pub. L. 100–690 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

1986—Pub. L. 99–500 and Pub. L. 99–591 amended section identically, inserting '', and any property, real or personal, tangible or intangible, which was used or intended to be used, in any manner or part, to facilitate a violation of this chapter'' in subsec. (a)(1), substituting ''Attorney General or the Postal Service'' for ''Attorney General'' in subsec. (b), and adding subsecs. (c) and (d).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

§ 2255. Civil remedy for personal injuries

(a) IN GENERAL.—Any person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $150,000 in value.

(b) STATUTE OF LIMITATIONS.—Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

(Added Pub. L. 99–500, § 101(b) [title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–74, and Pub. L. 99–591, § 101(b) [title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–74; amended Pub. L. 105–314, title VI, § 605, Oct. 30, 1998, 112 Stat. 2984; Pub. L. 109–248, title VII, § 707(b), (c), July 27, 2006, 120 Stat. 650.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 2255 was renumbered section 2256 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 707(b), inserted heading, inserted '', regardless of whether the injury occurred while such person was a minor,'' after ''such violation'', and substituted ''Any person who, while a minor, was'' for ''Any minor who is'', ''such person'' for ''such minor'', ''Any person as described'' for ''Any minor as described'', and ''$150,000'' for ''$50,000''.

Subsec. (b). Pub. L. 109–248, § 707(c), inserted heading.

1998—Subsec. (a). Pub. L. 105–314 substituted ''2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423'' for ''2251 or 2252''.

§ 2256. Definitions for chapter

For the purposes of this chapter, the term—

(1) ''minor'' means any person under the age of eighteen years;

(2)(A) Except as provided in subparagraph (B), ''sexually explicit conduct'' means actual or simulated—

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) bestiality;

(iii) masturbation;

(iv) sadistic or masochistic abuse; or

(v) lascivious exhibition of the genitals or pubic area of any person;

(B) For purposes of subsection 8(B)[1] of this section, ''sexually explicit conduct'' means—

(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

(ii) graphic or lascivious simulated;

(I) bestiality;

(II) masturbation; or

(III) sadistic or masochistic abuse; or

(iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;

(3) ''producing'' means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) ''organization'' means a person other than an individual;

(5) ''visual depiction'' includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

(6) ''computer'' has the meaning given that term in section 1030 of this title;

(7) ''custody or control'' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) ''child pornography'' means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

[1] So in original. Probably should be ''(8)(B)''.

(9) ''identifiable minor''—

(A) means a person—

(i)(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) ''graphic'', when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

(11) the term ''indistinguishable'' used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(Added Pub. L. 95–225, § 2(a), Feb. 6, 1978, 92 Stat. 8, § 2253; renumbered § 2255 and amended Pub. L. 98–292, § 5, May 21, 1984, 98 Stat. 205; renumbered § 2256, Pub. L. 99–500, § 101(b) [title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–74, and Pub. L. 99–591, § 101(b) [title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–74; Pub. L. 99–628, § 4, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100–690, title VII, §§ 7511(c), 7512(b), Nov. 18, 1988, 102 Stat. 4485, 4486; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[2]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–27; Pub. L. 108–21, title V, § 502(a)–(c), Apr. 30, 2003, 117 Stat. 678, 679.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2003—Par. (2). Pub. L. 108–21, § 502(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''(2) 'sexually explicit conduct' means actual or simulated—

''(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

''(B) bestiality;

''(C) masturbation;

''(D) sadistic or masochistic abuse; or

''(E) lascivious exhibition of the genitals or pubic area of any person;''.

Par. (8)(B). Pub. L. 108–21, § 502(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;''.

Par. (8)(C). Pub. L. 108–21, § 502(a)(2), substituted a period for ''; or'' at end.

Par. (8)(D). Pub. L. 108–21, § 502(a)(3), struck out subpar. (D) which read as follows: ''such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and''.

Pars. (10), (11). Pub. L. 108–21, § 502(c), added pars. (10) and (11).

1996—Par. (5). Pub. L. 104–208, § 101(a) [title I, § 121[2(1)]], inserted '', and data stored on computer disk or by electronic means which is capable of conversion into a visual image'' before semicolon at end.

Pars. (8), (9). Pub. L. 104–208, § 101(a) [title I, § 121[2(2)–(4)]], added pars. (8) and (9).

1988—Par. (6). Pub. L. 100–690, § 7511(c), added par. (6).

Par. (7). Pub. L. 100–690, § 7512(b), added par. (7).

1986—Pub. L. 99–500 and Pub. L. 99–591 renumbered section 2255 of this title as this section.

Par. (5). Pub. L. 99–628, which directed that par. (5) be added to section 2255 of this title, was executed by adding par. (5) to section 2256 of this title to reflect the probable intent of Congress and the renumbering of section 2255 as 2256 by Pub. L. 99–500 and Pub. L. 99–591.

1984—Pub. L. 98–292, § 5(b), renumbered section 2253 of this title as this section.

Par. (1). Pub. L. 98–292, § 5(a)(1), substituted ''eighteen'' for ''sixteen''.

Par. (2)(D). Pub. L. 98–292, § 5(a)(2), (3), substituted ''sadistic or masochistic'' for ''sado-masochistic'' and struck out ''(for the purpose of sexual stimulation)'' after ''abuse''.

Par. (2)(E). Pub. L. 98–292, § 5(a)(4), substituted ''lascivious'' for ''lewd''.

Par. (3). Pub. L. 98–292, § 5(a)(5), struck out '', for pecuniary profit'' after ''advertising''.

Par. (4). Pub. L. 98–292, § 5(a)(6), substituted '' 'organization' means a person other than an individual'' for '' 'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium''.

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

For provisions declaring and confirming intent of Congress in enacting this section, see section 160003(a) of Pub. L. 103–322, set out as a note under section 2252 of this title.

§ 2257. Record keeping requirements

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter which—

(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name,

alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located. In this paragraph, the term ''copy'' includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection;

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept; and

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) The Attorney General shall issue appropriate regulations to carry out this section.

(h) In this section—

(1) the term ''actual sexually explicit conduct'' means actual but not simulated conduct as defined in clauses (i) through (v) of section 2256(2)(A) of this title;

(2) the term ''produces''—

(A) means—

(i) actually filming, videotaping, photographing, creating a picture, digital image, or digitally- or computer-manipulated image of an actual human being;

(ii) digitizing an image, of a visual depiction of sexually explicit conduct; or, assembling, manufacturing, publishing, duplicating, reproducing, or reissuing a book, magazine, periodical, film, videotape, digital image, or picture, or other matter intended for commercial distribution, that contains a visual depiction of sexually explicit conduct; or

(iii) inserting on a computer site or service a digital image of, or otherwise managing the sexually explicit content,[1] of a computer site or service that contains a visual depiction of, sexually explicit conduct; and

(B) does not include activities that are limited to—

(i) photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;

(ii) distribution;

(iii) any activity, other than those activities identified in subparagraph (A), that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

(v) the transmission, storage, retrieval, hosting, formatting, or translation (or any

[1] So in original. The comma probably should not appear.

combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication; and

(3) the term ''performer'' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct.

(i) Whoever violates this section shall be imprisoned for not more than 5 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.

(Added Pub. L. 100–690, title VII, § 7513(a), Nov. 18, 1988, 102 Stat. 4487; amended Pub. L. 101–647, title III, §§ 301(b), 311, Nov. 29, 1990, 104 Stat. 4816; Pub. L. 103–322, title XXXIII, § 330004(14), Sept. 13, 1994, 108 Stat. 2142; Pub. L. 108–21, title V, § 511(a), Apr. 30, 2003, 117 Stat. 684; Pub. L. 109–248, title V, § 502(a), July 27, 2006, 120 Stat. 625.)

REFERENCES IN TEXT

For effective date of this subsection, referred to in subsec. (f)(4)(A), see section 312 of Pub. L. 101–647, set out as an Effective Date of 1990 Amendment note below.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, § 502(a)(1), inserted ''digital image, digitally- or computer-manipulated image of an actual human being, picture,'' after ''videotape,''.

Subsec. (e)(1). Pub. L. 109–248, § 502(a)(2), inserted at end ''In this paragraph, the term 'copy' includes every page of a website on which matter described in subsection (a) appears.''

Subsec. (f)(5). Pub. L. 109–248, § 502(a)(3), added par. (5).

Subsec. (h). Pub. L. 109–248, § 502(a)(4), added subsec. (h) and struck out former subsec. (h) which defined ''actual sexually explicit conduct'', ''identification document'', ''produces'', and ''performer''.

2003—Subsec. (d)(2). Pub. L. 108–21, § 511(a)(1), substituted ''of this chapter or chapter 71,'' for ''of this section''.

Subsec. (h)(3). Pub. L. 108–21, § 511(a)(2), inserted '', computer generated image, digital image, or picture,'' after ''video tape''.

Subsec. (i). Pub. L. 108–21, § 511(a)(3), substituted ''not more than 5 years'' for ''not more than 2 years'' and ''10 years'' for ''5 years''.

1994—Subsecs. (f), (g). Pub. L. 103–322 struck out subsecs. (f) and (g) as enacted by Pub. L. 100–690. Subsec. (f) authorized Attorney General to issue regulations to carry out this section and subsec. (g) defined ''actual sexually explicit conduct'', ''identification document'', ''produces'', and ''performer''.

1990—Subsec. (a)(1). Pub. L. 101–647, § 301(b), substituted ''November 1, 1990'' for ''February 6, 1978''.

Subsec. (d). Pub. L. 101–647, § 311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: ''In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

''(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

''(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.''

Subsec. (e). Pub. L. 101–647, § 311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: ''In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.''

Subsec. (f). Pub. L. 101–647, § 311, added subsec. (f) relating to unlawful acts and omissions.

Subsec. (g). Pub. L. 101–647, § 311, added subsec. (g) relating to issuance of regulations.

Subsecs. (h), (i). Pub. L. 101–647, § 311, added subsecs. (h) and (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 312 of title III of Pub. L. 101–647 provided that: ''Subsections (d), (f), (g), (h), and (i) of section 2257 of title 18, United States Code, as added by this title shall take effect 90 days after the date of the enactment of this Act [Nov. 29, 1990] except—

''(1) the Attorney General shall prepare the initial set of regulations required or authorized by subsections (d), (f), (g), (h), and (i) of section 2257 within 60 days of the date of the enactment of this Act; and

''(2) subsection (e) of section 2257 and of any regulation issued pursuant thereto shall take effect 90 days after the date of the enactment of this Act.''

EFFECTIVE DATE

Section 7513(c) of Pub. L. 100–690 provided that: ''Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1988] except—

''(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

''(2) subsection (e) of section 2257 of such title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act.''

CONSTRUCTION

Pub. L. 109–248, title V, § 502(b), July 27, 2006, 120 Stat. 626, provided that: ''The provisions of section 2257 [of title 18, United States Code] shall not apply to any depiction of actual sexually explicit conduct as described in clause (v) of section 2256(2)(A) of title 18, United States Code, produced in whole or in part, prior to the effective date of this section [July 27, 2006] unless that depiction also includes actual sexually explicit conduct as described in clauses (i) through (iv) of section 2256(2)(A) of title 18, United States Code.''

REPORT

Pub. L. 108–21, title V, § 511(b), Apr. 30, 2003, 117 Stat. 685, provided that, not later than 1 year after Apr. 30,

2003, the Attorney General was to submit to Congress a report detailing the number of times since January 1993 that the Department of Justice had inspected records pursuant to this section and section 75 of title 28 of the Code of Federal Regulations, and the number of violations prosecuted as a result of those inspections.

§ 2257A. Record keeping requirements for simulated sexual conduct

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter that—

(1) contains 1 or more visual depictions of simulated sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of simulated sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at their business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in subsection (a)(1) in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located. In this paragraph, the term ''copy'' includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; or

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, that—

(A) contains 1 or more visual depictions made after the date of enactment of this subsection of simulated sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) As used in this section, the terms ''produces'' and ''performer'' have the same meaning as in section 2257(h) of this title.

(h)(1) The provisions of this section and section 2257 shall not apply to matter, or any image therein, containing one or more visual depictions of simulated sexually explicit conduct, or actual sexually explicit conduct as described in clause (v) of section 2256(2)(A), if such matter—

(A)(i) is intended for commercial distribution;

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and

maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer; and

(iii) is not produced, marketed or made available by the person described in clause (ii) to another in circumstances such than[1] an ordinary person would conclude that the matter contains a visual depiction that is child pornography as defined in section 2256(8); or

(B)(i) is subject to the authority and regulation of the Federal Communications Commission acting in its capacity to enforce section 1464 of this title, regarding the broadcast of obscene, indecent or profane programming; and

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer.

(2) Nothing in subparagraphs (A) and (B) of paragraph (1) shall be construed to exempt any matter that contains any visual depiction that is child pornography, as defined in section 2256(8), or is actual sexually explicit conduct within the definitions in clauses (i) through (iv) of section 2256(2)(A).

(i)(1) Whoever violates this section shall be imprisoned for not more than 1 year, and[2] fined in accordance with the provisions of this title, or both.

(2) Whoever violates this section in an effort to conceal a substantive offense involving the causing, transporting, permitting or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct in violation of this title, or to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor, including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic, in violation of this title, shall be imprisoned for not more than 5 years and[2] fined in accordance with the provisions of this title, or both.

(3) Whoever violates paragraph (2) after having been previously convicted of a violation punishable under that paragraph shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and[2] fined in accordance with the provisions of this title, or both.

The[3] provisions of this section shall not become effective until 90 days after the final regulations implementing this section are published in the Federal Register. The provisions of this section shall not apply to any matter, or image therein, produced, in whole or in part, prior to the effective date of this section.

(k) On an annual basis, the Attorney General shall submit a report to Congress—

(1) concerning the enforcement of this section and section 2257 by the Department of Justice during the previous 12-month period; and

(2) including—

(A) the number of inspections undertaken pursuant to this section and section 2257;

(B) the number of open investigations pursuant to this section and section 2257;

(C) the number of cases in which a person has been charged with a violation of this section and section 2257; and

(D) for each case listed in response to subparagraph (C), the name of the lead defendant, the federal district in which the case was brought, the court tracking number, and a synopsis of the violation and its disposition, if any, including settlements, sentences, recoveries and penalties.

(Added Pub. L. 109–248, title V, § 503(a), July 27, 2006, 120 Stat. 626.)

REFERENCES IN TEXT

The date of enactment of this subsection and the effective date of this section, referred to in subsec. (f)(4)(A) and par. following subsec. (i)(3), mean the date of enactment of Pub. L. 109–248, which was approved July 27, 2006.

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be fined under this title or imprisoned not more than 1 year or both.

(Added Pub. L. 101–647, title II, § 226(g)(1), Nov. 29, 1990, 104 Stat. 4808; amended Pub. L. 109–248, title II, § 209, July 27, 2006, 120 Stat. 615.)

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 13031 of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

AMENDMENTS

2006—Pub. L. 109–248 substituted ''fined under this title or imprisoned not more than 1 year or both'' for ''guilty of a Class B misdemeanor''.

§ 2259. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

[1] So in original. Probably should be ''that''.

[2] So in original.

[3] So in original. Probably should be ''(j) The''.

(b) SCOPE AND NATURE OF ORDER.—

(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) DEFINITION.—For purposes of this subsection, the term ''full amount of the victim's losses'' includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) DEFINITION.—For purposes of this section, the term ''victim'' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, § 40113(b)(1), Sept. 13, 1994, 108 Stat. 1907; amended Pub. L. 104–132, title II, § 205(c), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 205(c)(1), inserted ''or 3663A'' after ''3663''.

Subsec. (b)(1). Pub. L. 104–132, § 205(c)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The order of restitution under this section shall direct that—

''(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

''(B) the United States Attorney enforce the restitution order by all available and reasonable means.''

Subsec. (b)(2). Pub. L. 104–132, § 205(c)(2)(B), struck out ''by victim'' after ''Enforcement'' in heading and amended text generally. Prior to amendment, text read as follows: ''An order of restitution may also be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.''

Subsec. (b)(4)(C), (D). Pub. L. 104–132, § 205(c)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, § 205(c)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–132, § 205(c)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104–132, § 205(c)(3), struck out subsecs. (d) and (e) which read as follows:

''(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

''(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.''

Subsec. (f). Pub. L. 104–132, § 205(c)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

§ 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) USE OF MINOR.—A person who, outside the United States, employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, intending that the visual depiction will be imported into the United States or into waters within 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(b) USE OF VISUAL DEPICTION.—A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport, ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(c) PENALTIES.—

(1) A person who violates subsection (a), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (e) of section 2251 for a violation of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in that subsection.

(2) A person who violates subsection (b), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (b)(1) of section 2252 for a violation of paragraph (1), (2), or (3) of subsection (a) of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in subsection (b)(1) of section 2252.

(Added Pub. L. 103–322, title XVI, § 160001(a), Sept. 13, 1994, 108 Stat. 2036, § 2258; renumbered § 2260, Pub. L. 104–294, title VI, § 601(i)(1), Oct. 11, 1996, 110 Stat. 3501; amended Pub. L. 109–248, title II, § 206(b)(5), July 27, 2006, 120 Stat. 614.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–248 amended subsec. (c) generally. Prior to amendment, text read as follows: ''A person who violates subsection (a) or (b), or conspires or attempts to do so—

''(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

''(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both.''

1996—Pub. L. 104–294 renumbered section 2258, relating to production of sexually explicit depictions of minor, as this section.

§ 2260A. Penalties for registered sex offenders

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

(Added Pub. L. 109–248, title VII, § 702(a), July 27, 2006, 120 Stat. 648.)

CHAPTER 110A—DOMESTIC VIOLENCE AND STALKING

Sec.
2261. Interstate domestic violence.
2261A. Interstate stalking.[1]
2262. Interstate violation of protection order.
2263. Pretrial release of defendant.
2264. Restitution.
2265. Full faith and credit given to protection orders.
2265A Repeat offenders.[2]
2266. Definitions.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(a)(1), Oct. 11, 1996, 110 Stat. 3506, amended analysis by inserting ''Sec.'' above section numbers.

Pub. L. 104–201, div. A, title X, § 1069(b)(3), (c), Sept. 23, 1996, 110 Stat. 2656, inserted ''AND STALKING'' after ''VIOLENCE'' in chapter heading and added item 2261A.

§ 2261. Interstate domestic violence

(a) OFFENSES.—

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) CAUSING TRAVEL OF VICTIM.—A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) PENALTIES.—A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1926; amended Pub. L. 104–201, div. A, title X, § 1069(b)(1), (2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 106–386, div. B, title I, § 1107(a), Oct. 28, 2000, 114 Stat. 1497; Pub. L. 109–162, title I, §§ 114(b), 116(a), 117(a), Jan. 5, 2006, 119 Stat. 2988, 2989.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162, § 117(a), inserted ''or within the special maritime and territorial jurisdiction of the United States'' after ''Indian country''.

Pub. L. 109–162, § 116(a)(1), which directed substitution of '', intimate partner, or dating partner'' for ''or intimate partner'', was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109–162, § 116(a)(2), which directed substitution of '', intimate partner, or dating partner'' for ''or intimate partner'', was executed by making the substitution in two places to reflect the probable intent of Congress.

[1] Section catchline amended by Pub. L. 109–162 without corresponding amendment of chapter analysis.

[2] Editorially supplied. Section 2265A added by Pub. L. 109–162 without corresponding amendment of chapter analysis.

Subsec. (b)(6). Pub. L. 109–162, § 114(b), added par. (6).

2000—Subsec. (a). Pub. L. 106–386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

''(1) CROSSING A STATE LINE.—A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).

''(2) CAUSING THE CROSSING OF A STATE LINE.—A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner, shall be punished as provided in subsection (b).''

1996—Subsec. (b). Pub. L. 104–201 inserted ''or section 2261A'' after ''this section'' in introductory provisions and substituted ''victim'' for ''offender's spouse or intimate partner'' in pars. (1) to (3).

§ 2261A. Stalking

Whoever—

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent—

(A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) a member of the immediate family (as defined in section 115[1] of that person; or

(iii) a spouse or intimate partner of that person;

uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) of subparagraph (B);[2]

shall be punished as provided in section 2261(b) of this title.

(Added Pub. L. 104–201, div. A, title X, § 1069(a), Sept. 23, 1996, 110 Stat. 2655; amended Pub. L. 106–386, div. B, title I, § 1107(b)(1), Oct. 28, 2000, 114 Stat. 1498; Pub. L. 109–162, title I, § 114(a), Jan. 5, 2006, 119 Stat. 2987.)

AMENDMENTS

2006—Pub. L. 109–162 amended section catchline and text generally, revising and restating former provisions relating to stalking so as to include surveillance with intent to kill, injure, harass, or intimidate which results in substantial emotional distress to a person within the purview of the offense proscribed.

2000—Pub. L. 106–386 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title.''

§ 2262. Interstate violation of protection order

(a) OFFENSES.—

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) CAUSING TRAVEL OF VICTIM.—A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) PENALTIES.—A person who violates this section shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

[1] So in original. Probably should be followed by a closing parenthesis.

[2] So in original. Provision probably should be set flush with par. (2).

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1927; amended Pub. L. 104–201, div. A, title X, § 1069(b)(2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 104–294, title VI, § 605(d), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 106–386, div. B, title I, § 1107(c), Oct. 28, 2000, 114 Stat. 1498; Pub. L. 109–162, title I, § 117(b), Jan. 5, 2006, 119 Stat. 2989.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162 inserted ''or within the special maritime and territorial jurisdiction of the United States'' after ''Indian country''.

2000—Subsec. (a). Pub. L. 106–386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

''(1) CROSSING A STATE LINE.—A person who travels across a State line or enters or leaves Indian country with the intent to engage in conduct that—

''(A)(i) violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or

''(ii) would violate this subparagraph if the conduct occurred in the jurisdiction in which the order was issued; and

''(B) subsequently engages in such conduct,

shall be punished as provided in subsection (b).

''(2) CAUSING THE CROSSING OF A STATE LINE.—A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud, and, in the course or as a result of that conduct, intentionally commits an act that injures the person's spouse or intimate partner in violation of a valid protection order issued by a State shall be punished as provided in subsection (b).''

1996—Subsec. (a)(1)(A)(ii). Pub. L. 104–294 substituted ''violate this subparagraph'' for ''violate subparagraph (A)''.

Subsec. (b)(1) to (3). Pub. L. 104–201 substituted ''victim'' for ''offender's spouse or intimate partner''.

§ 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928.)

§ 2264. Restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) DEFINITION.—For purposes of this subsection, the term ''full amount of the victim's losses'' includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) VICTIM DEFINED.—For purposes of this section, the term ''victim'' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928; amended Pub. L. 104–132, title II, § 205(d), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 205(d)(1), inserted ''or 3663A'' after ''3663''.

Subsec. (b)(1). Pub. L. 104–132, § 205(d)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The order of restitution under this section shall direct that—

''(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

''(B) the United States Attorney enforce the restitution order by all available and reasonable means.''

Subsec. (b)(2). Pub. L. 104–132, § 205(d)(2)(B), struck out ''by victim'' after ''Enforcement'' in heading and amended text generally. Prior to amendment, text read as follows: ''An order of restitution also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.''

Subsec. (b)(4)(C), (D). Pub. L. 104–132, § 205(d)(2)(C), struck out subpars. (C) and (D), which related to

court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, § 205(d)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–132, § 205(d)(3), (4), added subsec. (c) and struck out former subsec. (c) which read as follows: ''AFFIDAVIT.—Within 60 days after conviction and, in any event, not later than 10 days before sentencing, the United States Attorney (or such Attorney's delegate), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or the delegate) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or the delegate) shall advise the victim that the victim may file a separate affidavit and assist the victim in the preparation of the affidavit.''

Subsecs. (d) to (g). Pub. L. 104–132, § 205(d)(3), struck out subsecs. (d) to (g), which related, respectively, to objection, additional documentation and testimony, final determination of losses, and restitution in addition to punishment.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

§ 2265. Full faith and credit given to protection orders

(a) FULL FAITH AND CREDIT.—Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory[1] as if it were the order of the enforcing State or tribe.

(b) PROTECTION ORDER.—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) CROSS OR COUNTER PETITION.—A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) NOTIFICATION AND REGISTRATION.—

(1) NOTIFICATION.—A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.—Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1930; amended Pub. L. 106–386, div. B, title I, § 1101(b)(4), Oct. 28, 2000, 114 Stat. 1493; Pub. L. 109–162, title I, § 106(a)–(c), Jan. 5, 2006, 119 Stat. 2981, 2982; Pub. L. 109–271, § 2(n), Aug. 12, 2006, 120 Stat. 754.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 106(a)(1), (b), substituted '', Indian tribe, or territory'' for ''or Indian tribe'' wherever appearing and ''and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were'' for ''and enforced as if it were''.

Subsec. (b). Pub. L. 109–162, § 106(a)(2), substituted ''State, tribal, or territorial'' for ''State or tribal'' in introductory provisions.

Subsec. (b)(1). Pub. L. 109–162, § 106(a)(1), substituted '', Indian tribe, or territory'' for ''or Indian tribe''.

[1] So in original. Probably should not be capitalized.

Subsec. (b)(2). Pub. L. 109–162, § 106(a)(2), substituted ''State, tribal, or territorial'' for ''State or tribal''.

Subsec. (c). Pub. L. 109–162, § 106(a)(2), substituted ''State, tribal, or territorial'' for ''State or tribal'' in introductory provisions.

Subsec. (d)(1). Pub. L. 109–162, § 106(a), substituted '', Indian tribe, or territory'' for ''or Indian tribe'' in two places and ''State, tribal, or territorial'' for ''State or tribal''.

Subsec. (d)(2). Pub. L. 109–162, § 106(a)(2), substituted ''State, tribal, or territorial'' for ''State or tribal''.

Subsec. (d)(3). Pub. L. 109–271, which directed amendment of section 106(c) of Pub. L. 109–162 by substituting ''the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction'' for ''the registration or filing of a protection order'', was executed by making the substitution in par. (3), which was added by section 106(c) of Pub. L. 109–162, to reflect the probable intent of Congress.

Pub. L. 109–162, § 106(c), added par. (3).

2000—Subsecs. (d), (e). Pub. L. 106–386 added subsecs. (d) and (e).

§ 2265A. Repeat offenders

(a) MAXIMUM TERM OF IMPRISONMENT.—The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) DEFINITION.—For purposes of this section—

(1) the term ''prior domestic violence or stalking offense'' means a conviction for an offense—

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term ''State'' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(Added Pub. L. 109–162, title I, § 115, Jan. 5, 2006, 119 Stat. 2988.)

§ 2266. Definitions

In this chapter:

(1) BODILY INJURY.—The term ''bodily injury'' means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) COURSE OF CONDUCT.—The term ''course of conduct'' means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) ENTER OR LEAVE INDIAN COUNTRY.—The term ''enter or leave Indian country'' includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) INDIAN COUNTRY.—The term ''Indian country'' has the meaning stated in section 1151 of this title.

(5) PROTECTION ORDER.—The term ''protection order'' includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(6) SERIOUS BODILY INJURY.—The term ''serious bodily injury'' has the meaning stated in section 2119(2).

(7) SPOUSE OR INTIMATE PARTNER.—The term ''spouse or intimate partner'' includes—

(A) for purposes of—

(i) sections other than 2261A—

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A—

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.[1]

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) STATE.—The term ''State'' includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) TRAVEL IN INTERSTATE OR FOREIGN COMMERCE.—The term ''travel in interstate or foreign commerce'' does not include travel from 1 State to another by an individual who is a

[1] So in original. The period probably should be ''; and''.

member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) DATING PARTNER.—The term ''dating partner'' refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of—

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1931; amended Pub. L. 106–386, div. B, title I, § 1107(d), Oct. 28, 2000, 114 Stat. 1499; Pub. L. 109–162, title I, §§ 106(d), 116(b), Jan. 5, 2006, 119 Stat. 2982, 2988; Pub. L. 109–271, § 2(c), (i), Aug. 12, 2006, 120 Stat. 752.)

AMENDMENTS

2006—Par. (5). Pub. L. 109–162, § 106(d)(1), added par. (5) and struck out heading and text of former par. (5). Text read as follows: ''The term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.''

Par. (7)(A). Pub. L. 109–162, § 106(d)(2), which directed amendment of cls. (i) and (ii) by substituting ''2261A—

''(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

''(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship''

for ''2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser'', was executed only to cl. (i) to reflect the probable intent of Congress because the quoted language to be deleted does not appear in cl. (ii).

Par. (7)(A)(ii). Pub. L. 109–271, § 2(c), added cl. (ii) and struck out former cl. (ii) which read as follows: ''section 2261A, a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and''.

Par. (10). Pub. L. 109–271, § 2(i), substituted ''. The existence of such a relationship is'' for ''and the existence of such a relationship'' in introductory provisions.

Pub. L. 109–162, § 116(b), added par. (10).

2000—Pub. L. 106–386 reenacted section catchline without change and amended text generally. Prior to amendment, text defined ''bodily injury'', ''Indian country'', ''protection order'', ''spouse or intimate partner'', ''State'', and ''travel across State lines''.

CHAPTER 111—SHIPPING

Sec.
2271. Conspiracy to destroy vessels.
2272. Destruction of vessel by owner.
2273. Destruction of vessel by nonowner.
2274. Destruction or misuse of vessel by person in charge.
2275. Firing or tampering with vessel.[1]
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2280. Violence against maritime navigation.
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2282A. Devices or dangerous substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce.
2282B. Violence against aids to maritime navigation.
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2284. Transportation of terrorists.

AMENDMENTS

2006—Pub. L. 109–177, title III, §§ 304(b)(2), 305(b), Mar. 9, 2006, 120 Stat. 235, 237, added items 2282B, 2283, and 2284.

Pub. L. 109–177, title III, § 304(a)(2), Mar. 9, 2006, 120 Stat. 235, which directed amendment of table of sections for this chapter by adding item 2282A after item 2282, was executed by adding item 2282A after item 2281 to reflect the probable intent of Congress, because there is no item 2282.

1994—Pub. L. 103–322, title VI, § 60019(b), Sept. 13, 1994, 108 Stat. 1979, added items 2280 and 2281.

1990—Pub. L. 101–647, title XXXV, § 3566, Nov. 29, 1990, 104 Stat. 4928, substituted ''vessels'' for ''vessel'' in item 2271.

§ 2271. Conspiracy to destroy vessels

Whoever, on the high seas, or within the United States, willfully and corruptly conspires, combines, and confederates with any other person, such other person being either within or without the United States, to cast away or otherwise destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods on board thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel on bottomry or respondentia; or

Whoever, within the United States, builds, or fits out any vessel to be cast away or destroyed, with like intent—

Shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 487 (Mar. 4, 1909, ch. 321, § 296, 35 Stat. 1146).

Mandatory punishment provision was rephrased in the alternative.

Reference to a person who ''aids in building or fitting out any vessel'' was omitted as unnecessary in view of section 2 making all aiders guilty as principal.

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

[1] So in original. Does not conform to section catchline.

§ 2272. Destruction of vessel by owner

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of which he is owner, in whole or in part, with intent to injure any person that may underwrite any policy of insurance thereon, or any merchant that may have goods thereon, or any other owner of such vessel, shall be imprisoned for life or for any term of years.

(June 25, 1948, ch. 645, 62 Stat. 803.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 491 (Mar. 4, 1909, ch. 321, § 300, 35 Stat. 1147).

§ 2273. Destruction of vessel by nonowner

Whoever, not being an owner, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, willfully and corruptly casts away or otherwise destroys any vessel of the United States to which he belongs, or willfully attempts the destruction thereof, shall be imprisoned not more than ten years.

(June 25, 1948, ch. 645, 62 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 492 (Mar. 4, 1909, ch. 321, § 301, 35 Stat. 1147).

Words ''with intent to destroy the same, sets fire to any such vessel, or otherwise'' following ''willfully'' and preceding ''attempts'' were omitted as surplusage.

§ 2274. Destruction or misuse of vessel by person in charge

Whoever, being the owner, master or person in charge or command of any private vessel, foreign or domestic, or a member of the crew or other person, within the territorial waters of the United States, willfully causes or permits the destruction or injury of such vessel or knowingly permits said vessel to be used as a place of resort for any person conspiring with another or preparing to commit any offense against the United States, or any offense in violation of the treaties of the United States or of the obligations of the United States under the law of nations, or to defraud the United States; or knowingly permits such vessels to be used in violation of the rights and obligations of the United States under the law of nations, shall be fined under this title or imprisoned not more than ten years, or both.

In case such vessels are so used, with the knowledge of the owner or master or other person in charge or command thereof, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws.

(June 25, 1948, ch. 645, 62 Stat. 804; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 193 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title II, § 3, 40 Stat. 220; Mar. 28, 1940, ch. 72, § 3(b), 54 Stat. 79).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

REFERENCES IN TEXT

The customs revenue laws, referred to in text, are classified generally to Title 19, Customs Duties.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in first par.

§ 2275. Firing or tampering with vessels

Whoever sets fire to any vessel of foreign registry, or any vessel of American registry entitled to engage in commerce with foreign nations, or to any vessel of the United States, or to the cargo of the same, or tampers with the motive power of instrumentalities of navigation of such vessel, or places bombs or explosives in or upon such vessel, or does any other act to or upon such vessel while within the jurisdiction of the United States, or, if such vessel is of American registry, while she is on the high sea, with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom and whoever attempts to do so shall be fined under this title or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 804; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 502 (June 15, 1917, ch. 30, title III, § 1, 40 Stat. 221).

Words ''as defined in section 501 of this title,'' were omitted in view of section 9 of this title, defining vessel of the United States.

Last sentence of said section 502, defining ''United States'', was incorporated in section 5 of this title.

Provision prohibiting conspiracy was deleted as adequately covered by the general conspiracy statute, section 371 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 2276. Breaking and entering vessel

Whoever, upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State, breaks or enters any vessel with intent to commit any felony, or maliciously cuts, spoils, or destroys any cordage, cable, buoys, buoy rope, head fast, or other fast, fixed to the anchor or moorings belonging to any vessel, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 804; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 490 (Mar. 4, 1909, ch. 321, § 299, 35 Stat. 1147).

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2277. Explosives or dangerous weapons aboard vessels

(a) Whoever brings, carries, or possesses any dangerous weapon, instrument, or device, or any dynamite, nitroglycerin, or other explosive article or compound on board of any vessel documented under the laws of the United States, or any vessel purchased, requisitioned, chartered, or taken over by the United States pursuant to the provisions of Act June 6, 1941, ch. 174, 55 Stat. 242, as amended, without previously obtaining the permission of the owner or the master of such vessel; or

Whoever brings, carries, or possesses any such weapon or explosive on board of any vessel in the possession and under the control of the United States or which has been seized and forfeited by the United States or upon which a guard has been placed by the United States pursuant to the provisions of section 191 of Title 50, without previously obtaining the permission of the captain of the port in which such vessel is located, shall be fined under this title or imprisoned not more than one year, or both.

(b) This section shall not apply to the personnel of the Armed Forces of the United States or to officers or employees of the United States or of a State or of a political subdivision thereof, while acting in the performance of their duties, who are authorized by law or by rules or regulations to own or possess any such weapon or explosive.

(June 25, 1948, ch. 645, 62 Stat. 804; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–304, § 17(d)(6), Oct. 6, 2006, 120 Stat. 1707.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 503, 504 (Dec. 31, 1941, ch. 642, §§ 1, 2, 55 Stat. 876).

Section consolidates sections 503 and 504 of title 18, U.S.C., 1940 ed.

Words ''This section'' were substituted in subsection (b) for the words ''The provisions of sections 503, 504 of this title''.

Minor changes were made in phraseology.

REFERENCES IN TEXT

Act June 6, 1941, ch. 174, 55 Stat. 242, as amended, referred to in subsec. (a), expired July 1, 1953. For provisions covering the subject matter of that Act, see sections 196 to 198 of Title 50, War and National Defense.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–304 substituted ''documented'' for ''registered, enrolled, or licensed''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in second par.

§ 2278. Explosives on vessels carrying steerage passengers

Whoever, being the master of a steamship or other vessel referred to in section 151 of Title 46, except as otherwise expressly provided by law, takes, carries, or has on board of any such vessel any nitroglycerin, dynamite, or any other explosive article or compound, or any vitriol or like acids, or gunpowder, except for the ship's use, or any article or number of articles, whether as a cargo or ballast, which, by reason of the nature or quantity or mode of storage thereof, shall, either singly or collectively, be likely to endanger the health or lives of the passengers or the safety of the vessel, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 805; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 171 of title 46, U.S.C., 1940 ed., Shipping (Aug. 2, 1882, ch. 374, § 8, 22 Stat. 189).

Words ''except as otherwise expressly provided by law'' were inserted to remove obvious inconsistency between sections 831–835 of this title, section 170 of title 46, U.S.C., 1940 ed., Shipping, and this section.

Words ''shall be deemed guilty of a misdemeanor and'' were omitted because designation of the offense as a misdemeanor is unnecessary in view of definitive section 1 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

REFERENCES IN TEXT

Section 151 of Title 46, referred to in text, which was based on section 1 of act Aug. 2, 1882, ch. 374, 22 Stat. 186, as amended, was repealed by Pub. L. 98–89, Aug. 26, 1983, § 4(b), 97 Stat. 599.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2279. Boarding vessels before arrival

Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined under this title or imprisoned not more than six months, or both.

The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him taken before any committing magistrate, to be dealt with according to law.

(June 25, 1948, ch. 645, 62 Stat. 805; Pub. L. 103–322, title XXXIII, § 330016(1)(D), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on section 708 of title 46, U.S.C., 1940 ed., Shipping (R.S. § 4606).

''Law enforcement officer'' was substituted for ''constable or police officer'' and ''committing magistrate'' for ''justice of the peace.'' The phraseology used in the statute was archaic. It originated when the government had few law enforcement officers and magistrates of its own.

References to specific sections were made to read: ''according to law'' to achieve brevity.

Mandatory punishment provision was rephrased in the alternative.

The words ''without permission of the master'' were deleted to remove an inconsistency with the provisions of section 163 of title 46, U.S.C., 1940 ed., and customs regulations. Customs regulations, 1943, section 4.1c,

prohibit any person ''with or without consent of the master'' from boarding vessel, with specific enumerated exceptions. Said section 163 prescribes a ''penalty of not more than $100 or imprisonment not to exceed six months, or both'' for violating regulations. The revised section increases the fine from $100 to $200 for boarding the vessel ''with the consent of the master.''

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $200'' in first par.

§ 2280. Violence against maritime navigation

(a) OFFENSES.—

(1) IN GENERAL.—A person who unlawfully and intentionally—

(A) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

(B) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

(C) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

(D) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

(E) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

(F) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

(G) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in subparagraphs (A) through (F); or

(H) attempts or conspires to do any act prohibited under subparagraphs (A) through (G),

shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

(2) THREAT TO NAVIGATION.—A person who threatens to do any act prohibited under paragraph (1)(B), (C) or (E), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title, imprisoned not more than 5 years, or both.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a)—

(1) in the case of a covered ship, if—

(A) such activity is committed—

(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

(ii) in the United States; or

(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

(B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or

(C) the offender is later found in the United States after such activity is committed;

(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

(c) BAR TO PROSECUTION.—It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term ''labor dispute'' has the meaning set forth in section 2(c)[1] of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)).

(d) DELIVERY OF SUSPECTED OFFENDER.—The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that there is on board that ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action to take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of the master's intention to deliver such person and the reasons therefor. If the master delivers such person, the master shall furnish to the authorities of such country the evidence in the master's possession that pertains to the alleged offense.

(e) DEFINITIONS.—In this section—

''covered ship'' means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country.

''national of the United States'' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

''territorial sea of the United States'' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

''ship'' means a vessel of any type whatsoever not permanently attached to the sea-bed,

[1] So in original. Probably should be section ''13(c)''.

including dynamically supported craft, submersibles or any other floating craft, but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up.

''United States'', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and all territories and possessions of the United States.

(Added Pub. L. 103–322, title VI, § 60019(a), Sept. 13, 1994, 108 Stat. 1975; amended Pub. L. 104–132, title VII, §§ 722, 723(a)(1), Apr. 24, 1996, 110 Stat. 1299, 1300.)

AMENDMENTS

1996—Subsec. (a)(1)(H). Pub. L. 104–132, § 723(a)(1), inserted ''or conspires'' after ''attempts''.

Subsec. (b)(1)(A)(ii). Pub. L. 104–132, § 722(1), struck out ''and the activity is not prohibited as a crime by the State in which the activity takes place'' after ''the United States''.

Subsec. (b)(1)(A)(iii). Pub. L. 104–132, § 722(2), struck out ''the activity takes place on a ship flying the flag of a foreign country or outside the United States,'' before ''by a national of the United States''.

EFFECTIVE DATE

Section 60019(c) of Pub. L. 103–322 provided that: ''This section [enacting this section and section 2281 of this title] and the amendments made by this section shall take effect on the later of—

''(1) the date of the enactment of this Act [Sept. 13, 1994]; or

''(2)(A) in the case of section 2280 of title 18, United States Code, the date the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

''(B) in the case of section 2281 of title 18, United States Code, the date the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.''

[Convention and Protocol came into force Mar. 1, 1992, and entered into force with respect to the United States Mar. 6, 1995, Treaty Doc. 101–1.]

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 2281. Violence against maritime fixed platforms

(a) OFFENSES.—

(1) IN GENERAL.—A person who unlawfully and intentionally—

(A) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

(B) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

(C) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

(D) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;

(E) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in subparagraphs (A) through (D); or

(F) attempts or conspires to do anything prohibited under subparagraphs (A) through (E),

shall be fined under this title, imprisoned not more than 20 years, or both; and if death results to any person from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

(2) THREAT TO SAFETY.—A person who threatens to do anything prohibited under paragraph (1)(B) or (C), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title, imprisoned not more than 5 years, or both.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

(1) such activity is committed against or on board a fixed platform—

(A) that is located on the continental shelf of the United States;

(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

(C) in an attempt to compel the United States to do or abstain from doing any act;

(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

(c) BAR TO PROSECUTION.—It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term ''labor dispute'' has the meaning set forth in section 2(c)[1] of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)), and the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) DEFINITIONS.—In this section—

''continental shelf'' means the sea-bed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea.

''fixed platform'' means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

[1] So in original. Probably should be section ''13(c)''.

''national of the United States'' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

''territorial sea of the United States'' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

''United States'', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and all territories and possessions of the United States.

(Added Pub. L. 103–322, title VI, § 60019(a), Sept. 13, 1994, 108 Stat. 1977; amended Pub. L. 104–132, title VII, § 723(a)(1), Apr. 24, 1996, 110 Stat. 1300; Pub. L. 104–294, title VI, § 607(p), Oct. 11, 1996, 110 Stat. 3513.)

AMENDMENTS

1996—Subsec. (a)(1)(F). Pub. L. 104–132 inserted ''or conspires'' after ''attempts''.

Subsec. (c). Pub. L. 104–294 inserted before period at end '', and the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States''.

EFFECTIVE DATE

Section effective Mar. 6, 1995, see section 60019(c)(1), (2)(B) of Pub. L. 103–322, set out as a note under section 2280 of this title.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 2282A.[1] Devices or dangerous substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce

(a) A person who knowingly places, or causes to be placed, in navigable waters of the United States, by any means, a device or dangerous substance which is likely to destroy or cause damage to a vessel or its cargo, cause interference with the safe navigation of vessels, or interference with maritime commerce (such as by damaging or destroying marine terminals, facilities, or any other marine structure or entity used in maritime commerce) with the intent of causing such destruction or damage, interference with the safe navigation of vessels, or interference with maritime commerce shall be fined under this title or imprisoned for any term of years, or for life; or both.

(b) A person who causes the death of any person by engaging in conduct prohibited under subsection (a) may be punished by death.

(c) Nothing in this section shall be construed to apply to otherwise lawfully authorized and conducted activities of the United States Government.

(d) In this section:

(1) The term ''dangerous substance'' means any solid, liquid, or gaseous material that has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.

(2) The term ''device'' means any object that, because of its physical, mechanical, structural, or chemical properties, has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.

(Added Pub. L. 109–177, title III, § 304(a)(1), Mar. 9, 2006, 120 Stat. 234.)

§ 2282B. Violence against aids to maritime navigation

Whoever intentionally destroys, seriously damages, alters, moves, or tampers with any aid to maritime navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is likely to endanger the safe navigation of a ship, shall be fined under this title or imprisoned for not more than 20 years, or both.

(Added Pub. L. 109–177, title III, § 304(b)(1), Mar. 9, 2006, 120 Stat. 235.)

§ 2283. Transportation of explosive, biological, chemical, or radioactive or nuclear materials

(a) IN GENERAL.—Whoever knowingly transports aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality an explosive or incendiary device, biological agent, chemical weapon, or radioactive or nuclear material, knowing that any such item is intended to be used to commit an offense listed under section 2332b(g)(5)(B), shall be fined under this title or imprisoned for any term of years or for life, or both.

(b) CAUSING DEATH.—Any person who causes the death of a person by engaging in conduct prohibited by subsection (a) may be punished by death.

(c) DEFINITIONS.—In this section:

(1) BIOLOGICAL AGENT.—The term ''biological agent'' means any biological agent, toxin, or vector (as those terms are defined in section 178).

(2) BY-PRODUCT MATERIAL.—The term ''by-product material'' has the meaning given that term in section 11(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)).

(3) CHEMICAL WEAPON.—The term ''chemical weapon'' has the meaning given that term in section 229F(1).

(4) EXPLOSIVE OR INCENDIARY DEVICE.—The term ''explosive or incendiary device'' has the meaning given the term in section 232(5) and includes explosive materials, as that term is defined in section 841(c) and explosive as defined in section 844(j).

(5) NUCLEAR MATERIAL.—The term ''nuclear material'' has the meaning given that term in section 831(f)(1).

(6) RADIOACTIVE MATERIAL.—The term ''radioactive material'' means—

(A) source material and special nuclear material, but does not include natural or depleted uranium;

[1] So in original. No section 2282 has been enacted.

(B) nuclear by-product material;

(C) material made radioactive by bombardment in an accelerator; or

(D) all refined isotopes of radium.

(8)[1] SOURCE MATERIAL.—The term ''source material'' has the meaning given that term in section 11(z) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

(9) SPECIAL NUCLEAR MATERIAL.—The term ''special nuclear material'' has the meaning given that term in section 11(aa) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

(Added Pub. L. 109–177, title III, § 305(a), Mar. 9, 2006, 120 Stat. 236.)

§ 2284. Transportation of terrorists

(a) IN GENERAL.—Whoever knowingly and intentionally transports any terrorist aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality, knowing that the transported person is a terrorist, shall be fined under this title or imprisoned for any term of years or for life, or both.

(b) DEFINED TERM.—In this section, the term ''terrorist'' means any person who intends to commit, or is avoiding apprehension after having committed, an offense listed under section 2332b(g)(5)(B).

(Added Pub. L. 109–177, title III, § 305(a), Mar. 9, 2006, 120 Stat. 237.)

CHAPTER 111A—DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES

Sec.
2290. Jurisdiction and scope.
2291. Destruction of vessel or maritime facility.
2292. Imparting or conveying false information.
2293. Bar to prosecution.[1]

§ 2290. Jurisdiction and scope

(a) JURISDICTION.—There is jurisdiction, including extraterritorial jurisdiction, over an offense under this chapter if the prohibited activity takes place—

(1) within the United States and within waters subject to the jurisdiction of the United States; or

(2) outside United States and—

(A) an offender or a victim is a national of the United States (as that term is defined under section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); [1]

(B) the activity involves a vessel in which a national of the United States was on board; or

(C) the activity involves a vessel of the United States (as that term is defined under section 2[2] of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903).[1]

[1] So in original. No par. (7) has been enacted.

[1] Editorially supplied. Section 2293 added by Pub. L. 109–177 without corresponding amendment of chapter analysis.

[1] So in original. There probably should be an additional closing parenthesis.

[2] See References in Text note below.

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(b) SCOPE.—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

(Added Pub. L. 109–177, title III, § 306(a), Mar. 9, 2006, 120 Stat. 237.)

REFERENCES IN TEXT

Section 2 of the Maritime Drug Law Enforcement Act, referred to in subsec. (a)(2)(C), probably means section 3 of the Maritime Drug Law Enforcement Act, Pub. L. 96–350, which was classified to section 1903 of former Title 46, Appendix, Shipping, and was repealed and restated in sections 70502 to 70506 of Title 46, Shipping, by Pub. L. 109–304, §§ 10(2), 19, Oct. 6, 2006, 120 Stat. 1683, 1710. Section 70502(b) of Title 46 defines ''vessel of the United States''.

§ 2291. Destruction of vessel or maritime facility

(a) OFFENSE.—Whoever knowingly—

(1) sets fire to, damages, destroys, disables, or wrecks any vessel;

(2) places or causes to be placed a destructive device, as defined in section 921(a)(4), destructive substance, as defined in section 31(a)(3), or an explosive, as defined in section 844(j) in, upon, or near, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

(3) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or near, any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment;

(4) interferes by force or violence with the operation of any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment, if such action is likely to endanger the safety of any vessel in navigation;

(5) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or near, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

(6) performs an act of violence against or incapacitates any individual on any vessel, if such act of violence or incapacitation is likely to endanger the safety of the vessel or those on board;

(7) performs an act of violence against a person that causes or is likely to cause serious bodily injury, as defined in section 1365(h)(3), in, upon, or near, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

(8) communicates information, knowing the information to be false and under circum-

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stances in which such information may reasonably be believed, thereby endangering the safety of any vessel in navigation; or

(9) attempts or conspires to do anything prohibited under paragraphs (1) through (8),

shall be fined under this title or imprisoned not more than 20 years, or both.

(b) LIMITATION.—Subsection (a) shall not apply to any person that is engaging in otherwise lawful activity, such as normal repair and salvage activities, and the transportation of hazardous materials regulated and allowed to be transported under chapter 51 of title 49.

(c) PENALTY.—Whoever is fined or imprisoned under subsection (a) as a result of an act involving a vessel that, at the time of the violation, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12))[1] or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)),[1] shall be fined under this title, imprisoned for a term up to life, or both.

(d) PENALTY WHEN DEATH RESULTS.—Whoever is convicted of any crime prohibited by subsection (a) and intended to cause death by the prohibited conduct, if the conduct resulted in the death of any person, shall be subject also to the death penalty or to a term of imprisonment for a period up to life.

(e) THREATS.—Whoever knowingly and intentionally imparts or conveys any threat to do an act which would violate this chapter, with an apparent determination and will to carry the threat into execution, shall be fined under this title or imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.

(Added Pub. L. 109–177, title III, § 306(a), Mar. 9, 2006, 120 Stat. 237.)

§ 2292. Imparting or conveying false information

(a) IN GENERAL.—Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act that would be a crime prohibited by this chapter or by chapter 111 of this title, shall be subject to a civil penalty of not more than $5,000, which shall be recoverable in a civil action brought in the name of the United States.

(b) MALICIOUS CONDUCT.—Whoever knowingly, intentionally, maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be fined under this title or imprisoned not more than 5 years.

(c) JURISDICTION.—

(1) IN GENERAL.—Except as provided under paragraph (2), section 2290(a) shall not apply to any offense under this section.

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(2) JURISDICTION.—Jurisdiction over an offense under this section shall be determined in accordance with the provisions applicable to the crime prohibited by this chapter, or by chapter 111 of this title, to which the imparted or conveyed false information relates, as applicable.

(Added Pub. L. 109–177, title III, § 306(a), Mar. 9, 2006, 120 Stat. 239.)

§ 2293. Bar to prosecution

(a) IN GENERAL.—It is a bar to prosecution under this chapter if—

(1) the conduct in question occurred within the United States in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed; or

(2) such conduct is prohibited as a misdemeanor, and not as a felony, under the law of the State in which it was committed.

(b) DEFINITIONS.—In this section:

(1) LABOR DISPUTE.—The term ''labor dispute'' has the same meaning given that term in section 13(c) of the Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes (29 U.S.C. 113(c), commonly known as the Norris-LaGuardia Act).

(2) STATE.—The term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 109–177, title III, § 306(a), Mar. 9, 2006, 120 Stat. 239.)

CHAPTER 113—STOLEN PROPERTY

Sec.
2311. Definitions.
2312. Transportation of stolen vehicles.
2313. Sale or receipt of stolen vehicles.
2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting.
2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps.
2316. Transportation of livestock.
2317. Sale or receipt of livestock.
2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging.
2319. Criminal infringement of a copyright.
2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.
2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.[1]
2320. Trafficking in counterfeit goods or services.
2321. Trafficking in certain motor vehicles or motor vehicle parts.
2322. Chop shops.

AMENDMENTS

2005—Pub. L. 109–9, title I, § 102(b), Apr. 27, 2005, 119 Stat. 220, added item 2319B.

2004—Pub. L. 108–482, title I, § 102(c), Dec. 23, 2004, 118 Stat. 3915, substituted ''Trafficking in counterfeit la-

[1] So in original. There probably should be an additional closing parenthesis.

[1] So in original. Does not conform to section catchline.

bels, illicit labels, or counterfeit documentation or packaging'' for ''Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging'' in item 2318.

1996—Pub. L. 104–153, § 4(b)(2), July 2, 1996, 110 Stat. 1387, substituted ''Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging'' for ''Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works'' in item 2318.

1994—Pub. L. 103–465, title V, § 513(b), Dec. 8, 1994, 108 Stat. 4976, added item 2319A.

1992—Pub. L. 102–519, title I, § 105(b), Oct. 25, 1992, 106 Stat. 3386, added item 2322.

1986—Pub. L. 99–646, § 42(b), Nov. 10, 1986, 100 Stat. 3601, renumbered item 2320 relating to trafficking in certain motor vehicles or motor vehicle parts as item 2321.

1984—Pub. L. 98–547, title II, § 204(b), Oct. 25, 1984, 98 Stat. 2770, added item 2320 relating to trafficking in certain motor vehicles or motor vehicle parts.

Pub. L. 98–473, title II, §§ 1115, 1502(b), Oct. 12, 1984, 98 Stat. 2149, 2179, substituted ''livestock'' for ''cattle'' in items 2316 and 2317 and added item 2320 relating to trafficking in counterfeit goods or services.

1982—Pub. L. 97–180, § 4, May 24, 1982, 96 Stat. 92, substituted ''Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works'' for ''Transportation, sale, or receipt of phonograph records bearing forged or counterfeit labels'' in item 2318 and added item 2319.

1962—Pub. L. 87–773, § 2, Oct. 9, 1962, 76 Stat. 775, added item 2318.

1961—Pub. L. 87–371, § 4, Oct. 4, 1961, 75 Stat. 802, inserted ''fraudulent State tax stamps,'' in item 2314, and substituted ''moneys, or fraudulent State tax stamps'' for ''or monies'' in item 2315.

§ 2311. Definitions

As used in this chapter:

''Aircraft'' means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air;

''Cattle'' means one or more bulls, steers, oxen, cows, heifers, or calves, or the carcass or carcasses thereof;

''Livestock'' means any domestic animals raised for home use, consumption, or profit, such as horses, pigs, llamas, goats, fowl, sheep, buffalo, and cattle, or the carcasses thereof;

''Money'' means the legal tender of the United States or of any foreign country, or any counterfeit thereof;

''Motor vehicle'' includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails;

''Securities'' includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle title; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a ''security'', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

''Tax stamp'' includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

''Value'' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

''Vessel'' means any watercraft or other contrivance used or designed for transportation or navigation on, under, or immediately above, water.

(June 25, 1948, ch. 645, 62 Stat. 805; Pub. L. 87–371, § 1, Oct. 4, 1961, 75 Stat. 802; Pub. L. 98–547, title II, § 202, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 103–322, title XXXII, § 320912, Sept. 13, 1994, 108 Stat. 2128; Pub. L. 104–294, title VI, § 604(b)(20), Oct. 11, 1996, 110 Stat. 3507; Pub. L. 107–273, div. B, title IV, § 4002(b)(8), Nov. 2, 2002, 116 Stat. 1808; Pub. L. 109–177, title III, § 307(b)(1), Mar. 9, 2006, 120 Stat. 240.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 408, 414(b), (c), 417, 419a(a) (Oct. 29, 1919, ch. 89, § 2(a), 41 Stat. 324; May 22, 1934, ch. 333, §§ 2(b), (c), 5, 48 Stat. 794, 795; Aug. 3, 1939, ch. 413, § 3, 53 Stat. 1178; Aug. 18, 1941, ch. 366, § 2(a), 55 Stat. 631; Sept. 24, 1945, ch. 383, § 1, 59 Stat. 536).

The definitive provisions in each of said sections were separated therefrom and consolidated into this one section defining terms used in this chapter.

The definitions of ''interstate or foreign commerce'', contained in said section 408 and in sections 414(a) and 419a(b) of title 18, U.S.C., 1940 ed., are incorporated in section 10 of this title.

Other provisions of section 408 of title 18, U.S.C., 1940 ed., are incorporated in sections 2312 and 2313 of this title.

In the definition of ''motor vehicle'', words ''designed for running on land but not on rails'' were substituted for ''not designed for running on rails'' so as to conform with the ruling in the case of *McBoyle* v. *U.S.* (1931, 51 S. Ct. 340, 283, U. S. 25, 75 L. Ed. 816), in which the Supreme Court held that ''vehicle'' is limited to vehicles running on land and that motor vehicle does not include an airplane.

In the paragraph defining ''value'' which came from said section 417 of title 18, U.S.C., 1940 ed., words ''In the event that a defendant is charged in the same indictment with two or more violations of sections 413–419 of this title, then'' were omitted and the same meaning was preserved by the substitution of the words ''a single'' for the word ''such.''

Minor changes were made in phraseology.

Amendments

2006—Pub. L. 109–177 inserted definition of ''Vessel''.

2002—Pub. L. 107–273 substituted semicolon for period at end of third par.

1996—Pub. L. 104–294 substituted ''Livestock'' for ''livestock'' in third par.

1994—Pub. L. 103–322 inserted definition of ''livestock''.

1984—Pub. L. 98–547 inserted ''valid or blank motor vehicle title;'' in definition of ''Securities''.

1961—Pub. L. 87–371 inserted definition of ''Tax stamp''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–482, title I, § 101, Dec. 23, 2004, 118 Stat. 3912, provided that: ''This title [amending section 2318 of this title and enacting provisions set out as a note under section 2318 of this title] may be cited as the 'Anti-counterfeiting Amendments Act of 2004'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–147, § 1, Dec. 16, 1997, 111 Stat. 2678, provided that: ''This Act [amending sections 2319 to 2320 of this title, sections 101, 506, and 507 of Title 17, Copyrights, and section 1498 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 994 of Title 28] may be cited as the 'No Electronic Theft (NET) Act'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–153, § 1, July 2, 1996, 110 Stat. 1386, provided that: ''This Act [amending sections 1961, 2318, and 2320 of this title, sections 1116 and 1117 of Title 15, Commerce and Trade, section 603 of Title 17, Copyrights, sections 1431, 1484, and 1526 of Title 19, Customs Duties, and section 80302 of Title 49, Transportation, and enacting provisions set out as notes under this section and section 1431 of Title 19] may be cited as the 'Anti-counterfeiting Consumer Protection Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–519, § 1, Oct. 25, 1992, 106 Stat. 3384, provided that: ''This Act [enacting sections 2119 and 2322 of this title, sections 2026a to 2026c and 2041 to 2044 of Title 15, Commerce and Trade, sections 1646b and 1646c of Title 19, Customs Duties, and sections 3750a to 3750d of Title 42, The Public Health and Welfare, amending sections 553, 981, 982, 2312, and 2313 of this title, sections 2021 to 2023, 2025, 2027, and 2034 of Title 15, and enacting provisions set out as notes under section 2119 of this title, sections 2026a, 2026b, and 2041 of Title 15, and section 1646b of Title 19] may be cited as the 'Anti Car Theft Act of 1992'.''

SHORT TITLE OF 1984 AMENDMENTS

Section 1(a) of Pub. L. 98–547 provided that: ''This Act [enacting sections 511, 512, 553, and 2320 [now 2321] of this title, sections 2021 to 2034 of Title 15, Commerce and Trade, and section 1627 of Title 19, Customs Duties, amending this section, sections 1961 and 2313 of this title, and section 1901 of Title 15, and enacting provisions set out as a note under section 2021 of Title 15] may be cited as the 'Motor Vehicle Theft Law Enforcement Act of 1984'.''

Section 1501 of chapter XV (§§ 1501–1503) of title II of Pub. L. 98–473 provided that: ''This chapter [enacting section 2320 of this title and amending sections 1116, 1117, and 1118 of Title 15, Commerce and Trade] may be cited as the 'Trademark Counterfeiting Act of 1984'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–180, § 1, May 24, 1982, 96 Stat. 91, provided: ''That this Act [enacting section 2319 of this title and amending section 2318 of this title and section 506 of Title 17, Copyrights] may be cited as the 'Piracy and Counterfeiting Amendments Act of 1982'.''

COUNTERFEITING OF TRADEMARKED AND COPYRIGHTED MERCHANDISE; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 104–153, § 2, July 2, 1996, 110 Stat. 1386, provided that: ''The counterfeiting of trademarked and copyrighted merchandise—

''(1) has been connected with organized crime;

''(2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill;

''(3) poses health and safety threats to United States consumers;

''(4) eliminates United States jobs; and

''(5) is a multibillion-dollar drain on the United States economy.''

CONGRESSIONAL DECLARATION OF PURPOSE OF 1984 AMENDMENT

Section 2 of Pub. L. 98–547 provided that: ''It is the purpose of this Act [see Short Title of 1984 Amendments note above]—

''(1) to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft;

''(2) to augment the Federal criminal penalties imposed upon persons trafficking in stolen motor vehicles;

''(3) to encourage decreases in premiums charged consumers for motor vehicle theft insurance; and

''(4) to reduce opportunities for exporting or importing stolen motor vehicles and off-highway mobile equipment.''

§ 2312. Transportation of stolen vehicles

Whoever transports in interstate or foreign commerce a motor vehicle, vessel, or aircraft, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 806; Pub. L. 102–519, title I, § 103, Oct. 25, 1992, 106 Stat. 3385; Pub. L. 109–177, title III, § 307(b)(2)(A), Mar. 9, 2006, 120 Stat. 240.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408 (Oct. 29, 1919, ch. 89, §§ 1, 3, 5, 41 Stat. 324, 325; Sept. 24, 1945, ch. 383, §§ 2, 3, 59 Stat. 536).

The first sentence of said section 408, providing the short title ''An Act to punish the transportation of stolen motor vehicles or aircraft in interstate or foreign commerce,'' and derived from section 1 of said act of October 29, 1919, as amended, was omitted as not appropriate in a revision.

Definitions of ''aircraft,'' ''motor vehicle,'' and ''interstate or foreign commerce,'' which constituted the second sentence of said section 408 of title 18, U.S.C., 1940 ed., and were derived from section 2 of said act of October 29, 1919, as amended, are incorporated in sections 10 and 2311 of this title.

Provision relating to receiving or selling stolen aircraft or motor vehicles, which was derived from section 4 of the act of October 29, 1919, as amended, is incorporated in section 2313 of this title.

Venue provision, which was derived from section 5 of the act of October 29, 1919, was omitted as unnecessary, being covered by section 3237 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

2006—Pub. L. 109–177 substituted ''motor vehicle, vessel, or aircraft'' for ''motor vehicle or aircraft''.

1992—Pub. L. 102–519 substituted ''fined under this title or imprisoned not more than 10 years'' for ''fined not more than $5,000 or imprisoned not more than five years''.

§ 2313. Sale or receipt of stolen vehicles

(a) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any motor

vehicle, vessel, or aircraft, which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 806; Pub. L. 98–547, title II, § 203, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 101–647, title XII, § 1205(*l*), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 102–519, title I, § 103, Oct. 25, 1992, 106 Stat. 3385; Pub. L. 109–177, title III, § 307(b)(2)(B), Mar. 9, 2006, 120 Stat. 240.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408 (Oct. 29, 1919, ch. 89, § 4, 41 Stat. 325; Sept. 24, 1945, ch. 383, §§ 2, 3, 59 Stat. 536).

Section constitutes the fourth sentence of said section 408 of title 18, U.S.C., 1940 ed.

Definitions of ''aircraft,'' ''motor vehicle,'' and ''interstate or foreign commerce,'' which constituted the second sentence of said section 408, are incorporated in sections 10 and 2311 of this title.

The third sentence of said section 408, relating to transporting stolen aircraft or motor vehicles, is incorporated in section 2312 of this title.

The first sentence of said section 408, providing the short title, and the fifth sentence thereof, relating to venue, were omitted. (See reviser's note under section 2312 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 substituted ''motor vehicle, vessel, or aircraft'' for ''motor vehicle or aircraft''.

1992—Subsec. (a). Pub. L. 102–519 substituted ''fined under this title or imprisoned not more than 10 years'' for ''fined not more than $5,000 or imprisoned not more than five years''.

1990—Pub. L. 101–647 designated existing provisions as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–547 inserted ''possesses,'' after ''receives,'' and substituted ''which has crossed a State or United States boundary after being stolen,'' for ''moving as, or which is a part of, or which constitutes interstate or foreign commerce,''.

§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person or persons to travel in, or to be transported in interstate or foreign commerce in the execution or concealment of a scheme or artifice to defraud that person or those persons of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined under this title or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.

(June 25, 1948, ch. 645, 62 Stat. 806; May 24, 1949, ch. 139, § 45, 63 Stat. 96; July 9, 1956, ch. 519, 70 Stat. 507; Pub. L. 87–371, § 2, Oct. 4, 1961, 75 Stat. 802; Pub. L. 90–535, Sept. 28, 1968, 82 Stat. 885; Pub. L. 100–690, title VII, §§ 7057, 7080, Nov. 18, 1988, 102 Stat. 4402, 4406; Pub. L. 101–647, title XII, § 1208, Nov. 29, 1990, 104 Stat. 4832; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 413, 415, 418, 418a, 419 (May 22, 1934, ch. 333, §§ 1, 3, 6, 48 Stat. 794, 795; May 22, 1934, ch. 333, § 7, as added Aug. 3, 1939, ch. 413, § 5, 53 Stat. 1179; May 22, 1934, ch. 333, § 7, renumbered § 8 by Aug. 3, 1939, ch. 413, § 6, 53 Stat. 1179; Aug. 3, 1939, ch. 413, §§ 1, 4, 5, 53 Stat. 1178, 1179).

Section consolidates sections 413, 415, 417, 418, 418a, and 419 of title 18, U.S.C., 1940 ed.

Words ''or with intent to steal or purloin, knowing the same to have been so stolen, converted, or taken'' were omitted as surplusage, since property so ''taken'' is ''stolen,'' and insertion of word ''knowingly'' after ''Whoever'' at beginning of section renders such omission possible.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Section 413 of title 18, U.S.C., 1940 ed., providing the short title ''National Stolen Property Act,'' was omitted as not appropriate in a revision.

Section 414 of title 18, U.S.C., 1940 ed., containing definitions of ''interstate or foreign commerce,'' ''securities,'' and ''money,'' is incorporated in sections 10 and 2311 of this title.

Section 417 of title 18, U.S.C., 1940 ed., relating to indictments and determination of ''value'' of goods, wares, merchandise, securities, and money referred to in indictments, is also incorporated in section 2311 of this title.

Section 418 of title 18, U.S.C., 1940 ed., relating to venue, was omitted as completely covered by section 3237 of this title.

Section 418a of title 18, U.S.C., 1940 ed., relating to conspiracy, was omitted as covered by section 371 of this title, the general conspiracy section.

Section 419 of title 18, U.S.C., 1940 ed., providing that nothing contained in the National Stolen Property Act should be construed to repeal, modify, or amend any part of the National Motor Vehicle Theft Act, was omitted as unnecessary, in view of this revision and reenactment of the provisions of the latter act (sections 10, 2311–2313 of this title).

Changes were made in phraseology and arrangement.

1949 ACT

This amendment [see section 45] restates and clarifies the first paragraph of section 2314 of title 18, U.S.C., to conform to the original law upon which the section is based.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' in penultimate par.

Pub. L. 103–322, § 330016(1)(K), which directed the amendment of this section by striking ''not more than $5,000'' and inserting ''under this title'', could not be executed because the phrase ''not more than $5,000'' did not appear in text.

1990—Pub. L. 101–647 inserted ''or foreign'' after ''interstate'' in second par.

1988—Pub. L. 100–690, § 7057(a), substituted ''transports, transmits, or transfers'' for ''transports'' in first par.

Pub. L. 100–690, § 7080, inserted ''or persons'' after ''any person'' and ''or those persons'' after ''that person'' in second par.

Pub. L. 100–690, § 7057(b), struck out ''or by a bank or corporation of any foreign country'' after ''foreign government'' in last par. and inserted at end ''This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.''

1968—Pub. L. 90–535 prohibited transportation with unlawful or fraudulent intent in interstate or foreign commerce of traveler's checks bearing forged countersignatures.

1961—Pub. L. 87–371 inserted ''or tax stamps'' after ''securities'' in third par. and after ''security'' in fourth par., and ''fraudulent State tax stamps,'' in section catchline.

1956—Act July 9, 1956, inserted par. relating to interstate transportation of persons in schemes to defraud.

1949—Act May 24, 1949, substituted ''knowing the same to have been stolen, converted or taken by fraud'' for ''theretofore stolen, converted, or taken by fraud'' in first par.

§ 2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barters, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof—

Shall be fined under this title or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government. This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.

For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 806; Pub. L. 87–371, § 3, Oct. 4, 1961, 75 Stat. 802; Pub. L. 99–646, § 76, Nov. 10, 1986, 100 Stat. 3618; Pub. L. 100–690, title VII, §§ 7048, 7057(b), Nov. 18, 1988, 102 Stat. 4401, 4402; Pub. L. 101–647, title XII, § 1205(m), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 416 (May 22, 1934, ch. 333, § 4, 48 Stat. 795; Aug. 3, 1939, ch. 413, § 2, 53 Stat. 1178).

(See reviser's notes under sections 10, 2311 and 2314 of this title for explanation of consolidation or omission of other sections of title 18, U.S.C., 1940 ed., which were derived from the National Stolen Property Act.)

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in fourth par.

1990—Pub. L. 101–647 inserted par. at end defining ''State''.

1988—Pub. L. 100–690, § 7048, substituted ''moving as, or which are a part of, or which constitute interstate or foreign commerce'' for ''which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken'' in second par.

Pub. L. 100–690, § 7057(b), struck out ''or by a bank or corporation of any foreign country'' after ''foreign government'' in last par. and inserted at end ''This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.''

1986—Pub. L. 99–646 substituted ''receives, possesses, conceals'' for ''receives, conceals'' and ''which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken'' for ''moving as, or which are part of, or which constitute interstate or foreign commerce'' in first and second pars.

1961—Pub. L. 87–371 inserted ''or tax stamps'' after ''securities'', wherever appearing, in second par., and ''or tax stamp'' after ''security'', wherever appearing,

in third par., and substituted ''moneys, or fraudulent State tax stamps'' for ''or monies'' in section catchline.

§ 2316. Transportation of livestock

Whoever transports in interstate or foreign commerce any livestock, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 98–473, title II, § 1113, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 419b, 419d (Aug. 18, 1941, ch. 366, §§ 3, 5, 55 Stat. 631).

This section consolidates sections 419b and 419d of title 18, U.S.C., 1940 ed.

Definition of ''cattle'', contained in section 419a(a) of title 18, U.S.C., 1940 ed., is incorporated in section 2311 of this title.

Definition of ''interstate or foreign commerce'', constituting section 419a(b) of title 18, U.S.C., 1940 ed., is incorporated in section 10 of this title.

The venue provision of said section 419d of title 18, U.S.C., 1940 ed., was omitted as completely covered by section 3237 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of ''principal'' in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1984—Pub. L. 98–473 substituted ''livestock'' for ''cattle'' in section catchline and text.

§ 2317. Sale or receipt of livestock

Whoever receives, conceals, stores, barters, buys, sells, or disposes of any livestock, moving in or constituting a part of interstate or foreign commerce, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 98–473, title II, § 1114, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 419c, 419d (Aug. 18, 1941, ch. 366, §§ 4, 5, 55 Stat. 632).

Definitions of ''cattle'' and ''interstate or foreign commerce'', contained in section 419a of title 18, U.S.C., 1940 ed., are incorporated in sections 10 and 2311 of this title.

Venue provision of said section 419d of title 18, U.S.C., 1940 ed., was omitted as completely covered by section 3237 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $5,000''.

1984—Pub. L. 98–473 substituted ''livestock'' for ''cattle'' in section catchline and text.

§ 2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging

(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

(1) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany—

(A) a phonorecord;

(B) a copy of a computer program;

(C) a copy of a motion picture or other audiovisual work;

(D) a copy of a literary work;

(E) a copy of a pictorial, graphic, or sculptural work;

(F) a work of visual art; or

(G) documentation or packaging; or

(2) counterfeit documentation or packaging,

shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) As used in this section—

(1) the term ''counterfeit label'' means an identifying label or container that appears to be genuine, but is not;

(2) the term ''traffic'' has the same meaning as in section 2320(e) of this title;

(3) the terms ''copy'', ''phonorecord'', ''motion picture'', ''computer program'', ''audiovisual work'', ''literary work'', ''pictorial, graphic, or sculptural work'', ''sound recording'', ''work of visual art'', and ''copyright owner'' have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17;

(4) the term ''illicit label'' means a genuine certificate, licensing document, registration card, or similar labeling component—

(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

(B) that is, without the authorization of the copyright owner—

(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner's distribution channel and not for the purpose of verifying that a copy or phonorecord is noninfringing;

(5) the term ''documentation or packaging'' means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

(6) the term ''counterfeit documentation or packaging'' means documentation or packaging that appears to be genuine, but is not.

(c) The circumstances referred to in subsection (a) of this section are—

(1) the offense is committed within the special maritime and territorial jurisdiction of the United States; or within the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

(2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense;

(3) the counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany—

(A) a phonorecord of a copyrighted sound recording or copyrighted musical work;

(B) a copy of a copyrighted computer program;

(C) a copy of a copyrighted motion picture or other audiovisual work;

(D) a copy of a literary work;

(E) a copy of a pictorial, graphic, or sculptural work;

(F) a work of visual art; or

(G) copyrighted documentation or packaging; or

(4) the counterfeited documentation or packaging is copyrighted.

(d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels or illicit labels and all articles to which counterfeit labels or illicit labels have been affixed or which were intended to have had such labels affixed, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels.

(e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).

(f) CIVIL REMEDIES.—

(1) IN GENERAL.—Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) may bring a civil action in an appropriate United States district court.

(2) DISCRETION OF COURT.—In any action brought under paragraph (1), the court—

(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain a violation of subsection (a);

(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of subsection (a); and

(C) may award to the injured party—

(i) reasonable attorney fees and costs; and

(ii)(I) actual damages and any additional profits of the violator, as provided in paragraph (3); or

(II) statutory damages, as provided in paragraph (4).

(3) ACTUAL DAMAGES AND PROFITS.—

(A) IN GENERAL.—The injured party is entitled to recover—

(i) the actual damages suffered by the injured party as a result of a violation of subsection (a), as provided in subparagraph (B) of this paragraph; and

(ii) any profits of the violator that are attributable to a violation of subsection (a) and are not taken into account in computing the actual damages.

(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

(i) the value of the phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging, by

(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

(C) DEFINITION.—For purposes of this paragraph, the ''value'' of a phonorecord, copy, or work of visual art is—

(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

(v) in the case of a pictorial, graphic, or sculptural work, the retail value of an authorized copy of that work; and

(vi) in the case of a work of visual art, the retail value of that work.

(4) STATUTORY DAMAGES.—The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of subsection (a) in a sum of not less than $2,500 or more than $25,000, as the court considers appropriate.

(5) SUBSEQUENT VIOLATION.—The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

(6) LIMITATION ON ACTIONS.—A civil action may not be commenced under section[1] unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).

(Added Pub. L. 87–773, § 1, Oct. 9, 1962, 76 Stat. 775; amended Pub. L. 93–573, title I, § 103, Dec. 31,

[1] So in original. Probably should be ''this subsection''.

1974, 88 Stat. 1873; Pub. L. 94–553, title I, § 111, Oct. 19, 1976, 90 Stat. 2600; Pub. L. 97–180, § 2, May 24, 1982, 96 Stat. 91; Pub. L. 101–647, title XXXV, § 3567, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103–272, § 5(e)(10), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–153, § 4(a), (b)(1), July 2, 1996, 110 Stat. 1386, 1387; Pub. L. 108–482, title I, § 102(a), (b), Dec. 23, 2004, 118 Stat. 3912, 3914; Pub. L. 109–181, § 2(c)(2), Mar. 16, 2006, 120 Stat. 288.)

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–181 added par. (2) and struck out former par. (2) which read as follows: ''the term 'traffic' means to transport, transfer or otherwise dispose of, to another, as consideration for anything of value or to make or obtain control of with intent to so transport, transfer or dispose of;''.

2004—Pub. L. 108–482, § 102(a)(1), substituted ''Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging'' for ''Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging'' in section catchline.

Subsec. (a). Pub. L. 108–482, § 102(a)(2), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in a counterfeit label affixed or designed to be affixed to a phonorecord, or a copy of a computer program or documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work, and whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in counterfeit documentation or packaging for a computer program, shall be fined under this title or imprisoned for not more than five years, or both.''

Subsec. (b)(2). Pub. L. 108–482, § 102(a)(3)(A), struck out ''and'' after the semicolon at end.

Subsec. (b)(3). Pub. L. 108–482, § 102(a)(3)(B), substituted '' 'audiovisual work', 'literary work', 'pictorial, graphic, or sculptural work', 'sound recording', 'work of visual art', and 'copyright owner' have'' for ''and 'audiovisual work' have'' and a semicolon for the period at end.

Subsec. (b)(4) to (6). Pub. L. 108–482, § 102(a)(3)(C), added pars. (4) to (6).

Subsec. (c)(3). Pub. L. 108–482, § 102(a)(4)(A), added par. (3) and struck former par. (3) which read as follows: ''the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program, a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording; or''.

Subsec. (c)(4). Pub. L. 108–482, § 102(a)(4)(B), struck out ''for a computer program'' after ''packaging''.

Subsec. (d). Pub. L. 108–482, § 102(a)(5), inserted ''or illicit labels'' after ''counterfeit labels'' in two places and inserted '', and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels'' before period at end.

Subsec. (f). Pub. L. 108–482, § 102(b), added subsec. (f).

1996—Pub. L. 104–153, § 4(b)(1), substituted ''Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging'' for ''Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works'' in section catchline.

Subsec. (a). Pub. L. 104–153, § 4(a)(1), substituted ''a computer program or documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work, and whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in counterfeit documentation or packaging for a computer program,'' for ''a motion picture or other audiovisual work,''.

Subsec. (b)(3). Pub. L. 104–153, § 4(a)(2), inserted '' 'computer program','' after '' 'motion picture',''.

Subsec. (c)(2). Pub. L. 104–153, § 4(a)(3)(A), struck out ''or'' at end.

Subsec. (c)(3). Pub. L. 104–153, § 4(a)(3)(B), inserted ''a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program,'' after ''enclose,'' and substituted ''; or'' for period at end.

Subsec. (c)(4). Pub. L. 104–153, § 4(a)(3)(C), added par. (4).

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $250,000''.

Subsec. (c)(1). Pub. L. 103–272 substituted ''section 46501 of title 49'' for ''section 101 of the Federal Aviation Act of 1958''.

1990—Pub. L. 101–647 struck out comma after ''phonorecords'' in section catchline.

1982—Pub. L. 97–180 substituted ''Trafficking in counterfeit labels for phonorecords, and copies of motion pictures or other audiovisual works'' for ''Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels'' in section catchline.

Subsec. (a). Pub. L. 97–180 substituted provision that violators of this section shall be fined not more than $250,000 or imprisoned for not more than five years or both for provision that whoever knowingly and with fraudulent intent transported, caused to be transported, received, sold, or offered for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds were recorded, to which or upon which was stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited would be fined not more than $10,000 or imprisoned for not more than one year, or both, for the first such offense and would be fined not more than $25,000 or imprisoned for not more than two years, or both, for any subsequent offense.

Subsecs. (b) to (e). Pub. L. 97–180 added subsecs. (b) and (c), redesignated former subsecs. (b) and (c) as (d) and (e), respectively, and in subsec. (d) as so redesignated struck out the comma after ''judgment of conviction shall''.

1976—Pub. L. 94–553 designated existing provisions as subsec. (a) and substituted ''$10,000'' for ''$25,000'' and ''$25,000'' for ''$50,000'', and added subsecs. (b) and (c).

1974—Pub. L. 93–573 substituted ''not more than $25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than $50,000 or imprisoned not more than 2 years, or both, for any subsequent offense'' for ''not more than $1,000 or imprisoned not more than one year or both''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as a note preceding section 101 of Title 17, Copyrights.

OTHER RIGHTS NOT AFFECTED BY ANTI-COUNTERFEITING PROVISIONS

Pub. L. 108–482, title I, § 103, Dec. 23, 2004, 118 Stat. 3915, provided that:

''(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC TRANSMISSIONS.—The amendments made by this title [amending this section]—

''(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201 or 1202 of title 17, United States Code; and

''(2) shall not be construed to apply—

''(A) in any case, to the electronic transmission of a genuine certificate, licensing document, registra-

tion card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title; and

''(B) in the case of a civil action under section 2318(f) of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

''(b) FAIR USE.—The amendments made by this title shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title.''

§ 2319. Criminal infringement of a copyright

(a) Any person who violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b), (c), and (d) and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under section 506(a)(1)(A) of title 17—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than $2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.

(c) Any person who commits an offense under section 506(a)(1)(B) of title 17—

(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of $2,500 or more;

(2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000.

(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

(1) shall be imprisoned not more than 3 years, fined under this title, or both;

(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).

(e)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(f) As used in this section—

(1) the terms ''phonorecord'' and ''copies'' have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17;

(2) the terms ''reproduction'' and ''distribution'' refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 122, of title 17;

(3) the term ''financial gain'' has the meaning given the term in section 101 of title 17; and

(4) the term ''work being prepared for commercial distribution'' has the meaning given the term in section 506(a) of title 17.

(Added Pub. L. 97–180, § 3, May 24, 1982, 96 Stat. 92; amended Pub. L. 102–561, Oct. 28, 1992, 106 Stat. 4233; Pub. L. 105–80, § 12(b)(2), Nov. 13, 1997, 111 Stat. 1536; Pub. L. 105–147, § 2(d), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 107–273, div. C, title III, § 13211(a), Nov. 2, 2002, 116 Stat. 1910; Pub. L. 109–9, title I, § 103(b), Apr. 27, 2005, 119 Stat. 220.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–9, § 103(b)(1), substituted ''Any person who'' for ''Whoever'' and '', (c), and (d)'' for ''and (c) of this section''.

Subsec. (b). Pub. L. 109–9, § 103(b)(2), substituted ''section 506(a)(1)(A)'' for ''section 506(a)(1)'' in introductory provisions.

Subsec. (c). Pub. L. 109–9, § 103(b)(3), substituted ''section 506(a)(1)(B) of title 17'' for ''section 506(a)(2) of title 17, United States Code'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 109–9, § 103(b)(4), (5), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–9, § 103(b)(4), (6), redesignated subsec. (e) as (f) and added pars. (3) and (4).

2002—Subsec. (e)(2). Pub. L. 107–273 substituted ''107 through 122'' for ''107 through 120''.

1997—Subsec. (a). Pub. L. 105–147, § 2(d)(1), substituted ''subsections (b) and (c)'' for ''subsection (b)''.

Subsec. (b). Pub. L. 105–147, § 2(d)(2)(A), substituted ''section 506(a)(1) of title 17'' for ''subsection (a) of this section'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–147, § 2(d)(2)(B), inserted ''including by electronic means,'' after ''if the offense consists of the reproduction or distribution,'' and substituted ''which have a total retail value of more than $2,500'' for ''with a retail value of more than $2,500''.

Pub. L. 105–80, substituted ''at least 10 copies'' for ''at last 10 copies''.

Subsecs. (c) to (e). Pub. L. 105–147, § 2(d)(3), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1992—Subsec. (b). Pub. L. 102–561, § 1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any person who commits an offense under subsection (a) of this section—

''(1) shall be fined not more than $250,000 or imprisoned for not more than five years, or both, if the offense—

''(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least one thousand phonorecords or copies infringing the copyright in one or more sound recordings;

''(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; or

''(C) is a second or subsequent offense under either of subsection (b)(1) or (b)(2) of this section, where a prior offense involved a sound recording, or a motion picture or other audiovisual work;

''(2) shall be fined not more than $250,000 or imprisoned for not more than two years, or both, if the offense—

''(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than one hundred but less than one thousand phonorecords or copies infringing the copyright in one or more sound recordings; or

''(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than seven but less than sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; and

''(3) shall be fined not more than $25,000 or imprisoned for not more than one year, or both, in any other case.''

Subsec. (c). Pub. L. 102–561, § 2, substituted ''''phonorecord'''' for ''''sound recording', 'motion picture', 'audiovisual work', 'phonorecord','' in par. (1) and ''120'' for ''118'' in par. (2).

§ 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances

(a) OFFENSE.—Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10 years or fined in the amount set forth in this title, or both.

(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court shall order the forfeiture and destruction of any copies or phonorecords created in violation thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made. The court may also, in its discretion, order the forfeiture and destruction of any other equipment by means of which such copies or phonorecords may be reproduced, taking into account the nature, scope, and proportionality of the use of the equipment in the offense.

(c) SEIZURE AND FORFEITURE.—If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of the Treasury shall, not later than 60 days after the date of the enactment of the Uruguay Round Agreements Act, issue regulations to carry out this subsection, including regulations by which any performer may, upon payment of a specified fee, be entitled to notification by the United States Customs Service of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

(d) VICTIM IMPACT STATEMENT.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(e) DEFINITIONS.—As used in this section—

(1) the terms ''copy'', ''fixed'', ''musical work'', ''phonorecord'', ''reproduce'', ''sound recordings'', and ''transmit'' mean those terms within the meaning of title 17; and

(2) the term ''traffic'' has the same meaning as in section 2320(e) of this title.

(f) APPLICABILITY.—This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

(Added Pub. L. 103–465, title V, § 513(a), Dec. 8, 1994, 108 Stat. 4974; amended Pub. L. 105–147, § 2(e), Dec. 16, 1997, 111 Stat. 2679; Pub. L. 109–181, § 2(c)(1), Mar. 16, 2006, 120 Stat. 288.)

REFERENCES IN TEXT

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsecs. (c) and (f), is

the date of enactment of Pub. L. 103–465, which was approved Dec. 8, 1994.

The Federal Rules of Criminal Procedure, referred to in subsec. (d)(1), are set out in the Appendix to this title.

AMENDMENTS

2006—Subsec. (e)(2). Pub. L. 109–181 added par. (2) and struck out former par. (2) which read as follows: ''the term 'traffic in' means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.''

1997—Subsecs. (d) to (f). Pub. L. 105–147 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

(1) be imprisoned for not more than 3 years, fined under this title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

(e) VICTIM IMPACT STATEMENT.—

(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in the works described in subparagraph (A); and

(C) the legal representatives of such producers, sellers, and holders.

(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) TITLE 17 DEFINITIONS.—The terms ''audiovisual work'', ''copy'', ''copyright owner'', ''motion picture'', ''motion picture exhibition facility'', and ''transmit'' have, respectively, the meanings given those terms in section 101 of title 17.

(2) AUDIOVISUAL RECORDING DEVICE.—The term ''audiovisual recording device'' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(Added Pub. L. 109–9, title I, § 102(a), Apr. 27, 2005, 119 Stat. 218.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

§ 2320. Trafficking in counterfeit goods or services

(a) Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services, or intentionally

traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive, shall, if an individual, be fined not more than $2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, be fined not more than $5,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than $5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than $15,000,000.

(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

(B) Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense;

(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense; and

(iii) any article that bears or consists of a counterfeit mark used in committing the offense.

(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

(5) The term ''victim'', as used in paragraph (4), has the meaning given that term in section 3663A(a)(2).

(c) All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(d)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate goods or services affected by conduct involved in the offense;

(B) holders of intellectual property rights in such goods or services; and

(C) the legal representatives of such producers, sellers, and holders.

(e) For the purposes of this section—

(1) the term ''counterfeit mark'' means—

(A) a spurious mark—

(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220506 of title 36;

but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.[1]

(2) the term ''traffic'' means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

(3) the term ''financial gain'' includes the receipt, or expected receipt, of anything of value; and

(4) the term ''Lanham Act'' means the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

(f) Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.

(g)(1) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of this title), criminal infringement of copyrights (as defined in section 2319 of this title), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of this title), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of this title):

(A) The number of open investigations.

(B) The number of cases referred by the United States Customs Service.

(C) The number of cases referred by other agencies or sources.

(D) The number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, 2319A, and 2320 of this title.

(2)(A) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:

(i) The number of infringement cases in these categories: audiovisual (videos and films); audio (sound recordings); literary works (books and musical compositions); computer programs; video games; and, others.

(ii) The number of online infringement cases.

(iii) The number and dollar amounts of fines assessed in specific categories of dollar amounts. These categories shall be: no fines ordered; fines under $500; fines from $500 to $1,000; fines from $1,000 to $5,000; fines from $5,000 to $10,000; and fines over $10,000.

(iv) The total amount of restitution ordered in all copyright infringement cases.

(B) In this paragraph, the term ''online infringement cases'' as used in paragraph (2) means those cases where the infringer—

(i) advertised or publicized the infringing work on the Internet; or

(ii) made the infringing work available on the Internet for download, reproduction, performance, or distribution by other persons.

(C) The information required under subparagraph (A) shall be submitted in the report required in fiscal year 2005 and thereafter.

(Added Pub. L. 98–473, title II, § 1502(a), Oct. 12, 1984, 98 Stat. 2178; amended Pub. L. 103–322, title XXXII, § 320104(a), title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2110, 2148; Pub. L. 104–153, § 5, July 2, 1996, 110 Stat. 1387; Pub. L. 105–147, § 2(f), Dec. 16, 1997, 111 Stat. 2679; Pub. L. 105–225, § 4(b), Aug. 12, 1998, 112 Stat. 1499; Pub. L. 105–354, § 2(c)(1), Nov. 3, 1998, 112 Stat. 3244; Pub. L. 107–140, § 1, Feb. 8, 2002, 116 Stat. 12; Pub. L. 107–273, div. A, title II, § 205(e), Nov. 2, 2002, 116 Stat. 1778; Pub. L. 109–181, §§ 1(b), 2(b), Mar. 16, 2006, 120 Stat. 285, 288.)

REFERENCES IN TEXT

The Lanham Act, referred to in subsecs. (c) and (e)(1)(B), (4), also known as the Trademark Act of 1946, is act July 5, 1946, ch. 540, 60 Stat. 427, as amended, which is classified generally to chapter 22 (§ 1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 15 and Tables.

The Federal Rules of Criminal Procedure, referred to in subsec. (d)(1), are set out in the Appendix to this title.

The date of enactment of this subsection, referred to in subsec. (g)(1), is date of enactment of Pub. L. 104–153, which was approved July 2, 1996.

CODIFICATION

Another section 2320 was renumbered section 2321 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–181, § 1(b)(1), inserted '', or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,'' after ''such goods or services''.

Subsec. (b). Pub. L. 109–181, § 1(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in a prosecution under this section bear coun-

[1] So in original. The period probably should be a semicolon.

terfeit marks, the United States may obtain an order for the destruction of such articles.''

Subsec. (e)(1). Pub. L. 109–181, §1(b)(3)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;''.

Subsec. (e)(1)(A). Pub. L. 109–181, §1(b)(3)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''a spurious mark—

''(i) that is used in connection with trafficking in goods or services;

''(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered; and

''(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or''.

Subsec. (e)(2). Pub. L. 109–181, §2(b)(1), added par. (2) and struck out former par. (2) which read as follows: ''the term 'traffic' means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of; and''.

Subsec. (e)(3), (4). Pub. L. 109–181, §2(b)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (f), (g). Pub. L. 109–181, §1(b)(4), added subsec. (f) and redesignated former subsec. (f) as (g).

2002—Subsec. (e)(1)(B). Pub. L. 107–140 substituted ''section 220506 of title 36'' for ''section 220706 of title 36''.

Subsec. (f). Pub. L. 107–273, §205(e), designated existing provisions as par. (1), substituted ''this title'' for ''title 18'' wherever appearing, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and added par. (2).

1998—Subsec. (e)(1)(B). Pub. L. 105–225, §4(b)(1), as amended by Pub. L. 105–354, §2(c)(1), substituted ''section 220706 of title 36'' for ''section 110 of the Olympic Charter Act''.

Subsec. (e)(2). Pub. L. 105–225, §4(b)(2), as amended by Pub. L. 105–354, §2(c)(1), inserted ''and'' after semicolon at end.

Subsec. (e)(3). Pub. L. 105–225, §4(b)(3), as amended by Pub. L. 105–354, §2(c)(1), substituted a period for ''; and'' at end.

Subsec. (e)(4). Pub. L. 105–225, §4(b)(4), as amended by Pub. L. 105–354, §2(c)(1), struck out par. (4) which read as follows: ''the term 'Olympic Charter Act' means the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 371 et seq.).''

1997—Subsecs. (d) to (f). Pub. L. 105–147 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsec. (e). Pub. L. 104–153 added subsec. (e).

1994—Pub. L. 103–322, §330016(1)(U), which directed the amendment of this section by striking ''not more than $250,000'' and inserting ''under this title'', could not be executed because the phrase ''not more than $250,000'' did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 103–322, §320104(a). See below.

Subsec. (a). Pub. L. 103–322, §320104(a), in first sentence, substituted ''$2,000,000 or imprisoned not more than 10 years'' for ''$250,000 or imprisoned not more than five years'' and ''$5,000,000'' for ''$1,000,000'', and in second sentence, substituted ''$5,000,000 or imprisoned not more than 20 years'' for ''$1,000,000 or imprisoned not more than fifteen years'' and ''$15,000,000'' for ''$5,000,000''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–354, §2(c), Nov. 3, 1998, 112 Stat. 3244, provided that the amendment made by section 2(c) is effective Aug. 12, 1998.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FINDINGS

Pub. L. 109–181, §1(a)(2), Mar. 16, 2006, 120 Stat. 285, provided that: ''The Congress finds that—

''(A) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

''(B) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States $200 billion annually;

''(C) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

''(D) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

''(E) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

''(F) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

''(G) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.''

§ 2321. Trafficking in certain motor vehicles or motor vehicle parts

(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell or otherwise dispose of, a motor vehicle or motor vehicle part, knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the terms ''identification number'' and ''motor vehicle'' have the meaning given those terms in section 511 of this title.

(Added Pub. L. 98–547, title II, §204(a), Oct. 25, 1984, 98 Stat. 2770, §2320; renumbered §2321, Pub. L. 99–646, §42(a), Nov. 10, 1986, 100 Stat. 3601; amended Pub. L. 103–322, title XXXIII, §330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $20,000''.

§ 2322. Chop shops

(a) IN GENERAL.—

(1) UNLAWFUL ACTION.—Any person who knowingly owns, operates, maintains, or con-

trols a chop shop or conducts operations in a chop shop shall be punished by a fine under this title or by imprisonment for not more than 15 years, or both. If a conviction of a person under this paragraph is for a violation committed after the first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to any fine and imprisonment.

(2) INJUNCTIONS.—The Attorney General shall, as appropriate, in the case of any person who violates paragraph (1), commence a civil action for permanent or temporary injunction to restrain such violation.

(b) DEFINITION.—For purposes of this section, the term ''chop shop'' means any building, lot, facility, or other structure or premise where one or more persons engage in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing any passenger motor vehicle or passenger motor vehicle part which has been unlawfully obtained in order to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number or derivative thereof, of such vehicle or vehicle part and to distribute, sell, or dispose of such vehicle or vehicle part in interstate or foreign commerce.

(Added Pub. L. 102–519, title I, § 105(a), Oct. 25, 1992, 106 Stat. 3385.)

CHAPTER 113A—TELEMARKETING FRAUD

Sec.
2325. Definition.
2326. Enhanced penalties.
2327. Mandatory restitution.

PRIOR PROVISIONS

A prior chapter 113A of part I of this title, consisting of section 2331 et seq. and relating to terrorism, was renumbered chapter 113B of part I of this title by Pub. L. 103–322, title XXV, § 250002(a)(1), Sept. 13, 1994, 108 Stat. 2082.

§ 2325. Definition

In this chapter, ''telemarketing''—

(1) means a plan, program, promotion, or campaign that is conducted to induce—

(A) purchases of goods or services;

(B) participation in a contest or sweepstakes; or

(C) a charitable contribution, donation, or gift of money or any other thing of value,

by use of 1 or more interstate telephone calls initiated either by a person who is conducting the plan, program, promotion, or campaign or by a prospective purchaser or contest or sweepstakes participant or charitable contributor, or donor; but

(2) does not include the solicitation of sales through the mailing of a catalog that—

(A) contains a written description or illustration of the goods or services offered for sale;

(B) includes the business address of the seller;

(C) includes multiple pages of written material or illustration; and

(D) has been issued not less frequently than once a year,

if the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders without further solicitation.

(Added Pub. L. 103–322, title XXV, § 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 107–56, title X, § 1011(d), Oct. 26, 2001, 115 Stat. 396.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–56 added subpar. (C) and inserted ''or charitable contributor, or donor'' before semicolon in concluding provisions.

SHORT TITLE

Section 250001 of title XXV of Pub. L. 103–322 provided that: ''This Act [probably should be ''title'', meaning title XXV (§§ 250001–250008) of Pub. L. 103–322, which enacted this chapter, amended sections 1029, 1341, and 3059 of this title, and enacted provisions set out as notes under this section and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Senior Citizens Against Marketing Scams Act of 1994'.''

INFORMATION NETWORK

Section 250008 of title XXV of Pub. L. 103–322, as amended by Pub. L. 104–294, title VI, § 604(b)(29), Oct. 11, 1996, 110 Stat. 3508, provided that:

''(a) HOTLINE.—The Attorney General shall, subject to the availability of appropriations, establish a national toll-free hotline for the purpose of—

''(1) providing general information on telemarketing fraud to interested persons; and

''(2) gathering information related to possible violations of provisions of law amended by this title [see Short Title note above].

''(b) ACTION ON INFORMATION GATHERED.—The Attorney General shall work in cooperation with the Federal Trade Commission to ensure that information gathered through the hotline shall be acted on in an appropriate manner.''

§ 2326. Enhanced penalties

A person who is convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or a conspiracy to commit such an offense, in connection with the conduct of telemarketing—

(1) shall be imprisoned for a term of up to 5 years in addition to any term of imprisonment imposed under any of those sections, respectively; and

(2) in the case of an offense under any of those sections that—

(A) victimized ten or more persons over the age of 55; or

(B) targeted persons over the age of 55,

shall be imprisoned for a term of up to 10 years in addition to any term of imprisonment imposed under any of those sections, respectively.

(Added Pub. L. 103–322, title XXV, § 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 105–184, §§ 3, 4, June 23, 1998, 112 Stat. 520.)

AMENDMENTS

1998—Pub. L. 105–184 inserted '', or a conspiracy to commit such an offense,'' after ''or 1344'' in introductory provisions and substituted ''shall'' for ''may'' in two places.

§ 2327. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or

criminal penalty authorized by law, the court shall order restitution to all victims of any offense for which an enhanced penalty is provided under section 2326.

(b) SCOPE AND NATURE OF ORDER.—

(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) DEFINITION.—For purposes of this subsection, the term ''full amount of the victim's losses'' means all losses suffered by the victim as a proximate result of the offense.

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) VICTIM DEFINED.—In this section, the term ''victim'' has the meaning given that term in section 3663A(a)(2).

(Added Pub. L. 103–322, title XXV, § 250002(a)(2), Sept. 13, 1994, 108 Stat. 2082; amended Pub. L. 104–132, title II, § 205(e), Apr. 24, 1996, 110 Stat. 1232; Pub. L. 104–294, title VI, § 601(n), Oct. 11, 1996, 110 Stat. 3502; Pub. L. 105–184, § 5, June 23, 1998, 112 Stat. 520.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–184, § 5(1), substituted ''to all victims of any offense for which an enhanced penalty is provided under section 2326'' for ''for any offense under this chapter''.

Subsec. (c). Pub. L. 105–184, § 5(2), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) DEFINITION.—For purposes of this section, the term 'victim' includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.''

1996—Subsec. (a). Pub. L. 104–132, § 205(e)(1), inserted ''or 3663A'' after ''3663''.

Subsec. (b)(1). Pub. L. 104–132, § 205(e)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The order of restitution under this section shall direct that—

''(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

''(B) the United States Attorney enforce the restitution order by all available and reasonable means.''

Subsec. (b)(2). Pub. L. 104–132, § 205(e)(2)(B), struck out ''by victim'' after ''Enforcement'' in heading and amended text generally. Prior to amendment, text read as follows: ''An order of restitution may be enforced by a victim named in the order to receive the restitution as well as by the United States Attorney, in the same manner as a judgment in a civil action.''

Subsec. (b)(4)(C), (D). Pub. L. 104–132, § 205(e)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, § 205(e)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–294, which directed substitution of ''designee'' for ''delegee'' wherever appearing, could not be executed because of amendment by Pub. L. 104–132, § 205(e)(3), (4). See below.

Pub. L. 104–132, § 205(e)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104–132, § 205(e)(3), struck out subsecs. (d) and (e) which read as follows:

''(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

''(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.''

Subsec. (f). Pub. L. 104–132, § 205(e)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

CHAPTER 113B—TERRORISM

Sec.
2331. Definitions.
2332. Criminal penalties.
2332a. Use of weapons of mass destruction.
2332b. Acts of terrorism transcending national boundaries.
[2332c. Repealed.]
2332d. Financial transactions.
2332e. Requests for military assistance to enforce prohibition in certain emergencies.
2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.
2332g. Missile systems designed to destroy aircraft.
2332h. Radiological dispersal devices.
2333. Civil remedies.
2334. Jurisdiction and venue.
2335. Limitation of actions.
2336. Other limitations.
2337. Suits against Government officials.
2338. Exclusive Federal jurisdiction.
2339. Harboring or concealing terrorists.
2339A. Providing material support to terrorists.
2339B. Providing material support or resources to designated foreign terrorist organizations.
2339C. Prohibitions against the financing of terrorism.
2339D. Receiving military-type training from a foreign terrorist organization.[1]

CODIFICATION

Pub. L. 101–519, § 132, Nov. 5, 1990, 104 Stat. 2250, known as the ''Antiterrorism Act of 1990'', amended

[1] Editorially supplied. Section 2339D added by Pub. L. 108–458 without corresponding amendment of chapter analysis.

this chapter by adding sections 2331 and 2333 to 2338 and by amending former section 2331 and renumbering it as section 2332. Pub. L. 102–27, title IV, § 402, Apr. 10, 1991, 105 Stat. 155, as amended by Pub. L. 102–136, § 126, Oct. 25, 1991, 105 Stat. 643, repealed section 132 of Pub. L. 101–519, effective Nov. 5, 1990, and provided that effective Nov. 5, 1990, this chapter is amended to read as if section 132 of Pub. L. 101–519 had not been enacted.

PRIOR PROVISIONS

Another chapter 113B, consisting of sections 2340 to 2340B, was renumbered chapter 113C.

AMENDMENTS

2004—Pub. L. 108–458, title VI, § 6911(a), Dec. 17, 2004, 118 Stat. 3775, added items 2332g and 2332h.

2002—Pub. L. 107–197, title I, § 102(b), title II, § 202(b), June 25, 2002, 116 Stat. 724, 727, added items 2332f and 2339C.

2001—Pub. L. 107–56, title VIII, § 803(b), Oct. 26, 2001, 115 Stat. 377, added item 2339.

1998—Pub. L. 105–277, div. I, title II, § 201(c)(2), Oct. 21, 1998, 112 Stat. 2681–871, struck out item 2332c ''Use of chemical weapons''.

1996—Pub. L. 104–294, title VI, § 605(q), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2332d, relating to requests for military assistance to enforce prohibition in certain emergencies, as item 2332e, and moved the item to follow item 2332d, relating to financial transactions.

Pub. L. 104–294, title VI, § 604(b)(5), Oct. 11, 1996, 110 Stat. 3506, amended directory language of Pub. L. 103–322, title XII, § 120005(b), Sept. 13, 1994, 108 Stat. 2023. See 1994 Amendment note below.

Pub. L. 104–201, div. A, title XIV, § 1416(c)(2)(B), Sept. 23, 1996, 110 Stat. 2723, which directed amendment of table of sections at beginning of the chapter 133B of this title, that relates to terrorism, by adding item 2332d relating to requests for military assistance to enforce prohibition in certain emergencies, after item 2332c, was executed by making the addition after item 2332c in the table of sections at the beginning of this chapter to reflect the probable intent of Congress. This title does not contain a chapter 133B.

Pub. L. 104–132, title III, §§ 303(b), 321(b), title V, § 521(c), title VII, § 702(b), Apr. 24, 1996, 110 Stat. 1253, 1254, 1287, 1294, added items 2332b to 2332d and 2339B.

1994—Pub. L. 103–322, title XII, § 120005(b), Sept. 13, 1994, 108 Stat. 2023, as amended by Pub. L. 104–294, title VI, § 604(b)(5), Oct. 11, 1996, 110 Stat. 3506, added item 2339A.

Pub. L. 103–322, title VI, § 60023(b), title XXV, § 250002(a)(1), (b)(2), Sept. 13, 1994, 108 Stat. 1981, 2082, 2085, renumbered chapter 113A as 113B, amended chapter heading generally, substituting ''113B'' for ''113A'', and added item 2332a.

1992—Pub. L. 102–572, title X, § 1003(a)(5), Oct. 29, 1992, 106 Stat. 4524, substituted ''TERRORISM'' for ''EXTRATERRITORIAL JURISDICTION OVER TERRORIST ACTS ABROAD AGAINST UNITED STATES NATIONALS'' in chapter heading and amended chapter analysis generally, substituting ''Definitions'' for ''Terrorist acts abroad against United States nationals'' in item 2331 and adding items 2332 to 2338.

1988—Pub. L. 100–690, title VII, § 7062, Nov. 18, 1988, 102 Stat. 4404, added item 2331.

§ 2331. Definitions

As used in this chapter—

(1) the term ''international terrorism'' means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

(2) the term ''national of the United States'' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

(3) the term ''person'' means any individual or entity capable of holding a legal or beneficial interest in property;

(4) the term ''act of war'' means any act occurring in the course of—

(A) declared war;

(B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin; and

(5) the term ''domestic terrorism'' means activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

(Added Pub. L. 102–572, title X, § 1003(a)(3), Oct. 29, 1992, 106 Stat. 4521; amended Pub. L. 107–56, title VIII, § 802(a), Oct. 26, 2001, 115 Stat. 376.)

REFERENCES IN TEXT

Section 101(a)(22) of the Immigration and Nationality Act, referred to in par. (2), is classified to section 1101(a)(22) of Title 8, Aliens and Nationality.

PRIOR PROVISIONS

A prior section 2331 was renumbered 2332 of this title.

AMENDMENTS

2001—Par. (1)(B)(iii). Pub. L. 107–56, § 802(a)(1), substituted ''by mass destruction, assassination, or kidnapping'' for ''by assassination or kidnapping''.

Par. (5). Pub. L. 107–56, § 802(a)(2)–(4), added par. (5).

EFFECTIVE DATE

Section 1003(c) of Pub. L. 102–572 provided that: ''This section [enacting this section and sections 2333 to 2338 of this title, amending former section 2331 of this title, and renumbering former section 2331 of this title as 2332] and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act [Oct. 29, 1992].''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6601, Dec. 17, 2004, 118 Stat. 3761, provided that: ''This subtitle [subtitle G (§§ 6601–6604) of title VI of Pub. L. 108–458, enacting section 2339D of this title, amending sections 2332b and 2339A to 2339C of this title, and enacting provisions set out as a note under section 2332b of this title] may be cited as the 'Material Support to Terrorism Prohibition Enhancement Act of 2004'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–197, title I, § 101, June 25, 2002, 116 Stat. 721, provided that: ''This title [enacting section 2332f of this title and provisions set out as notes under section 2332f of this title] may be cited as the 'Terrorist Bombings Convention Implementation Act of 2002'.''

Pub. L. 107–197, title II, § 201, June 25, 2002, 116 Stat. 724, provided that: ''This title [enacting section 2339C of this title and provisions set out as notes under section 2339C of this title] may be cited as the 'Suppression of the Financing of Terrorism Convention Implementation Act of 2002'.''

§ 2332. Criminal penalties

(a) HOMICIDE.—Whoever kills a national of the United States, while such national is outside the United States, shall—

(1) if the killing is murder (as defined in section 1111(a)), be fined under this title, punished by death or imprisonment for any term of years or for life, or both;

(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and

(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

(b) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.—Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall—

(1) in the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and

(2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

(c) OTHER CONDUCT.—Whoever outside the United States engages in physical violence—

(1) with intent to cause serious bodily injury to a national of the United States; or

(2) with the result that serious bodily injury is caused to a national of the United States;

shall be fined under this title or imprisoned not more than ten years, or both.

(d) LIMITATION ON PROSECUTION.—No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

(Added Pub. L. 99–399, title XII, § 1202(a), Aug. 27, 1986, 100 Stat. 896, § 2331; amended Pub. L. 101–519, § 132(b), Nov. 5, 1990, 104 Stat. 2250; Pub. L. 102–27, title IV, § 402, Apr. 10, 1991, 105 Stat. 155; Pub. L. 102–136, § 126, Oct. 25, 1991, 105 Stat. 643; renumbered § 2332 and amended Pub. L. 102–572, title X, § 1003(a)(1), (2), Oct. 29, 1992, 106 Stat. 4521; Pub. L. 103–322, title VI, § 60022, Sept. 13, 1994, 108 Stat. 1980; Pub. L. 104–132, title VII, § 705(a)(6), Apr. 24, 1996, 110 Stat. 1295.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–132 substituted ''ten years'' for ''five years'' in concluding provisions.

1994—Subsec. (a)(1). Pub. L. 103–322 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;''.

1992—Pub. L. 102–572 renumbered section 2331 of this title as this section, substituted ''Criminal penalties'' for ''Terrorist acts abroad against United States national'' in section catchline, redesignated subsec. (e) as (d), and struck out former subsec. (d) which read as follows: ''DEFINITION.—As used in this section the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''

1991—Pub. L. 102–27, § 402, as amended by Pub. L. 102–136, § 126, repealed Pub. L. 101–519, § 132, and amended this section to read as if Pub. L. 101–519, § 132, had not been enacted, effective as of Nov. 5, 1990, the date of enactment of Pub. L. 101–519. See Codification note preceding this section.

1990—Pub. L. 101–519, § 132, which amended this section, was repealed by Pub. L. 102–27, § 402, as amended. See 1991 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as an Effective Date note under section 2331 of this title.

§ 2332a. Use of weapons of mass destruction

(a) OFFENSE AGAINST A NATIONAL OF THE UNITED STATES OR WITHIN THE UNITED STATES.—A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction—

(1) against a national of the United States while such national is outside of the United States;

(2) against any person or property within the United States, and

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;

(3) against any property that is owned, leased or used by the United States or by any

department or agency of the United States, whether the property is within or outside of the United States; or

(4) against any property within the United States that is owned, leased, or used by a foreign government,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

(b) OFFENSE BY NATIONAL OF THE UNITED STATES OUTSIDE OF THE UNITED STATES.—Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''national of the United States'' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(2) the term ''weapon of mass destruction'' means—

(A) any destructive device as defined in section 921 of this title;

(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(C) any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of this title); or

(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; and

(3) the term ''property'' includes all real and personal property.

(Added Pub. L. 103–322, title VI, § 60023(a), Sept. 13, 1994, 108 Stat. 1980; amended Pub. L. 104–132, title V, § 511(c), title VII, § 725, Apr. 24, 1996, 110 Stat. 1284, 1300; Pub. L. 104–294, title VI, § 605(m), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105–277, div. I, title II, § 201(b)(1), Oct. 21, 1998, 112 Stat. 2681–871; Pub. L. 107–188, title II, § 231(d), June 12, 2002, 116 Stat. 661; Pub. L. 108–458, title VI, § 6802(a), (b), Dec. 17, 2004, 118 Stat. 3766, 3767.)

AMENDMENTS

2004—Pub. L. 108–458, § 6802(b)(1), struck out ''certain'' before ''weapons'' in section catchline.

Subsec. (a). Pub. L. 108–458, § 6802(b)(2), struck out ''(other than a chemical weapon as that term is defined in section 229F)'' after ''mass destruction'' in introductory provisions.

Subsec. (a)(2). Pub. L. 108–458, § 6802(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce; or''.

Subsec. (a)(4). Pub. L. 108–458, § 6802(a)(2), (3), added par. (4).

Subsec. (b). Pub. L. 108–458, § 6802(b)(3), struck out ''(other than a chemical weapon (as that term is defined in section 229F))'' after ''mass destruction''.

Subsec. (c)(3). Pub. L. 108–458, § 6802(a)(4)–(6), added par. (3).

2002—Subsec. (a). Pub. L. 107–188, § 231(d)(1), substituted ''section 229F)—'' for ''section 229F), including any biological agent, toxin, or vector (as those terms are defined in section 178)—'' in introductory provisions.

Subsec. (c)(2)(C). Pub. L. 107–188, § 231(d)(2), substituted ''a biological agent, toxin, or vector (as those terms are defined in section 178 of this title)'' for ''a disease organism''.

1998—Pub. L. 105–277, § 201(b)(1)(A), inserted ''certain'' before ''weapons'' in section catchline.

Subsec. (a). Pub. L. 105–277, § 201(b)(1)(B), inserted ''(other than a chemical weapon as that term is defined in section 229F)'' after ''weapon of mass destruction'' in introductory provisions.

Subsec. (b). Pub. L. 105–277, § 201(b)(1)(C), inserted ''(other than a chemical weapon (as that term is defined in section 229F))'' after ''weapon of mass destruction''.

1996—Subsec. (a). Pub. L. 104–132, §§ 511(c), 725(1)(A), (B), in heading, inserted ''AGAINST A NATIONAL OF THE UNITED STATES OR WITHIN THE UNITED STATES'' after ''OFFENSE'', and in introductory provisions, substituted '', without lawful authority, uses, threatens, or attempts'' for ''uses, or attempts'' and inserted '', including any biological agent, toxin, or vector (as those terms are defined in section 178)'' after ''mass destruction''.

Subsec. (a)(2). Pub. L. 104–132, § 725(1)(C), inserted before semicolon at end '', and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce''.

Subsec. (b). Pub. L. 104–132, § 725(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (b)(2)(B). Pub. L. 104–132, § 725(2), as amended by Pub. L. 104–294, § 605(m), added subpar. (B) and struck out former subpar. (B) which read as follows: ''poison gas;''.

Subsec. (c). Pub. L. 104–132, § 725(3), redesignated subsec. (b) as (c).

§ 2332b. Acts of terrorism transcending national boundaries

(a) PROHIBITED ACTS.—

(1) OFFENSES.—Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)—

(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or

(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States;

in violation of the laws of any State, or the United States, shall be punished as prescribed in subsection (c).

(2) TREATMENT OF THREATS, ATTEMPTS AND CONSPIRACIES.—Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished under subsection (c).

(b) JURISDICTIONAL BASES.—

(1) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are—

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

(B) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

(C) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

(D) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, or leased to the United States, or any department or agency of the United States;

(E) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

(F) the offense is committed within the special maritime and territorial jurisdiction of the United States.

(2) CO-CONSPIRATORS AND ACCESSORIES AFTER THE FACT.—Jurisdiction shall exist over all principals and co-conspirators of an offense under this section, and accessories after the fact to any offense under this section, if at least one of the circumstances described in subparagraphs (A) through (F) of paragraph (1) is applicable to at least one offender.

(c) PENALTIES.—

(1) PENALTIES.—Whoever violates this section shall be punished—

(A) for a killing, or if death results to any person from any other conduct prohibited by this section, by death, or by imprisonment for any term of years or for life;

(B) for kidnapping, by imprisonment for any term of years or for life;

(C) for maiming, by imprisonment for not more than 35 years;

(D) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;

(E) for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;

(F) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

(G) for threatening to commit an offense under this section, by imprisonment for not more than 10 years.

(2) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

(d) PROOF REQUIREMENTS.—The following shall apply to prosecutions under this section:

(1) KNOWLEDGE.—The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

(2) STATE LAW.—In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

(e) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction—

(1) over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and

(2) over conduct which, under section 3, renders any person an accessory after the fact to an offense under subsection (a).

(f) INVESTIGATIVE AUTHORITY.—In addition to any other investigative authority with respect to violations of this title, the Attorney General shall have primary investigative responsibility for all Federal crimes of terrorism, and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title, and the Secretary of the Treasury shall assist the Attorney General at the request of the Attorney General. Nothing in this section shall be construed to interfere with the authority of the United States Secret Service under section 3056.

(g) DEFINITIONS.—As used in this section—

(1) the term ''conduct transcending national boundaries'' means conduct occurring outside of the United States in addition to the conduct occurring in the United States;

(2) the term ''facility of interstate or foreign commerce'' has the meaning given that term in section 1958(b)(2);

(3) the term ''serious bodily injury'' has the meaning given that term in section 1365(g)(3);[1]

(4) the term ''territorial sea of the United States'' means all waters extending seaward to 12 nautical miles from the baselines of the United States, determined in accordance with international law; and

(5) the term ''Federal crime of terrorism'' means an offense that—

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of—

(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 175c (relating to variola virus), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)[2] 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to national defense material, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2332f (relating to bombing of public places and facilities), 2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), 2339C (relating to financing of terrorism), 2339D (relating to military-type training from a foreign terrorist organization), or 2340A (relating to torture) of this title;

(ii) sections 92 (relating to prohibitions governing atomic weapons) or 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2122 or 2284);

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49; or

(iv) section 1010A of the Controlled Substances Import and Export Act (relating to narco-terrorism).

(Added Pub. L. 104–132, title VII, § 702(a), Apr. 24, 1996, 110 Stat. 1291; amended Pub. L. 104–294, title VI, § 601(s)(1), (3), Oct. 11, 1996, 110 Stat. 3502; Pub. L. 107–56, title VIII, § 808, Oct. 26, 2001, 115 Stat. 378; Pub. L. 107–197, title III, § 301(b), June 25, 2002, 116 Stat. 728; Pub. L. 108–458, title VI, §§ 6603(a)(1), 6803(c)(3), 6908, Dec. 17, 2004, 118 Stat. 3762, 3769, 3774; Pub. L. 109–177, title I, §§ 110(b)(3)(A), 112, Mar. 9, 2006, 120 Stat. 208, 209.)

REFERENCES IN TEXT

Section 1365(g)(3), referred to in subsec. (g)(3), was redesignated section 1365(h)(3) by Pub. L. 107–307, § 2(1), Dec. 2, 2002, 116 Stat. 2445.

Section 1010A of the Controlled Substances Import and Export Act, referred to in subsec. (g)(5)(B)(iv), is classified to section 960a of Title 21, Food and Drugs.

AMENDMENTS

2006—Subsec. (g)(5)(B)(i). Pub. L. 109–177, §§ 110(b)(3)(A), 112(a)(1), (b), substituted ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),'' for ''1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),'' and ''terrorism), 2339D (relating to military-type training from a foreign terrorist organization), or 2340A'' for ''terrorism, or 2340A''.

Subsec. (g)(5)(B)(iv). Pub. L. 109–177, § 112(a)(2)–(4), added cl. (iv).

2004—Subsec. (g)(5)(B)(i). Pub. L. 108–458, § 6908(1), inserted ''175c (relating to variola virus),'' after ''175 or 175b (relating to biological weapons),'' and ''2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices),'' before ''2339 (relating to harboring terrorists)''.

Pub. L. 108–458, § 6803(c)(3), inserted ''832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)'' after ''831 (relating to nuclear materials),''.

Pub. L. 108–458, § 6603(a)(1), inserted ''1361 (relating to government property or contracts),'' after ''1203 (relating to hostage taking),'' and ''2156 (relating to national defense material, premises, or utilities),'' after ''2155 (relating to destruction of national defense materials, premises, or utilities),''.

Subsec. (g)(5)(B)(ii). Pub. L. 108–458, § 6908(2), substituted ''sections 92 (relating to prohibitions governing atomic weapons) or'' for ''section'' and inserted ''2122 or'' before ''2284''.

2002—Subsec. (g)(5)(B)(i). Pub. L. 107–197 inserted ''2332f (relating to bombing of public places and facilities),'' after ''2332b (relating to acts of terrorism transcending national boundaries),'' and ''2339C (relating to financing of terrorism,'' after ''2339B (relating to providing material support to terrorist organizations),''.

2001—Subsec. (f). Pub. L. 107–56, § 808(1), inserted ''and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title,'' before ''and the Secretary''.

Subsec. (g)(5)(B)(i) to (iii). Pub. L. 107–56, § 808(2), added cls. (i) to (iii) and struck out former cls. (i) to (iii), inserting references to sections 175b, 229, 1030, 1993, and 2339 of this title and striking out references to 1361, 2152, 2156, 2332c of this title in cl. (i) and inserting references to sections 46504, 46505, and 46506 of title 49 in cl. (iii).

1996—Subsec. (b)(1)(A). Pub. L. 104–294, § 601(s)(1), struck out ''any of the offenders uses'' before ''the mail or any facility'' and inserted ''is used'' after ''foreign commerce''.

Subsec. (g)(5)(B)(i). Pub. L. 104–294, § 601(s)(3), inserted ''930(c),'' before ''956 (relating to conspiracy to injure property of a foreign government)'', ''1992,'' before ''2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas)'', and ''2332c,'' before ''2339A (relating to providing material support to terrorists)''.

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6603(g), Dec. 17, 2004, 118 Stat. 3764, which provided that section 6603 of Pub. L. 108–458 (amending this section and sections 2339A and 2339B of this title) and the amendments made by section 6603 would cease to be effective on Dec. 31, 2006, with certain exceptions, was repealed by Pub. L. 109–177, title I, § 104, Mar. 9, 2006, 120 Stat. 195.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

[§ 2332c. Repealed. Pub. L. 105–277, div. I, title II, § 201(c)(1), Oct. 21, 1998, 112 Stat. 2681–871]

Section, added Pub. L. 104–132, title V, § 521(a), Apr. 24, 1996, 110 Stat. 1286, related to use of chemical weapons.

§ 2332d. Financial transactions

(a) OFFENSE.—Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

(b) DEFINITIONS.—As used in this section—

(1) the term ''financial transaction'' has the same meaning as in section 1956(c)(4); and

(2) the term ''United States person'' means any—

(A) United States citizen or national;

(B) permanent resident alien;

(C) juridical person organized under the laws of the United States; or

(D) any person in the United States.

(Added Pub. L. 104–132, title III, § 321(a), Apr. 24, 1996, 110 Stat. 1254; amended Pub. L. 107–273, div. B, title IV, § 4002(a)(5), Nov. 2, 2002, 116 Stat. 1806.)

CODIFICATION

Another section 2332d was renumbered section 2332e of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273 inserted ''of 1979'' after ''Export Administration Act''.

EFFECTIVE DATE

Section 321(c) of Pub. L. 104–132 provided that: ''The amendments made by this section [enacting this section] shall become effective 120 days after the date of enactment of this Act [Apr. 24, 1996].''

§ 2332e. Requests for military assistance to enforce prohibition in certain emergencies

The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 2332a of this title during an emergency situation involving a weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

(Added Pub. L. 104–201, title XIV, § 1416(c)(2)(A), Sept. 23, 1996, 110 Stat. 2723, § 2332d; renumbered § 2332e, Pub. L. 104–294, title VI, § 605(q), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 107–56, title I, § 104, Oct. 26, 2001, 115 Stat. 277.)

CODIFICATION

Pub. L. 104–201, § 1416(c)(2)(A), which directed amendment of the chapter 133B of this title that relates to terrorism by adding this section, was executed by adding this section to this chapter to reflect the probable intent of Congress. This title does not contain a chapter 133B.

AMENDMENTS

2001—Pub. L. 107–56 substituted ''2332a of this title'' for ''2332c of this title'' and struck out ''chemical'' before ''weapon of''.

1996—Pub. L. 104–294 renumbered section 2332d of this title, relating to requests for military assistance to enforce prohibition in certain emergencies, as this section.

§ 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

(a) OFFENSES.—

(1) IN GENERAL.—Whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility—

(A) with the intent to cause death or serious bodily injury, or

(B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss,

shall be punished as prescribed in subsection (c).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

(1) the offense takes place in the United States and—

(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

(C) at the time the offense is committed, it is committed—

(i) on board a vessel flying the flag of another state;

(ii) on board an aircraft which is registered under the laws of another state; or

(iii) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) a perpetrator is a national of another state or a stateless person; or

(F) a victim is a national of another state or a stateless person;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a victim is a national of the United States;

(C) a perpetrator is found in the United States;

(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

(G) the offense is committed on board an aircraft which is operated by the United States.

(c) PENALTIES.—Whoever violates this section shall be punished as provided under section 2332a(a) of this title.

(d) EXEMPTIONS TO JURISDICTION.—This section does not apply to—

(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

(2) activities undertaken by military forces of a state in the exercise of their official duties; or

(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

(e) DEFINITIONS.—As used in this section, the term—

(1) ''serious bodily injury'' has the meaning given that term in section 1365(g)(3) of this title;[1]

(2) ''national of the United States'' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(3) ''state or government facility'' includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of Government, the legislature or the judiciary or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

(4) ''intergovernmental organization'' includes international organization (as defined in section 1116(b)(5) of this title);

(5) ''infrastructure facility'' means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications;

(6) ''place of public use'' means those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public, whether continuously, periodically, or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public;

(7) ''public transportation system'' means all facilities, conveyances, and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

(8) ''explosive'' has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage;

(9) ''other lethal device'' means any weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents, or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

(10) ''military forces of a state'' means the armed forces of a state which are organized, trained, and equipped under its internal law for the primary purpose of national defense or security, and persons acting in support of those armed forces who are under their formal command, control, and responsibility;

(11) ''armed conflict'' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature; and

(12) ''state'' has the same meaning as that term has under international law, and includes all political subdivisions thereof.

(Added Pub. L. 107–197, title I, § 102(a), June 25, 2002, 116 Stat. 721.)

REFERENCES IN TEXT

Section 1365(g)(3), referred to in subsec. (e)(1), was redesignated section 1365(h)(3) by Pub. L. 107–307, § 2(1), Dec. 2, 2002, 116 Stat. 2445.

EFFECTIVE DATE

Pub. L. 107–197, title I, § 103, June 25, 2002, 116 Stat. 724, provided that: ''Section 102 [enacting this section

[1] See References in Text note below.

and provisions set out as a note below] shall take effect on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States [July 26, 2002].''

DISCLAIMER

Pub. L. 107–197, title I, § 102(c), June 25, 2002, 116 Stat. 724, provided that: ''Nothing contained in this section [enacting this section and provisions set out as a note above] is intended to affect the applicability of any other Federal or State law which might pertain to the underlying conduct.''

§ 2332g. Missile systems designed to destroy aircraft

(a) UNLAWFUL CONDUCT.—

(1) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

(ii) otherwise direct or guide the rocket or missile to an aircraft;

(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

(2) NONWEAPON.—Paragraph (1)(A) does not apply to any device that is neither designed nor redesigned for use as a weapon.

(3) EXCLUDED CONDUCT.—This subsection does not apply with respect to—

(A) conduct by or under the authority of the United States or any department or agency thereof or of a State or any department or agency thereof; or

(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof or with a State or any department or agency thereof.

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

(d) DEFINITION.—As used in this section, the term ''aircraft'' has the definition set forth in section 40102(a)(6) of title 49, United States Code.

(Added Pub. L. 108–458, title VI, § 6903, Dec. 17, 2004, 118 Stat. 3770.)

§ 2332h. Radiological dispersal devices

(a) UNLAWFUL CONDUCT.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

(2) EXCEPTION.—This subsection does not apply with respect to—

(A) conduct by or under the authority of the United States or any department or agency thereof; or

(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce;

(2) the offense occurs outside of the United States and is committed by a national of the United States;

(3) the offense is committed against a national of the United States while the national is outside the United States;

(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(5) an offender aids or abets any person over whom jurisdiction exists under this subsection

in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

(c) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.

(Added Pub. L. 108–458, title VI, § 6905, Dec. 17, 2004, 118 Stat. 3772.)

§ 2333. Civil remedies

(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 46314, 46502, 46505, or 46506 of title 49 shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4522; amended Pub. L. 103–429, § 2(1), Oct. 31, 1994, 108 Stat. 4377.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–429 substituted ''section 46314, 46502, 46505, or 46506 of title 49'' for ''section 902(i), (k), (*l*), (n), or (r) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(i), (k), (*l*), (n), or (r))''.

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2334. Jurisdiction and venue

(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

(2) that foreign court is significantly more convenient and appropriate; and

(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4522.)

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2335. Limitation of actions

(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years after the date the cause of action accrued.

(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or of any concealment of the defendant's whereabouts, shall not be included in the 4-year period set forth in subsection (a).

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4523.)

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2336. Other limitations

(a) ACTS OF WAR.—No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

(b) LIMITATION ON DISCOVERY.—If a party to an action under section 2333 seeks to discover the

investigative files of the Department of Justice, the Assistant Attorney General, Deputy Attorney General, or Attorney General may object on the ground that compliance will interfere with a criminal investigation or prosecution of the incident, or a national security operation related to the incident, which is the subject of the civil litigation. The court shall evaluate any such objections in camera and shall stay the discovery if the court finds that granting the discovery request will substantially interfere with a criminal investigation or prosecution of the incident or a national security operation related to the incident. The court shall consider the likelihood of criminal prosecution by the Government and other factors it deems to be appropriate. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. If the court grants a stay of discovery under this subsection, it may stay the action in the interests of justice.

(c) STAY OF ACTION FOR CIVIL REMEDIES.—(1) The Attorney General may intervene in any civil action brought under section 2333 for the purpose of seeking a stay of the civil action. A stay shall be granted if the court finds that the continuation of the civil action will substantially interfere with a criminal prosecution which involves the same subject matter and in which an indictment has been returned, or interfere with national security operations related to the terrorist incident that is the subject of the civil action. A stay may be granted for up to 6 months. The Attorney General may petition the court for an extension of the stay for additional 6-month periods until the criminal prosecution is completed or dismissed.

(2) In a proceeding under this subsection, the Attorney General may request that any order issued by the court for release to the parties and the public omit any reference to the basis on which the stay was sought.

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4523.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2337. Suits against Government officials

No action shall be maintained under section 2333 of this title against—

(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his or her official capacity or under color of legal authority; or

(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4523.)

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2338. Exclusive Federal jurisdiction

The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.

(Added Pub. L. 102–572, title X, § 1003(a)(4), Oct. 29, 1992, 106 Stat. 4524.)

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102–572, set out as a note under section 2331 of this title.

§ 2339. Harboring or concealing terrorists

(a) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe, has committed, or is about to commit, an offense under section 32 (relating to destruction of aircraft or aircraft facilities), section 175 (relating to biological weapons), section 229 (relating to chemical weapons), section 831 (relating to nuclear materials), paragraph (2) or (3) of section 844(f) (relating to arson and bombing of government property risking or causing injury or death), section 1366(a) (relating to the destruction of an energy facility), section 2280 (relating to violence against maritime navigation), section 2332a (relating to weapons of mass destruction), or section 2332b (relating to acts of terrorism transcending national boundaries) of this title, section 236(a) (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)), or section 46502 (relating to aircraft piracy) of title 49, shall be fined under this title or imprisoned not more than ten years, or both.

(b) A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(Added Pub. L. 107–56, title VIII, § 803(a), Oct. 26, 2001, 115 Stat. 376; amended Pub. L. 107–273, div. B, title IV, § 4005(d)(2), Nov. 2, 2002, 116 Stat. 1813.)

AMENDMENTS

2002—Pub. L. 107–273 made technical correction to directory language of Pub. L. 107–56, § 803(a), which enacted this section.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(d)(2), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(d)(2) is effective Oct. 26, 2001.

§ 2339A. Providing material support to terrorists

(a) OFFENSE.—Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956,

1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(b) DEFINITIONS.—As used in this section—

(1) the term ''material support or resources'' means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

(2) the term ''training'' means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

(3) the term ''expert advice or assistance'' means advice or assistance derived from scientific, technical or other specialized knowledge.

(Added Pub. L. 103–322, title XII, § 120005(a), Sept. 13, 1994, 108 Stat. 2022; amended Pub. L. 104–132, title III, § 323, Apr. 24, 1996, 110 Stat. 1255; Pub. L. 104–294, title VI, §§ 601(b)(2), (s)(2), (3), 604(b)(5), Oct. 11, 1996, 110 Stat. 3498, 3502, 3506; Pub. L. 107–56, title VIII, §§ 805(a), 810(c), 811(f), Oct. 26, 2001, 115 Stat. 377, 380, 381; Pub. L. 107–197, title III, § 301(c), June 25, 2002, 116 Stat. 728; Pub. L. 107–273, div. B, title IV, § 4002(a)(7), (c)(1), (e)(11), Nov. 2, 2002, 116 Stat. 1807, 1808, 1811; Pub. L. 108–458, title VI, § 6603(a)(2), (b), Dec. 17, 2004, 118 Stat. 3762; Pub. L. 109–177, title I, § 110(b)(3)(B), Mar. 9, 2006, 120 Stat. 208.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 struck out ''1993,'' after ''1992,''.

2004—Subsec. (a). Pub. L. 108–458, § 6603(a)(2)(B), which directed amendment of this section by inserting ''or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B)'' after ''section 60123(b) of title 49,'', was executed by making the insertion in subsec. (a) after ''section 46502 or 60123(b) of title 49,'' to reflect the probable intent of Congress.

Pub. L. 108–458, § 6603(a)(2)(A), struck out ''or'' before ''section 46502''.

Subsec. (b). Pub. L. 108–458, § 6603(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In this section, the term 'material support or resources' means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.''

2002—Subsec. (a). Pub. L. 107–273, § 4002(a)(7), (e)(11), struck out ''2332c,'' after ''2332b,'' and substituted ''of an escape'' for ''or an escape''.

Pub. L. 107–197 inserted ''2332f,'' before ''or 2340A''.

Subsec. (b). Pub. L. 107–273, § 4002(c)(1), repealed amendment by Pub. L. 104–294, § 601(b)(2). See 1996 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, § 811(f), inserted ''or attempts or conspires to do such an act,'' before ''shall be fined''.

Pub. L. 107–56, § 810(c)(1), substituted ''15 years'' for ''10 years''.

Pub. L. 107–56, § 810(c)(2), which directed substitution of '', and, if the death of any person results, shall be imprisoned for any term of years or for life.'' for period, was executed by making the substitution for the period at end of the first sentence to reflect the probable intent of Congress and the intervening amendment by section 805(a)(1)(F) of Pub. L. 107–56. See below.

Pub. L. 107–56, § 805(a)(1)(F), inserted at end ''A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.''

Pub. L. 107–56, §§ 805(a)(1)(A)–(E), struck out '', within the United States,'' after ''Whoever'', and inserted ''229,'' after ''175,'', ''1993,'' after ''1992,'', '', section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284),'' after ''2340A of this title'', and ''or 60123(b)'' after ''section 46502''.

Subsec. (b). Pub. L. 107–56, § 805(a)(2), substituted ''or monetary instruments or financial securities'' for ''or other financial securities'' and inserted ''expert advice or assistance,'' after ''training,''.

1996—Pub. L. 104–294, § 604(b)(5), amended directory language of Pub. L. 103–322, § 120005(a), which enacted this section.

Pub. L. 104–132 amended section generally, reenacting section catchline without change and redesignating provisions which detailed what constitutes offense, formerly contained in subsec. (b), as subsec. (a), inserting references to sections 37, 81, 175, 831, 842, 956, 1362, 1366, 2155, 2156, 2332, 2332a, 2332b, and 2340A of this title, striking out references to sections 36, 2331, and 2339 of this title, redesignating provisions which define ''material support or resource'', formerly contained in subsec. (a), as subsec. (b), substituting provisions excepting medicine or religious materials from definition for provisions excepting humanitarian assistance to persons not directly involved in violations, and struck out subsec. (c) which authorized investigations into possible violations, except activities involving First Amendment rights.

Subsec. (a). Pub. L. 104–294, § 601(s)(2), (3), inserted ''930(c),'' before ''956,'', ''1992,'' before ''2155,'', ''2332c,'' before ''or 2340A of this title'', and ''or an escape'' after ''concealment''.

Subsec. (b). Pub. L. 104–294, § 601(b)(2), which directed substitution of ''2332'' for ''2331'', ''2332a'' for ''2339'', ''37'' for ''36'', and ''or an escape'' for ''of an escape'' and which could not be executed after the general amendment by Pub. L. 104–132, was repealed by Pub. L. 107–273, § 4002(c)(1). See above.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(5) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) PROHIBITED ACTIVITIES.—

(1) UNLAWFUL CONDUCT.—Whoever knowingly provides material support or resources to a

foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(2) FINANCIAL INSTITUTIONS.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) CIVIL PENALTY.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) $50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) INJUNCTION.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) EXTRATERRITORIAL JURISDICTION.—

(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(B) an offender is a stateless person whose habitual residence is in the United States;

(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(D) the offense occurs in whole or in part within the United States;

(E) the offense occurs in or affects interstate or foreign commerce; or

(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(2) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

(e) INVESTIGATIONS.—

(1) IN GENERAL.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) COORDINATION WITH THE DEPARTMENT OF THE TREASURY.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) REFERRAL.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

(f) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—

(A) REQUEST BY UNITED STATES.—In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) substitute a summary of the information for such classified documents; or

(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

(B) ORDER GRANTING REQUEST.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) DENIAL OF REQUEST.—If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2) INTRODUCTION OF CLASSIFIED INFORMATION; PRECAUTIONS BY COURT.—

(A) EXHIBITS.—To prevent unnecessary or inadvertent disclosure of classified informa-

tion in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

(i) Copies of items from which classified information has been redacted.

(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

(iii) A declassified summary of the specific classified information.

(B) DETERMINATION BY COURT.—The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3) TAKING OF TRIAL TESTIMONY.—

(A) OBJECTION.—During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) ACTION BY COURT.—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

(i) permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) OBLIGATION OF DEFENDANT.—In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

(4) APPEAL.—If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

(5) INTERLOCUTORY APPEAL.—

(A) SUBJECT OF APPEAL.—An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

(i) authorizing the disclosure of classified information;

(ii) imposing sanctions for nondisclosure of classified information; or

(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

(B) EXPEDITED CONSIDERATION.—

(i) IN GENERAL.—An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

(ii) APPEALS PRIOR TO TRIAL.—If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) APPEALS DURING TRIAL.—If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

(I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

(III) shall render its decision not later than 4 days after argument on appeal; and

(IV) may dispense with the issuance of a written opinion in rendering its decision.

(C) EFFECT OF RULING.—An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(6) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(g) DEFINITIONS.—As used in this section—

(1) the term ''classified information'' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term ''financial institution'' has the same meaning as in section 5312(a)(2) of title 31, United States Code;

(3) the term ''funds'' includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

(4) the term ''material support or resources'' has the same meaning given that term in section 2339A (including the definitions of ''training'' and ''expert advice or assistance'' in that section);

(5) the term ''Secretary'' means the Secretary of the Treasury; and

(6) the term ''terrorist organization'' means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

(h) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term ''personnel'' unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terror-

ist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.

(j) EXCEPTION.—No person may be prosecuted under this section in connection with the term ''personnel'', ''training'', or ''expert advice or assistance'' if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

(Added Pub. L. 104–132, title III, § 303(a), Apr. 24, 1996, 110 Stat. 1250; amended Pub. L. 107–56, title VIII, § 810(d), Oct. 26, 2001, 115 Stat. 380; Pub. L. 108–458, title VI, § 6603(c)–(f), Dec. 17, 2004, 118 Stat. 3762, 3763.)

REFERENCES IN TEXT

Section 212(a)(3)(B) of the Immigration and Nationality Act, referred to in subsecs. (a)(1) and (j), is classified to section 1182(a)(3)(B) of Title 8, Aliens and Nationality.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (a)(1), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1)(A)(i), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (g)(1), is section 1(a) of Pub. L. 95–456, which is set out in the Appendix to this title.

Section 219 of the Immigration and Nationality Act, referred to in subsec. (g)(6), is classified to section 1189 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–458, § 6603(c), struck out '', within the United States or subject to the jurisdiction of the United States,'' after ''Whoever'' and inserted at end ''To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).''

Subsec. (d). Pub. L. 108–458, § 6603(d), designated existing provisions as par. (2), inserted par. (2) heading, and added par. (1).

Subsec. (g)(4). Pub. L. 108–458, § 6603(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the term 'material support or resources' has the same meaning as in section 2339A;''.

Subsecs. (h) to (j). Pub. L. 108–458, § 6603(f), added subsecs. (h) to (j).

2001—Subsec. (a)(1). Pub. L. 107–56 substituted ''15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life'' for ''10 years, or both''.

FINDINGS AND PURPOSE

Section 301 of title III of Pub. L. 104–132 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) international terrorism is a serious and deadly problem that threatens the vital interests of the United States;

''(2) the Constitution confers upon Congress the power to punish crimes against the law of nations and to carry out the treaty obligations of the United States, and therefore Congress may by law impose penalties relating to the provision of material support to foreign organizations engaged in terrorist activity;

''(3) the power of the United States over immigration and naturalization permits the exclusion from the United States of persons belonging to international terrorist organizations;

''(4) international terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States;

''(5) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

''(6) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States, or use the United States as a conduit for the receipt of funds raised in other nations; and

''(7) foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.

''(b) PURPOSE.—The purpose of this subtitle [subtitle A (§§ 301–303) of title III of Pub. L. 104–132, enacting this section and section 1189 of Title 8, Aliens and Nationality] is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities.''

§ 2339C. Prohibitions against the financing of terrorism

(a) OFFENSES.—

(1) IN GENERAL.—Whoever, in a circumstance described in subsection (b), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

(1) the offense takes place in the United States and—

(A) a perpetrator was a national of another state or a stateless person;

(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

(C) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) was directed toward or resulted in the carrying out of a predicate act against—

(i) a national of another state; or

(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

(G) was directed toward or resulted in the carrying out of a predicate act—

(i) outside the United States; or

(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a perpetrator is found in the United States; or

(C) was directed toward or resulted in the carrying out of a predicate act against—

(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

(ii) any person or property within the United States;

(iii) any national of the United States or the property of such national; or

(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by the United States; or

(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

(c) CONCEALMENT.—Whoever—

(1)(A) is in the United States; or

(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); and

(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support or resources, or any funds or proceeds of such funds—

(A) knowing or intending that the support or resources are to be provided, or knowing that the support or resources were provided, in violation of section 2339B of this title; or

(B) knowing or intending that any such funds are to be provided or collected, or knowing that the funds were provided or collected, in violation of subsection (a),

shall be punished as prescribed in subsection (d)(2).

(d) PENALTIES.—

(1) SUBSECTION (a).—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

(2) SUBSECTION (c).—Whoever violates subsection (c) shall be fined under this title, imprisoned for not more than 10 years, or both.

(e) DEFINITIONS.—In this section—

(1) the term ''funds'' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term ''government facility'' means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

(3) the term ''proceeds'' means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

(4) the term ''provides'' includes giving, donating, and transmitting;

(5) the term ''collects'' includes raising and receiving;

(6) the term ''predicate act'' means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

(7) the term ''treaty'' means—

(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(C) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(F) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(8) the term ''intergovernmental organization'' includes international organizations;

(9) the term ''international organization'' has the same meaning as in section 1116(b)(5) of this title;

(10) the term ''armed conflict'' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

(11) the term ''serious bodily injury'' has the same meaning as in section 1365(g)(3) of this title;[1]

(12) the term ''national of the United States'' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(13) the term ''material support or resources'' has the same meaning given that term in section 2339B(g)(4) of this title; and

(14) the term ''state'' has the same meaning as that term has under international law, and includes all political subdivisions thereof.

(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least $10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).

(Added Pub. L. 107–197, title II, § 202(a), June 25, 2002, 116 Stat. 724; amended Pub. L. 107–273, div. B, title IV, § 4006, Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108–458, title VI, § 6604, Dec. 17, 2004, 118 Stat. 3764; Pub. L. 109–177, title IV, § 408, Mar. 9, 2006, 120 Stat. 245.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 1365(g)(3), referred to in subsec. (e)(11), was redesignated section 1365(h)(3) by Pub. L. 107–307, § 2(1), Dec. 2, 2002, 116 Stat. 2445.

AMENDMENTS

2006—Pub. L. 109–177 amended directory language of Pub. L. 108–458, § 6604. See 2004 Amendment notes below.

2004—Subsec. (c)(2). Pub. L. 108–458, § 6604(a)(1), as amended by Pub. L. 109–177, § 408(1), substituted ''or resources, or any funds or proceeds of such funds'' for '', resources, or funds'' in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 108–458, § 6604(a)(2), as amended by Pub. L. 109–177, § 408(1), substituted ''are to be provided, or knowing that the support or resources were provided,'' for ''were provided''.

Subsec. (c)(2)(B). Pub. L. 108–458, § 6604(a)(3), as amended by Pub. L. 109–177, § 408(1), struck out ''or any proceeds of such funds'' after ''any such funds'' and substituted ''are to be provided or collected, or knowing that the funds were provided or collected,'' for ''were provided or collected''.

Subsec. (e)(13), (14). Pub. L. 108–458, § 6604(b), as amended by Pub. L. 109–177, § 408(2), added par. (13) and redesignated former par. (13) as (14).

2002—Subsec. (a)(1). Pub. L. 107–273 substituted ''described in subsection (b)'' for ''described in subsection (c)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–177, title IV, § 408, Mar. 9, 2006, 120 Stat. 245, provided that the amendment by Pub. L. 109–177 to section 6604 of Pub. L. 108–458 (amending this section) is effective on the date of enactment of Pub. L. 108–458 (Dec. 17, 2004).

EFFECTIVE DATE

Pub. L. 107–197, title II, § 203, June 25, 2002, 116 Stat. 727, provided that: ''Except for paragraphs (1)(D) and (2)(B) of section 2339C(b) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States [July 26, 2002], and for the provisions of section 2339C(e)(7)(I) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of Terrorist Bombing enters into force for the United States [July 26, 2002], section 202 [enacting this section and provisions set out as a note below] shall take effect on the date of enactment of this Act [June 25, 2002].''

DISCLAIMER

Pub. L. 107–197, title II, § 202(c), June 25, 2002, 116 Stat. 727, provided that: ''Nothing contained in this section [enacting this section] is intended to affect the scope or applicability of any other Federal or State law.''

§ 2339D. Receiving military-type training from a foreign terrorist organization

(a) OFFENSE.—Whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and National-

ity Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

(1) an offender is a national of the United States (as defined in[1] 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(2) an offender is a stateless person whose habitual residence is in the United States;

(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(4) the offense occurs in whole or in part within the United States;

(5) the offense occurs in or affects interstate or foreign commerce; or

(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(c) DEFINITIONS.—As used in this section—

(1) the term ''military-type training'' includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2)[2]);

(2) the term ''serious bodily injury'' has the meaning given that term in section 1365(h)(3);

(3) the term ''critical infrastructure'' means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transportation systems and services (including highways, mass transit, airlines, and airports); and

(4) the term ''foreign terrorist organization'' means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.

(Added Pub. L. 108–458, title VI, § 6602, Dec. 17, 2004, 118 Stat. 3761.)

REFERENCES IN TEXT

Sections 101, 212, and 219 of the Immigration and Nationality Act, referred to in subsecs. (a), (b)(1), and (c)(4), are classified to sections 1101, 1182, and 1189, respectively, of Title 8, Aliens and Nationality.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (a), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

[1] So in original. The word ''section'' probably should appear after ''in''.

[2] So in original. Probably should be section ''2332a(c)(2)''.

CHAPTER 113C—TORTURE

Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, repealed Pub. L. 104–294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501. See 1996 Amendment note below.

1996—Pub. L. 104–132, title III, § 303(c)(1), Apr. 24, 1996, 110 Stat. 1253, redesignated chapter 113B as 113C. Pub. L. 104–294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501, which made identical amendment, was repealed by Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

§ 2340. Definitions

As used in this chapter—

(1) ''torture'' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) ''severe mental pain or suffering'' means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) ''United States'' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(Added Pub. L. 103–236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103–415, § 1(k), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103–429, § 2(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 108–375, div. A, title X, § 1089, Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Par. (3). Pub. L. 108–375 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''''United States' includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.''

1994—Par. (1). Pub. L. 103–415 substituted ''within his custody'' for ''with custody''.

Par. (3). Pub. L. 103–429 substituted ''section 46501(2) of title 49'' for ''section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38))''.

EFFECTIVE DATE

Section 506(c) of Pub. L. 103–236 provided that: ''The amendments made by this section [enacting this chapter] shall take effect on the later of—

''(1) the date of enactment of this Act [Apr. 30, 1994]; or

''(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.'' [Convention entered into Force with respect to United States Nov. 20, 1994, Treaty Doc. 100–20.]

§ 2340A. Torture

(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

(Added Pub. L. 103–236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103–322, title VI, § 60020, Sept. 13, 1994, 108 Stat. 1979; Pub. L. 107–56, title VIII, § 811(g), Oct. 26, 2001, 115 Stat. 381.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–56 added subsec. (c).

1994—Subsec. (a). Pub. L. 103–322 inserted ''punished by death or'' before ''imprisoned for any term of years or for life''.

§ 2340B. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

(Added Pub. L. 103–236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 464.)

CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Sec.
2341. Definitions.
2342. Unlawful acts.
2343. Recordkeeping, reporting, and inspection.
2344. Penalties.
2345. Effect on State and local law.
2346. Enforcement and regulations.

AMENDMENTS

2006—Pub. L. 109–177, title I, § 121(g)(3), (4)(A), Mar. 9, 2006, 120 Stat. 224, substituted ''TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO'' for ''TRAFFICKING IN CONTRABAND CIGARETTES'' in chapter heading, added items 2343 and 2345, and struck out former items 2343 ''Recordkeeping and inspection'' and 2345 ''Effect on State law''.

§ 2341. Definitions

As used in this chapter—

(1) the term ''cigarette'' means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term ''contraband cigarettes'' means a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

(3) the term ''common or contract carrier'' means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under subtitle IV of title 49, or under equivalent operating authority from a regulatory agency of the United States or of any State;

(4) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

(5) the term ''Attorney General'' means the Attorney General of the United States;

(6) the term ''smokeless tobacco'' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

(7) the term ''contraband smokeless tobacco'' means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer[1] of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

(C) a person who—

(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties;[2]

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2463; amended Pub. L. 97–449, §5(c), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–296, title XI, §1112(i)(1), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, §121(a)(1), (b)(1), (6), Mar. 9, 2006, 120 Stat. 221, 222.)

REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in pars. (2)(A) and (7)(A), is classified generally to chapter 52 (§5701 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Par. (2). Pub. L. 109–177, §121(b)(6), which directed amendment of par. (2) by substituting ''State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government'' for ''State cigarette taxes in the State where such cigarettes are found, if the State'' in introductory provisions, was executed by making the substitution for ''State cigarette taxes in the State where such cigarettes are found, if such State'', to reflect the probable intent of Congress.

Pub. L. 109–177, §121(a)(1), substituted ''10,000 cigarettes'' for ''60,000 cigarettes'' in introductory provisions.

Pars. (6), (7). Pub. L. 109–177, §121(b)(1), added pars. (6) and (7).

2002—Par. (5). Pub. L. 107–296 added par. (5) and struck out former par. (5) which read as follows: ''the term 'Secretary' means the Secretary of the Treasury.''

1986—Par. (2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Par. (3). Pub. L. 97–449 substituted ''subtitle IV of title 49'' for ''the Interstate Commerce Act''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section 4 of Pub. L. 95–575 provided:

''(a) Except as provided in subsection (b), this Act [enacting this chapter, amending section 1961 of this title and sections 781 and 787 of former Title 49, Transportation, and enacting provisions set out as a note under this section] shall take effect on the date of its enactment [Nov. 2, 1978].

''(b) Sections 2342(b) and 2343 of title 18, United States Code as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Nov. 2, 1978].''

AUTHORIZATION OF APPROPRIATIONS

Section 5 of Pub. L. 95–575 provided that: ''There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of chapter 114 of title 18, United States Code, added by the first section of this Act.''

§ 2342. Unlawful acts

(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes or contraband smokeless tobacco.

(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction.

(Added Pub. L. 95–575, §1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 109–177, title I, §121(a)(2), (b)(2), Mar. 9, 2006, 120 Stat. 221, 222.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177, §121(b)(2), inserted ''or contraband smokeless tobacco'' after ''contraband cigarettes''.

Subsec. (b). Pub. L. 109–177, §121(a)(2), substituted ''10,000'' for ''60,000''.

EFFECTIVE DATE

Subsec. (a) of this section effective Nov. 2, 1978, and subsec. (b) of this section effective on first day of first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as a note under section 2341 of this title.

§ 2343. Recordkeeping, reporting, and inspection

(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages, in a single transaction shall maintain such in-

[1] So in original. Probably should be ''a manufacturer''.

[2] So in original. The semicolon probably should be a period.

formation about the shipment, receipt, sale, and distribution of cigarettes as the Attorney General may prescribe by rule or regulation. The Attorney General may require such person to keep such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—

(1) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(3) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business.

(b) Any person, except for a tribal government, who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.

(c) Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 10,000 in a single transaction, or pursuant to a duly issued search warrant, the Attorney General may enter the premises (including places of storage) of such person for the purpose of inspecting any records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises.

(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

(e) In this section, the term ''delivery sale'' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

(1) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

(2) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

(f) In this section, the term ''interstate commerce'' means commerce between a State and any place outside the State, or commerce between points in the same State but through any place outside the State.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 107–296, title XI, § 1112(i)(2), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, § 121(a)(3), (b)(3), (c), (g)(1), Mar. 9, 2006, 120 Stat. 221, 222, 224.)

AMENDMENTS

2006—Pub. L. 109–177, § 121(g)(1), substituted ''Recordkeeping, reporting, and inspection'' for ''Recordkeeping and inspection'' in section catchline.

Subsec. (a). Pub. L. 109–177, § 121(a)(3)(A), (b)(3), (c)(1), in introductory provisions, substituted ''10,000, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages,'' for ''60,000'' and ''such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—'' for ''only—'' and, in concluding provisions, struck out ''Nothing contained herein shall authorize the Attorney General to require reporting under this section.'' at end.

Subsec. (b). Pub. L. 109–177, § 121(c)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Pub. L. 109–177, § 121(a)(3)(B), substituted ''10,000'' for ''60,000''.

Subsec. (c). Pub. L. 109–177, § 121(c)(2), redesignated subsec. (b) as (c).

Subsecs. (d) to (f). Pub. L. 109–177, § 121(c)(4), added subsecs. (d) to (f).

2002—Pub. L. 107–296 substituted ''Attorney General'' for ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section effective on first day of first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as a note under section 2341 of this title.

§ 2344. Penalties

(a) Whoever knowingly violates section 2342(a) of this title shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined under this title or imprisoned not more than three years, or both.

(c) Any contraband cigarettes or contraband smokeless tobacco involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—

(1) destroyed and not resold; or

(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2464; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (S), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 109–177, title I, § 121(b)(4), (d), Mar. 9, 2006, 120 Stat. 222, 223.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177 inserted ''or contraband smokeless tobacco'' after ''contraband cigarettes'', substituted ''seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—'' for ''seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.'', and added pars. (1) and (2).

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(S), substituted ''fined under this title'' for ''fined not more than $100,000''.

Subsec. (b). Pub. L. 103–322, § 330016(1)(K), substituted ''fined under this title'' for ''fined not more than $5,000''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

§ 2345. Effect on State and local law

(a) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State or local government to enact and enforce its own cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

(b) Nothing in this chapter shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by a number of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local cigarette tax laws, to provide for the confiscation of cigarettes or smokeless tobacco and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2465; amended Pub. L. 109–177, title I, § 121(b)(5), (e), (g)(2), Mar. 9, 2006, 120 Stat. 222–224.)

AMENDMENTS

2006—Pub. L. 109–177, § 121(g)(2), substituted ''Effect on State and local law'' for ''Effect on State law'' in section catchline.

Subsec. (a). Pub. L. 109–177, § 121(b)(5), (e)(1), substituted ''a State or local government to enact and enforce its own'' for ''a State to enact and enforce'' and inserted ''or smokeless tobacco'' after ''cigarettes''.

Subsec. (b). Pub. L. 109–177, § 121(b)(5), (e)(2), substituted ''of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local'' for ''of States, through interstate compact or otherwise, to provide for the administration of State'' and inserted ''or smokeless tobacco'' after ''cigarettes''.

§ 2346. Enforcement and regulations

(a) The Attorney General, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.

(b)(1) A State, through its attorney general, a local government, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986 may not bring such an action against a State or local government. No civil action may be commenced under this paragraph against an Indian tribe or an Indian in Indian country (as defined in section 1151).

(2) A State, through its attorney general, or a local government, through its chief law enforcement officer (or a designee thereof), may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief. Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government, or an Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government, or an Indian tribe.

(3) The remedies under paragraphs (1) and (2) are in addition to any other remedies under Federal, State, local, or other law.

(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2465; amended Pub. L. 107–296, title XI, § 1112(i)(2), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 109–177, title I, § 121(f), Mar. 9, 2006, 120 Stat. 223.)

REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1986, referred to in subsec. (b)(1), is classified generally to chapter 52 (§ 5701 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Pub. L. 109–177 designated existing provisions as subsec. (a) and added subsec. (b).

2002—Pub. L. 107–296 substituted ''Attorney General'' for ''Secretary''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

Sec.
2381. Treason.
2382. Misprision of treason.
2383. Rebellion or insurrection.
2384. Seditious conspiracy.
2385. Advocating overthrow of Government.
2386. Registration of certain organizations.
2387. Activities affecting armed forces generally.
2388. Activities affecting armed forces during war.
2389. Recruiting for service against United States.
2390. Enlistment to serve against United States.
[2391. Repealed.]

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330004(13), Sept. 13, 1994, 108 Stat. 2142, struck out item 2391 ''Temporary extension of section 2388''.

1953—Act June 30, 1953, ch. 175, § 5, 67 Stat. 134, added item 2391.

§ 2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, § 330016(2)(J), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 1, 2 (Mar. 4, 1909, ch. 321, §§ 1, 2, 35 Stat. 1088).

Section consolidates sections 1 and 2 of title 18, U.S.C., 1940 ed.

The language referring to collection of the fine was omitted as obsolete and repugnant to the more humane policy of modern law which does not impose criminal consequences on the innocent.

The words ''every person so convicted of treason'' were omitted as redundant.

Minor change was made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 inserted ''under this title but'' before ''not less than $10,000''.

§ 2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

(June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 3 (Mar. 4, 1909, ch. 321, § 3, 35 Stat. 1088).

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000''.

§ 2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 808; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 4 (Mar. 4, 1909, ch. 321, § 4, 35 Stat. 1088).

Word ''moreover'' was deleted as surplusage and minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000''.

§ 2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

(June 25, 1948, ch. 645, 62 Stat. 808; July 24, 1956, ch. 678, § 1, 70 Stat. 623; Pub. L. 103–322, title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 6 (Mar. 4, 1909, ch. 321, § 6, 35 Stat. 1089).

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $20,000''.

1956—Act July 24, 1956, substituted ''$20,000'' for ''$5,000'', and ''twenty years'' for ''six years''.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act July 24, 1956, provided that: ''The foregoing amendments [amending this section and section 2385 of this title] shall apply only with respect to offenses committed on and after the date of the enactment of this Act [July 24, 1956].''

§ 2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms ''organizes'' and ''organize'', with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

(June 25, 1948, ch. 645, 62 Stat. 808; July 24, 1956, ch. 678, § 2, 70 Stat. 623; Pub. L. 87–486, June 19, 1962, 76 Stat. 103; Pub. L. 103–322, title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 10, 11, 13 (June 28, 1940, ch. 439, title I, §§ 2, 3, 5, 54 Stat. 670, 671).

Section consolidates sections 10, 11, and 13 of title 18, U.S.C., 1940 ed. Section 13 of title 18, U.S.C., 1940 ed., which contained the punishment provisions applicable to sections 10 and 11 of title 18, U.S.C., 1940 ed., was combined with section 11 of title 18, U.S.C., 1940 ed., and added to this section.

In first paragraph, words ''the Government of the United States or the government of any State, Territory, District or possession thereof, or the government of any political subdivision therein'' were substituted for ''any government in the United States''.

In second and third paragraphs, word ''such'' was inserted after ''any'' and before ''government'', and words ''in the United States'' which followed ''government'' were omitted.

In view of these changes, the provisions of subsection (b) of section 10 of title 18, U.S.C., 1940 ed., which defined the term ''government in the United States'' were omitted as unnecessary.

Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general conspiracy provision, incorporated in section 371 of this title. (See reviser's note under that section.)

Words ''upon conviction thereof'' which preceded ''be fined'' were omitted as surplusage, as punishment cannot be imposed until a conviction is secured.

The phraseology was considerably changed to effect consolidation but without any change of substance.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $20,000'' in fourth and fifth pars.

1962—Pub. L. 87–486 defined the terms ''organizes'' and ''organize''.

1956—Act July 24, 1956, substituted ''$20,000'' for ''$10,000'', and ''twenty years'' for ''ten years'' in the paragraph prescribing penalties applicable to advocating overthrow of government and inserted provisions relating to conspiracy to commit any offense named in this section.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 24, 1956, as applicable only with respect to offenses committed on and after July 24, 1956, see section 3 of act July 24, 1956, set out as a note under section 2384 of this title.

§ 2386. Registration of certain organizations

(A) For the purposes of this section:

''Attorney General'' means the Attorney General of the United States;

''Organization'' means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

''Political activity'' means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in ''civilian military activity'' if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is ''subject to foreign control'' if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party

in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B)(3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(*l*) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined under this title or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is re-

quired to be stated, or which is necessary to make the statements made not misleading, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 808; Pub. L. 103–322, title XXXIII, § 330016(1)(I), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 14–17 (Oct. 17, 1940, ch. 897, §§ 1–4, 54 Stat. 1201–1204).

Section consolidates sections 14–17 of title 18, U.S.C., 1940 ed., as subsections (a), (b), (c), and (d), respectively, of this section, with necessary changes of phraseology and translation of section references.

Words ''upon conviction'' which preceded ''be subject'' were omitted as surplusage, as punishment cannot otherwise be imposed.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in penultimate par. and for ''fined not more than $2,000'' in last par.

§ 2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined under this title or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term ''military or naval forces of the United States'' includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

(June 25, 1948, ch. 645, 62 Stat. 811; May 24, 1949, ch. 139, § 46, 63 Stat. 96; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–163, div. A, title V, § 515(f)(2), Jan. 6, 2006, 119 Stat. 3236.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 9, 11, 13 (June 28, 1940, ch. 439, title I, §§ 1, 3, 5, 54 Stat. 670, 671).

Section consolidates sections 9, 11, and 13 of title 18, U.S.C., 1940 ed., with only such changes of phraseology as were necessary to effect consolidation.

The revised section extends the provisions so as to include the Coast Guard Reserve in its coverage.

Words ''upon conviction thereof'' were omitted as unnecessary, as punishment cannot be imposed until conviction is secured.

Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general law incorporated in section 371 of this title. (See reviser's note under that section.)

Minor changes were made in arrangement and phraseology.

1949 ACT

This section [section 46] inserts the words, ''Air Force,'' in subsection (b) of section 2387 of title 18, U.S.C., in view of the establishment in 1947 of this separate branch of the armed services.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par.

1949—Subsec. (b). Act May 24, 1949, made section applicable to the Air Force.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created Department of Transportation. See section 108 of Title 49, Transportation.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26, of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Such plan excepted from transfer functions of Coast Guard and Commandant thereof when Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

§ 2388. Activities affecting armed forces during war

(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—

Shall be fined under this title or imprisoned not more than twenty years, or both.

(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such con-

spiracy shall be punished as provided in said subsection (a).

(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined under this title or imprisoned not more than ten years, or both.

(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States.

(June 25, 1948, ch. 645, 62 Stat. 811; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 33, 34, 35, 37 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 3, 4, 5, 8, 40 Stat. 219; Mar. 3, 1921, ch. 136, 41 Stat. 1359; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79).

Sections 33, 34, 35, and 37 of title 50, U.S.C., 1940 ed., War and National Defense, were consolidated. Sections 34, 35, and 37 of title 50, U.S.C., 1940 ed., War and National Defense, are also incorporated in sections 791, 792, and 794 of this title, to which they relate.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in last par. of subsec. (a) and in subsec. (c).

REPEALS

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 134, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29), 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which had provided that this section should continue in force until six months after the termination of the National emergency proclaimed by 1950 Proc. No. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

REPEAL OF EXTENSIONS OF WAR-TIME PROVISIONS

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, ch. 437, 66 Stat. 137, and Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

§ 2389. Recruiting for service against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 811; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 7 (Mar. 4, 1909, ch. 321, § 7, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

§ 2390. Enlistment to serve against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined under this title[1] or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812; Pub. L. 103–322, title XXXIII, § 330016(1)(B), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 8 (Mar. 4, 1909, ch. 321, § 8, 35 Stat. 1089).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, which directed the amendment of this section by striking ''fined not more than $100'' and inserting ''fined under this title'', was executed by substituting ''fined under this title'' for ''fined $100'', to reflect the probable intent of Congress.

[§ 2391. Repealed. Pub. L. 103–322, title XXXIII, § 330004(13), Sept. 13, 1994, 108 Stat. 2142]

Section, added June 30, 1953, ch. 175, § 6, 67 Stat. 134, related to temporary extension of section 2388 of this title.

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

Sec.
2421. Transportation generally.
2422. Coercion and enticement.
2423. Transportation of minors.
2424. Filing factual statement about alien individual.
2425. Use of interstate facilities to transmit information about a minor.
2426. Repeat offenders.
2427. Inclusion of offenses relating to child pornography in definition of sexual activity for which any person can be charged with a criminal offense.
2428. Forfeitures.

AMENDMENTS

2006—Pub. L. 109–164, title I, § 103(d)(2), Jan. 10, 2006, 119 Stat. 3563, added item 2428.

1998—Pub. L. 105–314, title I, §§ 101(b), 104(b), 105(b), Oct. 30, 1998, 112 Stat. 2975–2977, added items 2425, 2426, and 2427.

1988—Pub. L. 100–690, title VII, § 7071, Nov. 18, 1988, 102 Stat. 4405, substituted ''individual'' for ''female'' in item 2424.

1986—Pub. L. 99–628, § 5(a)(1), (b)(2), Nov. 7, 1986, 100 Stat. 3511, substituted ''TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES'' for ''WHITE SLAVE TRAFFIC'' as chapter heading and substituted ''and enticement'' for ''or enticement of female'' in item 2422.

1978—Pub. L. 95–225, § 3(b), Feb. 6, 1978, 92 Stat. 9, substituted ''Transportation of minors'' for ''Coercion or enticement of minor female'' in item 2423.

[1] See 1994 Amendment note below.

§ 2421. Transportation generally

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 812; May 24, 1949, ch. 139, § 47, 63 Stat. 96; Pub. L. 99–628, § 5(b)(1), Nov. 7, 1986, 100 Stat. 3511; Pub. L. 105–314, title I, § 106, Oct. 30, 1998, 112 Stat. 2977.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 397, 398, 401, 404 (June 25, 1910, ch. 395, §§ 1, 2, 5, 8, 36 Stat. 825–827).

Section consolidates sections 397, 398, 401, and 404 of title 18, U.S.C., 1940 ed.

Section 397 of title 18, U.S.C., 1940 ed., containing a definition of the terms ''interstate commerce'' and ''foreign commerce'' was omitted as unnecessary in view of the definition of those terms in section 10 of this title.

Section 401 of title 18, U.S.C., 1940 ed., prescribing venue was omitted as unnecessary in view of section 3237 of this title.

Section 403 of title 18, U.S.C., 1940 ed., was omitted. No definition of ''Territory'' is necessary to the revised section as it is phrased. Construction therein of ''person'' is covered by section 1 of title 1, U.S.C., 1940 ed., General Provisions, as amended. Last paragraph of said section relating to construction of this chapter was omitted as surplusage.

Words ''Possession of the United States'' were inserted in three places in view of mission of said section 403 of title 18, U.S.C., 1940 ed., and, reference in that section to the Canal Zone is covered by those words. This chapter applies to the Territory of Hawaii. (See *Sun Chong Lee v. United States*, C.C.A. Hawaii, 1942, 125 F. 2d 95.)

Section 404 of title 18, U.S.C., 1940 ed., containing the short title was omitted as not appropriate in a revision.

Reference to persons causing, procuring, aiding or assisting was deleted as unnecessary because such persons are made principals by section 2 of this title.

Words ''and upon conviction thereof'' were also deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Words ''deemed guilty of a felony'' were deleted as unnecessary in view of the definition of a felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Minor changes were also made in translations and phraseology.

1949 ACT

This section [section 47] corrects a typographical error in section 2421 of title 18, U.S.C.

AMENDMENTS

1998—Pub. L. 105–314 inserted ''or attempts to do so,'' before ''shall be fined'' and substituted ''10 years'' for ''five years''.

1986—Pub. L. 99–628 amended section generally. Prior to amendment, section read as follows:

''Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

''Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

''Shall be fined not more than $5,000 or imprisoned not more than five years, or both.''

1949—Act May 24, 1949, corrected spelling of ''induce''.

§ 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

(June 25, 1948, ch. 645, 62 Stat. 812; Pub. L. 99–628, § 5(b)(1), Nov. 7, 1986, 100 Stat. 3511; Pub. L. 100–690, title VII, § 7070, Nov. 18, 1988, 102 Stat. 4405; Pub. L. 104–104, title V, § 508, Feb. 8, 1996, 110 Stat. 137; Pub. L. 105–314, title I, § 102, Oct. 30, 1998, 112 Stat. 2975; Pub. L. 108–21, title I, § 103(a)(2)(A), (B), (b)(2)(A), Apr. 30, 2003, 117 Stat. 652, 653; Pub. L. 109–248, title II, § 203, July 27, 2006, 120 Stat. 613.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 399 (June 25, 1910, ch. 395, § 3, 36 Stat. 825).

Words ''deemed guilty of a felony'' were deleted as unnecessary in view of definition of felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Words ''and on conviction thereof shall be'' were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

The references to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by section 2 of this title.

Words ''Possession of the United States'' were inserted twice. (See reviser's note under section 2421 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–248 substituted ''not less than 10 years or for life'' for ''not less than 5 years and not more than 30 years''.

2003—Subsec. (a). Pub. L. 108–21, § 103(a)(2)(A), substituted ''20 years'' for ''10 years''.

Subsec. (b). Pub. L. 108–21, § 103(a)(2)(B), (b)(2)(A), substituted ''and imprisoned not less than 5 years and'' for '', imprisoned'' and ''30 years'' for ''15 years, or both''.

1998—Subsec. (a). Pub. L. 105–314, § 102(1), inserted ''or attempts to do so,'' before ''shall be fined'' and substituted ''10 years'' for ''five years''.

Subsec. (b). Pub. L. 105–314, § 102(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.''

1996—Pub. L. 104–104 designated existing provisions as subsec. (a) and added subsec. (b).

1988—Pub. L. 100–690 substituted ''or'' for ''of'' before ''foreign commerce''.

1986—Pub. L. 99–628 substituted ''and enticement'' for ''or enticement of female'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.''

§ 2423. Transportation of minors

(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT.—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) ANCILLARY OFFENSES.—Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(e) ATTEMPT AND CONSPIRACY.—Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

(f) DEFINITION.—As used in this section, the term ''illicit sexual conduct'' means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

(g) DEFENSE.—In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

(June 25, 1948, ch. 645, 62 Stat. 812; Pub. L. 95–225, § 3(a), Feb. 6, 1978, 92 Stat. 8; Pub. L. 99–628, § 5(b)(1), Nov. 7, 1986, 100 Stat. 3511; Pub. L. 103–322, title XVI, § 160001(g), Sept. 13, 1994, 108 Stat. 2037; Pub. L. 104–71, § 5, Dec. 23, 1995, 109 Stat. 774; Pub. L. 104–294, title VI, §§ 601(b)(4), 604(b)(33), Oct. 11, 1996, 110 Stat. 3499, 3508; Pub. L. 105–314, title I, § 103, Oct. 30, 1998, 112 Stat. 2976; Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808; Pub. L. 108–21, title I, §§ 103(a)(2)(C), (b)(2)(B), 105, Apr. 30, 2003, 117 Stat. 652, 653; Pub. L. 109–248, title II, § 204, July 27, 2006, 120 Stat. 613.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 400 (June 25, 1910, ch. 395, § 4, 36 Stat. 826).

Words ''deemed guilty of a felony'' were deleted as unnecessary in view of definition of felony in section 1 of this title. (See reviser's note under section 550 of this title.)

Words ''and on conviction thereof shall be'' were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

Words ''Possession of the United States'' were inserted twice. (See reviser's note under section 2421 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248 substituted ''10 years or for life'' for ''5 years and not more than 30 years''.

2003—Subsec. (a). Pub. L. 108–21, § 105(b), struck out ''or attempts to do so,'' before ''shall be fined''.

Pub. L. 108–21, § 103(a)(2)(C), (b)(2)(B), substituted ''and imprisoned not less than 5 years and'' for '', imprisoned'' and ''30 years'' for ''15 years, or both''.

Subsec. (b) to (g). Pub. L. 108–21, § 105(a), added subsecs. (b) to (g) and struck out former subsec. (b) which read as follows:

''(b) TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United

States shall be fined under this title, imprisoned not more than 15 years, or both.''

2002—Subsec. (b). Pub. L. 107–273 repealed Pub. L. 104–294, § 601(b)(4). See 1996 Amendment note below.

1998—Subsec. (a). Pub. L. 105–314, § 103(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.''

Subsec. (b). Pub. L. 105–314, § 103(2), substituted ''15 years'' for ''10 years''.

1996—Pub. L. 104–294, § 604(b)(33), amended directory language of Pub. L. 103–322, § 160001(g). See 1994 Amendment note below.

Subsec. (b). Pub. L. 104–294, § 601(b)(4), which made amendment identical to that made by Pub. L. 104–71, was repealed by Pub. L. 107–273. See 1995 Amendment note below.

1995—Subsec. (b). Pub. L. 104–71 substituted ''2246'' for ''2245''.

1994—Pub. L. 103–322, as amended by Pub. L. 104–294, § 604(b)(33), added subsec. (b) and substituted ''(a) TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.—A person who'' for ''Whoever''.

1986—Pub. L. 99–628 amended section generally, revising and restating as one paragraph provisions formerly contained in subsec. (a) and striking out subsec. (b) which provided definitions.

1978—Pub. L. 95–225 substituted ''Transportation of minors'' for ''Coercion or enticement of minor female'' in section catchline, designated existing provision as subsec. (a), substituted provisions relating to conduct prohibiting the transportation of minors for provisions relating to conduct prohibiting the coercion or enticement of a minor female, and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(33) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 2424. Filing factual statement about alien individual

(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any individual, knowing or in reckless disregard of the fact that the individual is an alien, shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such individual, the place at which that individual is kept, and all facts as to the date of that individual's entry into the United States, the port through which that individual entered, that individual's age, nationality, and parentage, and concerning that individual's procuration to come to this country within the knowledge of such person; and

Whoever fails within five business days after commencing to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien individual to file such statement concerning such alien individual with the Commissioner of Immigration and Naturalization; or

Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within that person's knowledge or belief with reference to the age, nationality, or parentage of any such alien individual, or concerning that individual's procuration to come to this country—

Shall be fined under this title or imprisoned not more than 10 years, or both.

(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by that person, or the information therein contained, might tend to criminate that person or subject that person to a penalty or forfeiture, but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section.

(June 25, 1948, ch. 645, 62 Stat. 813; Pub. L. 91–452, title II, § 226, Oct. 15, 1970, 84 Stat. 930; Pub. L. 99–628, § 5(c), Nov. 7, 1986, 100 Stat. 3511; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title III, § 325, Sept. 30, 1996, 110 Stat. 3009–629.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 402(2), (3) (June 25, 1910, ch. 395, § 6, 36 Stat. 826).

First paragraph of section 402 of title 18, U.S.C., 1940 ed., was omitted from this section and recommended for transfer to Title 8, Aliens and Nationality.

Words ''shall be deemed guilty of a misdemeanor'' were omitted as unnecessary in view of the definition of a misdemeanor in section 1 of this title. (See reviser's note under section 212 of this title.)

Minor changes were made in phraseology.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 325(1), in first par. substituted ''individual, knowing or in reckless disregard of the fact that the individual is an alien'' for ''alien individual within three years after that individual has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppression of the white-slave traffic'' and struck out ''alien'' after ''the name of such''.

Pub. L. 104–208, § 325(2), in second par. substituted ''five business'' for ''thirty'' and struck out ''within three years after that individual has entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic,'' after ''any alien individual''.

Pub. L. 104–208, § 325(3), substituted ''10'' for ''two'' in last par.

1994—Subsec. (a). Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $2,000'' in last par.

1986—Pub. L. 99–628, § 5(c)(1), substituted ''individual'' for ''female'' in section catchline.

Subsec. (a). Pub. L. 99–628, § 5(c)(2)–(4), (6), substituted ''individual'' for ''woman or girl'', ''that individual'' for ''she'', ''that individual's'' for ''her'', and ''that person's'' for ''his'' wherever appearing.

Subsec. (b). Pub. L. 99–628, § 5(c)(5), substituted ''that person'' for ''him'' wherever appearing.

1970—Subsec. (b). Pub. L. 91–452 substituted provisions that no information contained in the statement or any evidence directly or indirectly derived from such information be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this section, for provisions that no person be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, etc., truthfully reported in his statement.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 2425. Use of interstate facilities to transmit information about a minor

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 105–314, title I, § 101(a), Oct. 30, 1998, 112 Stat. 2975.)

§ 2426. Repeat offenders

(a) MAXIMUM TERM OF IMPRISONMENT.—The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term of imprisonment otherwise provided by this chapter, unless section 3559(e) applies.

(b) DEFINITIONS.—In this section—

(1) the term ''prior sex offense conviction'' means a conviction for an offense—

(A) under this chapter, chapter 109A, or chapter 110; or

(B) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States; and

(2) the term ''State'' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 105–314, title I, § 104(a), Oct. 30, 1998, 112 Stat. 2976; amended Pub. L. 108–21, title I, § 106(b), Apr. 30, 2003, 117 Stat. 655.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–21 inserted '', unless section 3559(e) applies'' before period at end.

§ 2427. Inclusion of offenses relating to child pornography in definition of sexual activity for which any person can be charged with a criminal offense

In this chapter, the term ''sexual activity for which any person can be charged with a criminal offense'' includes the production of child pornography, as defined in section 2256(8).

(Added Pub. L. 105–314, title I, § 105(a), Oct. 30, 1998, 112 Stat. 2977.)

§ 2428. Forfeitures

(a) IN GENERAL.—The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) PROPERTY SUBJECT TO FORFEITURE.—

(1) IN GENERAL.—The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) APPLICABILITY OF CHAPTER 46.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.

(Added Pub. L. 109–164, title I, § 103(d)(1), Jan. 10, 2006, 119 Stat. 3563.)

CHAPTER 118—WAR CRIMES

Sec.
2441. War crimes.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 605(p)(2), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2401 as 2441.

§ 2441. War crimes

(a) OFFENSE.—Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if

death results to the victim, shall also be subject to the penalty of death.

(b) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) DEFINITION.—As used in this section the term ''war crime'' means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) COMMON ARTICLE 3 VIOLATIONS.—

(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term ''grave breach of common Article 3'' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term ''severe mental pain or suffering'' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

(B) the term ''serious bodily injury'' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

(C) the term ''sexual contact'' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

(D) the term ''serious physical pain or suffering'' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term ''serious mental pain or suffering'' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term ''severe mental pain or suffering'' (as defined in section 2340(2) of this title), except that—

(i) the term ''serious'' shall replace the term ''severe'' where it appears; and

(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term ''serious and non-transitory mental harm (which need not be prolonged)'' shall replace the term ''prolonged mental harm'' where it appears.

(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

(A) collateral damage; or

(B) death, damage, or injury incident to a lawful attack.

(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

(Added Pub. L. 104–192, § 2(a), Aug. 21, 1996, 110 Stat. 2104, § 2401; renumbered § 2441, Pub. L. 104–294, title VI, § 605(p)(1), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 105–118, title V, § 583, Nov. 26, 1997, 111 Stat. 2436; Pub. L. 107–273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109–366, § 6(b)(1), Oct. 17, 2006, 120 Stat. 2633.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101 of Title 8, Aliens and Nationality.

The date of the enactment of the Military Commissions Act of 2006, referred to in subsec. (d)(2)(E)(ii), is the date of enactment of Pub. L. 109–366, which was approved Oct. 17, 2006.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–366, § 6(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or''.

Subsec. (d). Pub. L. 109–366, § 6(b)(1)(B), added subsec. (d).

2002—Subsecs. (a) to (c). Pub. L. 107–273 made technical correction to directory language of Pub. L. 105–118, § 583. See 1997 Amendment notes below.

1997—Subsec. (a). Pub. L. 105–118, § 583(1), as amended by Pub. L. 107–273, substituted ''war crime'' for ''grave breach of the Geneva Conventions''.

Subsec. (b). Pub. L. 105–118, § 583(2), as amended by Pub. L. 107–273, substituted ''war crime'' for ''breach'' in two places.

Subsec. (c). Pub. L. 105–118, § 583(3), as amended by Pub. L. 107–273, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c) DEFINITIONS.—As used in this section, the term 'grave breach of the Geneva Conventions' means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party.''

1996—Pub. L. 104–294 renumbered section 2401 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, § 6(b)(2), Oct. 17, 2006, 120 Stat. 2635, provided that: ''The amendments made by this subsection [amending this section], except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 [amending this section] (as amended by section 4002(e)(7) of Public Law 107–273).''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810, provided that the amendment made by section 4002(e)(7) is effective Nov. 26, 1997.

SHORT TITLE

Section 1 of Pub. L. 104–192 provided that: ''This Act [enacting this chapter] may be cited as the 'War Crimes Act of 1996'.''

IMPLEMENTATION OF TREATY OBLIGATIONS

Pub. L. 109–366, § 6(a), Oct. 17, 2006, 120 Stat. 2632, provided that:

''(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section [enacting section 2000dd–0 of Title 42, The Public Health and Welfare], constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

''(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

''(3) INTERPRETATION BY THE PRESIDENT.—

''(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

''(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

''(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United

States law, in the same manner as other administrative regulations.

''(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

''(4) DEFINITIONS.—In this subsection:

''(A) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means—

''(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

''(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

''(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

''(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

''(B) THIRD GENEVA CONVENTION.—The term 'Third Geneva Convention' means the international convention referred to in subparagraph (A)(iii).''

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.
2510. Definitions.
2511. Interception and disclosure of wire, oral, or electronic communications prohibited.
2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.
2513. Confiscation of wire, oral, or electronic communication intercepting devices.
[2514. Repealed.]
2515. Prohibition of use as evidence of intercepted wire or oral communications.
2516. Authorization for interception of wire, oral, or electronic communications.
2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.
2518. Procedure for interception of wire, oral, or electronic communications.
2519. Reports concerning intercepted wire, oral, or electronic communications.
2520. Recovery of civil damages authorized.
2521. Injunction against illegal interception.
2522. Enforcement of the Communications Assistance for Law Enforcement Act.

AMENDMENTS

1994—Pub. L. 103–414, title II, § 201(b)(3), Oct. 25, 1994, 108 Stat. 4290, added item 2522.

1988—Pub. L. 100–690, title VII, § 7035, Nov. 18, 1988, 102 Stat. 4398, substituted ''wire, oral, or electronic'' for ''wire or oral'' in items 2511, 2512, 2513, 2516, 2517, 2518, and 2519.

1986—Pub. L. 99–508, title I, §§ 101(c)(2), 110(b), Oct. 21, 1986, 100 Stat. 1851, 1859, inserted ''AND ELECTRONIC COMMUNICATIONS'' in chapter heading and added item 2521.

1970—Pub. L. 91–452, title II, § 227(b), Oct. 15, 1970, 84 Stat. 930, struck out item 2514 ''Immunity of witnesses'', which section was repealed four years following the sixtieth day after Oct. 15, 1970.

1968—Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 212, added chapter 119 and items 2510 to 2520.

§ 2510. Definitions

As used in this chapter—

(1) ''wire communication'' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;

(2) ''oral communication'' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) ''intercept'' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[1]

(5) ''electronic, mechanical, or other device'' means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) ''person'' means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) ''Investigative or law enforcement officer'' means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) ''contents'', when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) ''Judge of competent jurisdiction'' means—

[1] So in original. The period probably should be a semicolon.

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) ''communication common carrier'' has the meaning given that term in section 3 of the Communications Act of 1934;

(11) ''aggrieved person'' means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) ''electronic communication'' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device (as defined in section 3117 of this title); or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

(13) ''user'' means any person or entity who—

(A) uses an electronic communication service; and

(B) is duly authorized by the provider of such service to engage in such use;

(14) ''electronic communications system'' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(15) ''electronic communication service'' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(16) ''readily accessible to the general public'' means, with respect to a radio communication, that such communication is not—

(A) scrambled or encrypted;

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

(17) ''electronic storage'' means—

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

(18) ''aural transfer'' means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

(19) ''foreign intelligence information'', for purposes of section 2517(6) of this title, means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States;

(20) ''protected computer'' has the meaning set forth in section 1030; and

(21) ''computer trespasser''—

(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 212; amended Pub. L. 99–508, title I, § 101(a), (c)(1)(A), (4), Oct. 21, 1986, 100 Stat. 1848, 1851; Pub. L. 103–414, title II, §§ 202(a), 203, Oct. 25, 1994, 108 Stat. 4290, 4291; Pub. L. 104–132, title VII, § 731, Apr. 24, 1996, 110 Stat. 1303; Pub. L. 107–56, title II, §§ 203(b)(2), 209(1), 217(1), Oct. 26, 2001, 115 Stat. 280, 283, 290; Pub. L. 107–108, title III, § 314(b), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 107–273, div. B, title IV, § 4002(e)(10), Nov. 2, 2002, 116 Stat. 1810.)

REFERENCES IN TEXT

Section 3 of the Communications Act of 1934, referred to in par. (10), is classified to section 153 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

2002—Par. (10). Pub. L. 107–273 substituted ''has the meaning given that term in section 3 of the Communications Act of 1934;'' for ''shall have the same meaning which is given the term 'common carrier' by section 153(h) of title 47 of the United States Code;''.

2001—Par. (1). Pub. L. 107–56, § 209(1)(A), struck out ''and such term includes any electronic storage of such communication'' before semicolon at end.

Par. (14). Pub. L. 107–56, § 209(1)(B), inserted ''wire or'' after ''transmission of''.

Par. (19). Pub. L. 107–108 inserted '', for purposes of section 2517(6) of this title,'' before ''means'' in introductory provisions.

Pub. L. 107–56, § 203(b)(2), added par. (19).

Pars. (20), (21). Pub. L. 107–56, § 217(1), added pars. (20) and (21).

1996—Par. (12)(D). Pub. L. 104–132, § 731(1), added subpar. (D).

Par. (16)(F). Pub. L. 104–132, § 731(2), struck out subpar. (F) which read as follows: ''an electronic communication;''.

1994—Par. (1). Pub. L. 103–414, § 202(a)(1), struck out before semicolon at end '', but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit''.

Par. (12). Pub. L. 103–414, § 202(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;''.

Par. (16)(F). Pub. L. 103–414, § 203, added subpar. (F).

1986—Par. (1). Pub. L. 99–508, § 101(a)(1), substituted ''any aural transfer'' for ''any communication'', inserted ''(including the use of such connection in a switching station)'' after ''reception'', struck out ''as a common carrier'' after ''person engaged'', and inserted ''or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit'' before the semicolon at end.

Par. (2). Pub. L. 99–508, § 101(a)(2), inserted '', but such term does not include any electronic communication'' before the semicolon at end.

Par. (4). Pub. L. 99–508, § 101(a)(3), inserted ''or other'' after ''aural'' and '', electronic,'' after ''wire''.

Par. (5). Pub. L. 99–508, § 101(a)(4), (c)(1)(A), (4), substituted ''wire, oral, or electronic'' for ''wire or oral'' in introductory provisions, substituted ''provider of wire or electronic communication service'' for ''communications common carrier'' in subpars. (a)(i) and (ii), and inserted ''or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business'' before the semicolon in subpar. (a)(i).

Par. (8). Pub. L. 99–508, § 101(a)(5), (c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' and struck out ''identity of the parties to such communication or the existence,'' after ''concerning the''.

Pars. (9)(b), (11). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral''.

Pars. (12) to (18). Pub. L. 99–508, § 101(a)(6), added pars. (12) to (18).

TERMINATION DATE OF 2001 AMENDMENT

Pub. L. 107–56, title II, § 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 109–160, § 1, Dec. 30, 2005, 119 Stat. 2957; Pub. L. 109–170, § 1, Feb. 3, 2006, 120 Stat. 3, which provided that title II of Pub. L. 107–56 and the amendments made by that title would cease to have effect on Mar. 10, 2006, with certain exceptions, was repealed by Pub. L. 109–177, title I, § 102(a), Mar. 9, 2006, 120 Stat. 194.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 111 of title I of Pub. L. 99–508 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b) or (c), this title and the amendments made by this title [enacting sections 2521 and 3117 of this title, amending this section and sections 2232, 2511 to 2513, and 2516 to 2520 of this title, and enacting provisions set out as notes under this section] shall take effect 90 days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

''(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

''(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

''(2) the date two years after the date of the enactment of this Act [Oct. 21, 1986].

''(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 104 of this Act [amending section 2516 of this title] shall take effect on the date of enactment of this Act [Oct. 21, 1986].''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–112, § 1, Nov. 21, 1997, 111 Stat. 2273, provided that: ''This Act [amending section 2512 of this title] may be cited as the 'Law Enforcement Technology Advertisement Clarification Act of 1997'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–508 provided that: ''This Act [enacting sections 1367, 2521, 2701 to 2710, 3117, and 3121 to 3126 of this title, amending sections 2232, 2511 to 2513, and 2516 to 2520 of this title, and enacting provisions set out as notes under this section and sections 2701 and 3121 of this title] may be cited as the 'Electronic Communications Privacy Act of 1986'.''

INTELLIGENCE ACTIVITIES

Section 107 of Pub. L. 99–508 provided that:

''(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act [see Short Title of 1986 Amendment note above] constitutes authority for the conduct of any intelligence activity.

''(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

''(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

''(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.]; or

''(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.''

CONGRESSIONAL FINDINGS

Section 801 of Pub. L. 90–351 provided that: ''On the basis of its own investigations and of published studies, the Congress makes the following findings:

''(a) Wire communications are normally conducted through the use of facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications. There has been extensive wiretapping carried on without legal sanctions, and without the consent of any of the parties to the conversation. Electronic, mechanical, and other intercepting devices are being used to overhear oral conversations made in private, without the consent of any of the parties to such communications. The contents of these communications and evidence derived therefrom are being used by public and private parties as evidence in court and administrative proceedings, and by persons whose activities affect interstate commerce. The possession, manufacture, distribution, advertising, and use of these devices are facilitated by interstate commerce.

''(b) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of interstate commerce, it is necessary for Congress to define on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized, to prohibit any unauthorized interception of such communications, and the use of the contents thereof in evidence in courts and administrative proceedings.

''(c) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

''(d) To safeguard the privacy of innocent persons, the interception of wire or oral communications where none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurances that the interception is justified and that the information obtained thereby will not be misused.''

NATIONAL COMMISSION FOR THE REVIEW OF FEDERAL AND STATE LAWS RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE

Section 804 of Pub. L. 90–351, as amended by Pub. L. 91–452, title XII, § 1212, Oct. 15, 1970, 84 Stat. 961; Pub. L. 91–644, title VI, § 20, Jan. 2, 1971, 84 Stat. 1892; Pub. L. 93–609, §§ 1–4, Jan. 2, 1975, 88 Stat. 1972, 1973; Pub. L. 94–176, Dec. 23, 1975, 89 Stat. 1031, established a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, provided for its membership, Chairman, powers and functions, compensation and allowances, required the Commission to study and review the operation of the provisions of this chapter to determine their effectiveness and to submit interim reports and a final report to the President and to the Congress of its findings and recommendations on or before Apr. 30, 1976, and also provided for its termination sixty days after submission of the final report.

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e)(i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518 of this chapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation,

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except

for mechanical or service quality control checks.

(ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121 or 206 of this title, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire, oral, and electronic communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted—

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which—

(I) is prohibited by section 633 of the Communications Act of 1934; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies

monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter—

(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—

(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

(II) the person acting under color of law is lawfully engaged in an investigation;

(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a)(i) If the communication is—

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection—

(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 213; amended Pub. L. 91–358, title II, § 211(a), July 29, 1970, 84 Stat. 654; Pub. L. 95–511, title II, § 201(a)–(c), Oct. 25, 1978, 92 Stat. 1796, 1797; Pub. L. 98–549, § 6(b)(2), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 99–508, title I, §§ 101(b), (c)(1), (5), (6), (d), (f)[(1)], 102, Oct. 21, 1986, 100 Stat. 1849, 1851–1853; Pub. L. 103–322, title XXXII, § 320901, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2123, 2147; Pub. L. 103–414, title II, §§ 202(b), 204, 205, Oct. 25, 1994, 108 Stat. 4290, 4291; Pub. L. 104–294, title VI, § 604(b)(42), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 107–56, title II, §§ 204, 217(2), Oct. 26, 2001, 115 Stat. 281, 291; Pub. L. 107–296, title II, § 225(h)(2), (j)(1), Nov. 25, 2002, 116 Stat. 2158.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in par. (2)(e), (f), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. Section 101 of the Foreign Intelligence Surveillance

Act of 1978, referred to in par. (2)(a)(ii), (e), and (f), is classified to section 1801 of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

Sections 633, 705, and 706 of the Communications Act of 1934, referred to in par. (2)(e), (f), (g)(iii), are classified to sections 553, 605, and 606 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, respectively.

AMENDMENTS

2002—Par. (2)(a)(ii). Pub. L. 107–296, § 225(h)(2), inserted ‘‘, statutory authorization,’’ after ‘‘terms of a court order’’ in concluding provisions.

Par. (4)(b), (c). Pub. L. 107–296, § 225(j)(1), redesignated subpar. (c) as (b) and struck out former subpar. (b) which read as follows: ‘‘If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then—

‘‘(i) if the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

‘‘(ii) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication or a paging service communication, the offender shall be fined under this title.’’

2001—Par. (2)(f). Pub. L. 107–56, § 204, substituted ‘‘this chapter or chapter 121 or 206 of this title, or section 705 of the Communications Act of 1934’’ for ‘‘this chapter or chapter 121, or section 705 of the Communications Act of 1934’’ and ‘‘wire, oral, and electronic communications’’ for ‘‘wire and oral communications’’.

Par. (2)(i). Pub. L. 107–56, § 217(2), added subpar. (i).

1996—Par. (1)(e)(i). Pub. L. 104–294 substituted ‘‘sections 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518 of this chapter’’ for ‘‘sections 2511(2)(A)(ii), 2511(b)–(c), 2511(e), 2516, and 2518 of this subchapter’’.

1994—Par. (1)(e). Pub. L. 103–322, § 320901, added par. (1)(e).

Par. (2)(a)(i). Pub. L. 103–414, § 205, inserted ‘‘or electronic’’ after ‘‘transmission of a wire’’.

Par. (4)(b). Pub. L. 103–414, § 204, in introductory provisions substituted ‘‘, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then’’ for ‘‘or encrypted, then’’.

Par. (4)(b)(i). Pub. L. 103–414, § 202(b)(1), inserted ‘‘a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit,’’ after ‘‘cellular telephone communication,’’.

Par. (4)(b)(ii). Pub. L. 103–414, § 202(b)(2), inserted ‘‘a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit,’’ after ‘‘cellular telephone communication,’’.

Pub. L. 103–322, § 330016(1)(G), substituted ‘‘fined under this title’’ for ‘‘fined not more than $500’’.

1986—Pub. L. 99–508, § 101(c)(1)(A), substituted ‘‘wire, oral, or electronic’’ for ‘‘wire or oral’’ in section catchline.

Par. (1). Pub. L. 99–508, § 101(c)(1)(A), (d)(1), (f)[(1)], substituted ‘‘intentionally’’ for ‘‘willfully’’ in subpars. (a) to (d) and ‘‘wire, oral, or electronic’ for ‘‘wire or oral’’ wherever appearing in subpars. (a), (c), and (d), and in concluding provisions substituted ‘‘shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)’’ for ‘‘shall be fined not more than $10,000 or imprisoned not more than five years, or both’’.

Par. (2)(a)(i). Pub. L. 99–508, § 101(c)(5), substituted ‘‘a provider of wire or electronic communication service’’ for ‘‘any communication common carrier’’ and ‘‘of the provider of that service, except that a provider of wire communication service to the public’’ for ‘‘of the carrier of such communication: *Provided*, That said communication common carriers’’.

Par. (2)(a)(ii). Pub. L. 99–508, § 101(b)(1), (c)(1)(A), (6), substituted ‘‘providers of wire or electronic communication service’’ for ‘‘communication common carriers’’, ‘‘wire, oral, or electronic’’ for ‘‘wire or oral’’, ‘‘if such provider’’ for ‘‘if the common carrier’’, ‘‘provider of wire or electronic communication service’’ for ‘‘communication common carrier’’ wherever appearing, ‘‘such disclosure’’ for ‘‘violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof’’, ‘‘render such person liable’’ for ‘‘render the carrier liable’’, and ‘‘a court order or certification under this chapter’’ for ‘‘an order or certification under this subparagraph’’ in two places.

Par. (2)(b). Pub. L. 99–508, § 101(c)(1)(B), inserted ‘‘or electronic’’ after ‘‘wire’’.

Par. (2)(c). Pub. L. 99–508, § 101(c)(1)(A), substituted ‘‘wire, oral, or electronic’’ for ‘‘wire or oral’’.

Par. (2)(d). Pub. L. 99–508, § 101(b)(2), (c)(1)(A), substituted ‘‘wire, oral, or electronic’’ for ‘‘wire or oral’’ and struck out ‘‘or for the purpose of committing any other injurious act’’ after ‘‘of any State’’.

Par. (2)(f). Pub. L. 99–508, § 101(b)(3), inserted ‘‘or chapter 121’’ in two places and substituted ‘‘foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means’’ for ‘‘foreign communications by a means’’.

Par. (2)(g), (h). Pub. L. 99–508, § 101(b)(4), added subpars. (g) and (h).

Par. (3). Pub. L. 99–508, § 102, added par. (3).

Pars. (4), (5). Pub. L. 99–508, § 101(d)(2), added pars. (4) and (5).

1984—Par. (2)(e). Pub. L. 98–549, § 6(b)(2)(A), substituted ‘‘section 705 or 706’’ for ‘‘section 605 or 606’’.

Par. (2)(f). Pub. L. 98–549, § 6(b)(2)(B), substituted ‘‘section 705’’ for ‘‘section 605’’.

1978—Par. (2)(a)(ii). Pub. L. 95–511, § 201(a), substituted provisions authorizing communication common carriers etc., to provide information to designated persons, prohibiting disclosure of intercepted information, and rendering violators civilly liable for provision exempting communication common carriers from criminality for giving information to designated officers.

Par. (2)(e), (f). Pub. L. 95–511, § 201(b), added par. (2)(e) and (f).

Par. (3). Pub. L. 95–511, § 201(c), struck out par. (3) which provided that nothing in this chapter or section 605 of title 47 limited the President's constitutional power to gather necessary intelligence to protect the national security and stated the conditions necessary for the reception into evidence and disclosure of communications intercepted by the President.

1970—Par. (2)(a). Pub. L. 91–358 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court

order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–549 effective 60 days after Oct. 30, 1984, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–511 effective Oct. 25, 1978, except as specifically provided, see section 401 of Pub. L. 95–511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 901(a) of Pub. L. 91–358.

§ 2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who intentionally—

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication or disseminates by electronic means any advertisement of—

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications,

knowing the content of the advertisement and knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined under this title or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for—

(a) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication service, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof,

to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(3) It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent, or carried in interstate or foreign commerce solely to a domestic provider of wire or electronic communication service or to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such device.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 214; amended Pub. L. 99–508, title I, § 101(c)(1)(A), (7), (f)(2), Oct. 21, 1986, 100 Stat. 1851, 1853; Pub. L. 103–322, title XXXIII, §§ 330016(1)(L), 330022, Sept. 13, 1994, 108 Stat. 2147, 2150; Pub. L. 104–294, title VI, § 604(b)(45), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 105–112, § 2, Nov. 21, 1997, 111 Stat. 2273; Pub. L. 107–296, title II, § 225(f), Nov. 25, 2002, 116 Stat. 2158.)

AMENDMENTS

2002—Par. (1)(c). Pub. L. 107–296, in introductory provisions, inserted ''or disseminates by electronic means'' after ''or other publication'' and, in concluding provisions, inserted ''knowing the content of the advertisement and'' before ''knowing or having reason to know''.

1997—Par. (3). Pub. L. 105–112 added par. (3).

1996—Par. (2). Pub. L. 104–294 amended directory language of Pub. L. 103–322, § 330022. See 1994 Amendment note below.

1994—Par. (1). Pub. L. 103–322, § 330016(1)(L), substituted ''fined under this title'' for ''fined not more than $10,000'' in concluding provisions.

Par. (2). Pub. L. 103–322, § 330022, as amended by Pub. L. 104–294, realigned margins of concluding provisions.

1986—Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline.

Par. (1). Pub. L. 99–508, § 101(c)(1)(A), (f)(2), substituted ''intentionally'' for ''willfully'' in introductory provision and ''wire, oral, or electronic'' for ''wire or oral'' in subpars. (a), (b), and (c)(i), (ii).

Par. (2)(a). Pub. L. 99–508, § 101(c)(7), substituted ''a provider of wire or electronic communication service or'' for ''a communications common carrier or'', ''such a provider, in'' for ''a communications common carrier, in'', and ''business of providing that wire or electronic communication service'' for ''communications common carrier's business''.

Par. (2)(b). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

§ 2513. Confiscation of wire, oral, or electronic communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 215; amended Pub. L. 99–508, title I, § 101(c)(1)(A), Oct. 21, 1986, 100 Stat. 1851.)

AMENDMENTS

1986—Pub. L. 99–508 substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

[§ 2514. Repealed. Pub. L. 91–452, title II, § 227(a), Oct. 15, 1970, 84 Stat. 930]

Section, Pub. L. 90–351, title II, § 802, June 19, 1968, 82 Stat. 216, provided for immunity of witnesses giving testimony or producing evidence under compulsion in Federal grand jury or court proceedings. Subject matter is covered in sections 6002 and 6003 of this title.

EFFECTIVE DATE OF REPEAL

Sections 227(a) and 260 of Pub. L. 91–452 provided for repeal of this section effective four years following sixtieth day after date of enactment of Pub. L. 91–452, which was approved Oct. 15, 1970, such repeal not affecting any immunity to which any individual was entitled under this section by reason of any testimony or other information given before such date. See section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of this title.

§ 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 216.)

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General,[1] or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons)[2] chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 37 (re-

[1] See 1984 Amendment note below.

[2] So in original. Probably should be followed by a comma.

lating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus) section 956 (conspiracy to harm persons or property overseas),,[3] section[4] a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline,)[5] section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

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[3] So in original.

[4] So in original. The word ''section'' probably should not appear.

[5] So in original. The comma probably should follow the closing parenthesis.

(*l*) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(*o*) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents, section 1028A (relating to aggravated identity theft))[6] of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or[7]

(q) any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h[2] 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); or

(s) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 216; amended Pub. L. 91–452, title VIII, § 810, title IX, § 902(a), title XI, § 1103, Oct. 15, 1970, 84 Stat. 940, 947, 959; Pub. L. 91–644, title IV, § 16, Jan. 2, 1971, 84 Stat. 1891; Pub. L. 95–598, title III, § 314(h), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 97–285, §§ 2(e), 4(e), Oct. 6, 1982, 96 Stat. 1220, 1221; Pub. L. 98–292, § 8, May 21, 1984, 98 Stat. 206; Pub. L. 98–473, title II, § 1203(c), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99–508, title I, §§ 101(c)(1)(A), 104, 105, Oct. 21, 1986, 100 Stat. 1851, 1855; Pub. L. 99–570, title I, § 1365(c), Oct. 27, 1986, 100 Stat. 3207–35; Pub. L. 100–690, title VI, § 6461, title VII, §§ 7036, 7053(d), 7525, Nov. 18, 1988, 102 Stat. 4374, 4399, 4402, 4502; Pub. L. 101–298, § 3(b), May 22, 1990, 104 Stat. 203; Pub. L. 101–647, title XXV, § 2531, title XXXV, § 3568, Nov. 29, 1990, 104 Stat. 4879, 4928; Pub. L. 103–272, § 5(e)(11), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title XXXIII, §§ 330011(c)(1), (q)(1), (r), 330021(1), Sept. 13, 1994, 108 Stat. 2144, 2145, 2150; Pub. L. 103–414, title II, § 208, Oct. 25, 1994, 108 Stat. 4292; Pub. L. 103–429, § 7(a)(4)(A), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 104–132, title IV, § 434, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104–208, div. C, title II, § 201, Sept. 30, 1996, 110 Stat. 3009–564; Pub. L. 104–287, § 6(a)(2), Oct. 11, 1996, 110 Stat. 3398; Pub. L. 104–294, title I, § 102, title VI, § 601(d), Oct. 11, 1996, 110 Stat. 3491, 3499; Pub. L. 105–318, § 6(b), Oct. 30, 1998, 112 Stat. 3011; Pub. L. 106–181, title V, § 506(c)(2)(B), Apr. 5, 2000, 114 Stat. 139; Pub. L. 107–56, title II, §§ 201, 202, Oct. 26, 2001, 115 Stat. 278; Pub. L. 107–197, title III, § 301(a), June 25, 2002, 116 Stat. 728; Pub. L. 107–273, div. B, title IV, §§ 4002(c)(1), 4005(a)(1), Nov. 2, 2002, 116 Stat. 1808, 1812; Pub. L. 108–21, title II, § 201, Apr. 30, 2003, 117 Stat. 659; Pub. L. 108–458, title VI, § 6907, Dec. 17, 2004, 118 Stat. 3774; Pub. L. 109–162, title XI, § 1171(b), Jan. 5, 2006, 119 Stat. 3123; Pub. L. 109–177, title I, §§ 110(b)(3)(C), 113, title V, § 506(a)(6), Mar. 9, 2006, 120 Stat. 208, 209, 248.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (1)(a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Arms Export Control Act, referred to in par. (1)(k), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 5861 of the Internal Revenue Code of 1986, referred to in par. (1)(*o*), is classified to section 5861 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in par. (3), are set out in the Appendix to this title.

[6] So in original. The second closing parenthesis probably should follow ''other documents''.

[7] So in original. The word ''or'' probably should not appear.

AMENDMENTS

2006—Par. (1). Pub. L. 109–177, §506(a)(6), inserted ''or National Security Division'' after ''the Criminal Division'' in introductory provisions.

Par. (1)(a). Pub. L. 109–177, §113(a), inserted ''chapter 10 (relating to biological weapons)'' after ''under the following chapters of this title:''.

Par. (1)(c). Pub. L. 109–177, §§110(b)(3)(C), 113(b), struck out ''1992 (relating to wrecking trains),'' before ''a felony violation of section 1028'' and inserted ''section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction),'' after ''the following sections of this title:'', ''section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities),'' after ''section 751 (relating to escape),'', ''section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials),'' after ''section 1014 (relating to loans and credit applications generally; renewals and discounts),'', ''section 1992 (relating to terrorist attacks against mass transportation),'' after ''section 1344 (relating to bank fraud),'', ''section 2340A (relating to torture),'' after ''section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),'', and ''section 956 (conspiracy to harm persons or property overseas),'' after ''section 175c (relating to variola virus)''.

Par. (1)(g). Pub. L. 109–177, §113(c), inserted '', or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited)'' before semicolon at end.

Par. (1)(j). Pub. L. 109–177, §113(d)(2), inserted '', the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft)'' before ''of title 49''.

Pub. L. 109–177, §113(d)(1), which directed amendment of par. (1)(j) by inserting a comma after ''section 60123(b) (relating to the destruction of a natural gas pipeline'', was executed by making the insertion after ''section 60123(b) (relating to destruction of a natural gas pipeline'', to reflect the probable intent of Congress.

Pub. L. 109–177, §113(d)(1), struck out ''or'' before ''section 46502 (relating to aircraft piracy)''.

Par. (1)(p). Pub. L. 109–177, §113(e), inserted '', section 1028A (relating to aggravated identity theft)'' after ''other documents''.

Par. (1)(q). Pub. L. 109–177, §113(f), inserted ''2339'' after ''2332h'' and substituted ''2339C, or 2339D'' for ''or 2339C''.

Pub. L. 109–162 struck out semicolon after ''(relating to chemical weapons)'' and substituted ''section 2332'' for ''sections 2332''.

Par. (1)(r), (s). Pub. L. 109–177, §113(g), added subpar. (r) and redesignated former subpar. (r) as (s).

2004—Par. (1)(a). Pub. L. 108–458, §6907(1), inserted ''2122 and'' after ''sections''.

Par. (1)(c). Pub. L. 108–458, §6907(2), inserted ''section 175c (relating to variola virus),'' after ''section 175 (relating to biological weapons),''.

Par. (1)(q). Pub. L. 108–458, §6907(3), inserted ''2332g, 2332h,'' after ''2332f,''.

2003—Par. (1)(a). Pub. L. 108–21, §201(1), inserted ''chapter 55 (relating to kidnapping),'' after ''chapter 37 (relating to espionage),''.

Par. (1)(c). Pub. L. 108–21, §201(2), inserted ''section 1591 (sex trafficking of children by force, fraud, or coercion),'' after ''section 1511 (obstruction of State or local law enforcement),'' and ''section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes),'' after ''sections 2251 and 2252 (sexual exploitation of children),''.

2002—Par. (1)(n). Pub. L. 107–273, §4002(c)(1), repealed Pub. L. 104–294, §601(d)(2). See 1996 Amendment note below.

Par. (1)(q). Pub. L. 107–273, §4005(a)(1), realigned margins.

Pub. L. 107–197 inserted ''2332f,'' after ''2332d,'' and substituted ''2339B, or 2339C'' for ''or 2339B''.

2001—Par. (1)(c). Pub. L. 107–56, §202, substituted ''section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),'' for ''and section 1341 (relating to mail fraud),''.

Par. (1)(p). Pub. L. 107–56, §201(1), redesignated subpar. (p), relating to conspiracy, as (r).

Par. (1)(q). Pub. L. 107–56, §201(2), added subpar. (q).

Par. (1)(r). Pub. L. 107–56, §201(1), redesignated subpar. (p), relating to conspiracy, as (r).

2000—Par. (1)(c). Pub. L. 106–181 inserted ''section 38 (relating to aircraft parts fraud),'' after ''section 32 (relating to destruction of aircraft or aircraft facilities),''.

1998—Par. (1)(a). Pub. L. 105–318 inserted ''chapter 90 (relating to protection of trade secrets),'' after ''chapter 37 (relating to espionage),''.

1996—Par. (1)(c). Pub. L. 104–294, §102, which directed amendment of par. 1(c) by inserting ''chapter 90 (relating to protection of trade secrets),'' after ''chapter 37 (relating to espionage),'', could not be executed because phrase ''chapter 37 (relating to espionage),'' did not appear.

Pub. L. 104–208, §201(1), substituted ''section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents)'' for ''or section 1992 (relating to wrecking trains)'' before semicolon at end.

Par. (1)(j). Pub. L. 104–287, §6(a)(2), amended directory language of Pub. L. 103–272, §5(e)(11) as amended by Pub. L. 103–429, §7(a)(4)(A). See 1994 Amendment note below.

Par. (1)(*l*). Pub. L. 104–208, §201(2), and Pub. L. 104–294, §601(d)(1), amended subpar. (*l*) identically, striking out ''or'' after semicolon at end.

Par. (1)(m). Pub. L. 104–208, §201(3), (4), added subpar. (m). Former subpar. (m) redesignated (n).

Par. (1)(n). Pub. L. 104–294, §601(d)(2), which could not be executed because of prior amendments by Pub. L. 104–132, §434(1) and Pub. L. 104–208, §201(3), was repealed by Pub. L. 107–273, §4002(c)(1). See below.

Pub. L. 104–208, §201(3), redesignated subpar. (m) as (n). Former subpar. (n) redesignated (*o*).

Pub. L. 104–132, §434(1), struck out ''and'' at end.

Par. (1)(*o*). Pub. L. 104–208, §201(3), redesignated subpar. (n) as (*o*). Former subpar. (*o*) redesignated (p).

Pub. L. 104–132 added subpar. (*o*) and redesignated former subpar. (*o*) as (p).

Par. (1)(p). Pub. L. 104–208, §201(3), redesignated subpar. (*o*), relating to felony violation of section 1028, etc., as (p).

Pub. L. 104–132, §434(2), redesignated subpar. (*o*), relating to conspiracy, as (p).

1994—Par. (1). Pub. L. 103–414 in introductory provisions inserted ''or acting Deputy Assistant Attorney General'' after ''Deputy Assistant Attorney General''.

Par. (1)(c). Pub. L. 103–322, §330021(1), substituted ''kidnapping'' for ''kidnaping'' in two places.

Pub. L. 103–322, §330011(c)(1), amended directory language of Pub. L. 101–298, §3(b). See 1990 Amendment note below.

Par. (1)(j). Pub. L. 103–322, § 330011(r), amended directory language of Pub. L. 101–647, § 2531(3). See 1990 Amendment note below.

Pub. L. 103–322, § 330011(q)(1), repealed Pub. L. 101–647, § 3568. See 1990 Amendment note below.

Pub. L. 103–272, § 5(e)(11), as amended by Pub. L. 103–429, § 7(a)(4)(A); Pub. L. 104–287, § 6(a)(2), substituted ''section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;'' for ''section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy);''.

1990—Par. (1)(c). Pub. L. 101–647, § 2531(1), inserted ''section 215 (relating to bribery of bank officials),'' before ''section 224'', ''section 1032 (relating to concealment of assets),'' before section 1084, ''section 1014 (relating to loans and credit applications generally; renewals and discounts),'' before ''sections 1503,'' and ''section 1344 (relating to bank fraud),'' before ''sections 2251 and 2252'' and struck out ''the section in chapter 65 relating to destruction of an energy facility,'' after ''retaliating against a Federal official),''.

Pub. L. 101–298, § 3(b), as amended by Pub. L. 103–322, § 330011(c)(1), inserted ''section 175 (relating to biological weapons),'' after ''section 33 (relating to destruction of motor vehicles or motor vehicle facilities),''.

Par. (1)(j). Pub. L. 101–647, § 3568, which directed amendment of subsec. (j) by substituting ''any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or section 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)'' for ''any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code'', and which was probably intended as an amendment to par. (1)(j), was repealed by Pub. L. 103–322, § 330011(q)(1).

Pub. L. 101–647, § 2531(3), as amended by Pub. L. 103–322, § 330011(r), substituted ''any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy)'' for ''any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code''.

Par. (1)(m). Pub. L. 101–647, § 2531(2)(A), struck out subpar. (m) relating to conspiracy which read as follows: ''any conspiracy to commit any of the foregoing offenses.''

Par. (1)(*o*). Pub. L. 101–647, § 2531(2)(B)–(D), added subpar. (*o*).

1988—Par. (1). Pub. L. 100–690, § 7036(a)(1), inserted ''or'' after ''Associate Attorney General,'' in introductory provisions.

Par. (1)(a). Pub. L. 100–690, § 7036(c)(1), which directed the amendment of subpar. (a) by substituting ''(relating to riots),'' for ''(relating to riots);'' was executed by substituting ''(relating to riots),'' for ''(relating to riots)'' as the probable intent of Congress.

Par. (1)(c). Pub. L. 100–690, § 7053(d), which directed the amendment of section 2516(c) by substituting ''1958'' for ''1952A'' and ''1959'' for ''1952B'' was executed by making the substitutions in par. (1)(c) as the probable intent of Congress.

Pub. L. 100–690, § 7036(b), struck out ''section 2252 or 2253 (sexual exploitation of children),'' after ''wire, radio, or television),'' and substituted ''section 2321'' for ''the second section 2320''.

Pub. L. 100–690, § 7036(a)(2), which directed the amendment of par. (1) by striking the comma that follows a comma was executed to subpar. (c) by striking out the second comma after ''to mail fraud)''.

Par. (1)(i). Pub. L. 100–690, § 7525, added subpar. (i) and redesignated former subpar. (i) as (j).

Par. (1)(j). Pub. L. 100–690, § 7525, redesignated former subpar. (i) as (j). Former subpar. (j) redesignated (k).

Pub. L. 100–690, § 7036(c)(2), which directed amendment of subpar. (j) by striking ''or;'' was executed by striking ''or'' after ''Export Control Act);'' to reflect the probable intent of Congress.

Par. (1)(k). Pub. L. 100–690, § 7525, redesignated former subpar. (j) as (k). Former subpar. (k) redesignated (*l*).

Pub. L. 100–690, § 7036(c)(3), struck out ''or'' at end.

Par. (1)(*l*). Pub. L. 100–690, § 7525, redesignated former subpar. (k) as (*l*). Former subpar. (*l*) redesignated (m).

Par. (1)(m). Pub. L. 100–690, § 7525, redesignated former subpar. (*l*) relating to conspiracy as (m).

Pub. L. 100–690, § 6461, added subpar. (m) relating to sections 922 and 924.

Par. (1)(n). Pub. L. 100–690, § 6461, added subpar. (n).

1986—Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline.

Par. (1). Pub. L. 99–508, § 104, substituted ''any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division'' for ''or any Assistant Attorney General'' in introductory provisions.

Par. (1)(a). Pub. L. 99–508, § 105(a)(5), inserted ''section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),'' struck out ''or'' after ''(relating to treason),'' and inserted ''chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)''.

Par. (1)(c). Pub. L. 99–570, which directed the amendment of subpar. (c) by inserting ''section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),'' after ''section 1955 (prohibition of relating to business enterprises of gambling),'' was executed by inserting this phrase after ''section 1955 (prohibition of business enterprises of gambling),'' as the probable intent of Congress.

Pub. L. 99–508, § 105(a)(1), inserted ''section 751 (relating to escape),'' ''the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities),'' and ''section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity),'' substituted ''2312, 2313, 2314,'' for ''2314'', inserted '', section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud),'' substituted '', section 351'' for ''or section 351'', and inserted '', section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)''.

Par. (1)(h) to (*l*). Pub. L. 99–508, § 105(a)(2)–(4), added subpars. (h) to (k) and redesignated former subpar. (h) as (*l*).

Par. (2). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in two places.

Par. (3). Pub. L. 99–508, § 105(b), added par. (3).

1984—Par. (1). Pub. L. 98–473, § 1203(c)(4), which directed the amendment of the first par. of par. (1) by inserting ''Deputy Attorney General, Associate Attorney General,'' after ''Attorney General.'' was executed by making the insertion after the first reference to ''Attorney General,'' to reflect the probable intent of Congress.

Par. (1)(c). Pub. L. 98–473, § 1203(c)(2), inserted references to sections 1512 and 1513 after ''1503''.

Pub. L. 98–473, § 1203(c)(1), inserted ''section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children),'' after ''section 664 (embezzlement from pension and welfare funds),''.

Pub. L. 98–292 inserted ''sections 2251 and 2252 (sexual exploitation of children),'' after ''section 664 (embezzlement from pension and welfare funds),''.

Par. (1)(g), (h). Pub. L. 98–473, § 1203(c)(3), added par. (g) and redesignated former par. (g) as (h).

1982—Par. (1)(c). Pub. L. 97–285 substituted ''(Presidential and Presidential staff assassination, kidnaping, and assault)'' for ''(Presidential assassinations, kidnapping, and assault)'' after ''section 1751'' and substituted ''(violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault)'' for ''(violations with respect to congressional assassination, kidnapping, and assault)'' after ''section 351''.

1978—Par. (1)(e). Pub. L. 95–598 substituted ''fraud connected with a case under title 11'' for ''bankruptcy fraud''.

1971—Par. (1)(c). Pub. L. 91–644 inserted reference to section 351 offense (violations with respect to congressional assassination, kidnaping, and assault).

1970—Par. (1)(c). Pub. L. 91–452 inserted reference to sections 844(d), (e), (f), (g), (h), or (i), 1511, 1955, and 1963 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(a) of Pub. L. 104–287 provided that the amendment made by that section is effective July 5, 1994.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 7(a) of Pub. L. 103–429 provided that the amendment made by section 7(a)(4)(A) of Pub. L. 103–429 is effective July 5, 1994.

Section 330011(c)(1) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3(b) of Pub. L. 101–298 took effect.

Section 330011(q)(1) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3568 of Pub. L. 101–647 took effect.

Section 330011(r) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 2531(3) of Pub. L. 101–647 took effect.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 101(c)(1)(A) and 105 of Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions pursuant to section 2516(2) of this title, and amendment by section 104 of Pub. L. 99–508 effective Oct. 21, 1986, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.

(4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or

foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 217; amended Pub. L. 91–452, title IX, § 902(b), Oct. 15, 1970, 84 Stat. 947; Pub. L. 99–508, title I, § 101(c)(1)(A), Oct. 21, 1986, 100 Stat. 1851; Pub. L. 107–56, title II, § 203(b)(1), Oct. 26, 2001, 115 Stat. 280; Pub. L. 107–296, title VIII, § 896, Nov. 25, 2002, 116 Stat. 2257.)

AMENDMENTS

2002—Pars. (7), (8). Pub. L. 107–296 added pars. (7) and (8).

2001—Par. (6). Pub. L. 107–56 added par. (6).

1986—Pub. L. 99–508 substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline and wherever appearing in text.

1970—Par. (3). Pub. L. 91–452 substituted ''proceeding held under the authority of the United States or of any State or political subdivision thereof'' for ''criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

PROCEDURES FOR DISCLOSURE OF INFORMATION

Pub. L. 107–56, title II, § 203(c), Oct. 26, 2001, 115 Stat. 280, as amended by Pub. L. 107–296, title VIII, § 897(b), Nov. 25, 2002, 116 Stat. 2258; Pub. L. 108–458, title VI, § 6501(b), Dec. 17, 2004, 118 Stat. 3760, provided that: ''The Attorney General shall establish procedures for the disclosure of information pursuant to paragraphs (6) and (8) of section 2517 of title 18, United States Code, and Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure [18 U.S.C. App.] that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) [sic].''

§ 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person,

if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon

as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, depart-

ment, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

(a) in the case of an application with respect to the interception of an oral communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electronic communication—

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

(iii) the judge finds that such showing has been adequately made; and

(iv) the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11)(a) shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

(Added Pub. L. 90–351, title III, §802, June 19, 1968, 82 Stat. 218; amended Pub. L. 91–358, title II, §211(b), July 29, 1970, 84 Stat. 654; Pub. L. 95–511, title II, §201(d)–(g), Oct. 25, 1978, 92 Stat. 1797, 1798; Pub. L. 98–473, title II, §1203(a), (b), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99–508, title I, §§101(c)(1)(A), (8), (e), 106(a)–(d)(3), Oct. 21, 1986, 100 Stat. 1851–1853, 1856, 1857; Pub. L. 103–414, title II, §201(b)(1), Oct. 25, 1994, 108 Stat. 4290; Pub. L. 105–272, title VI, §604, Oct. 20, 1998, 112 Stat. 2413.)

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in par. (4), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§1001 et seq.) of chapter 9 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

AMENDMENTS

1998—Par. (11)(b)(ii). Pub. L. 105–272, §604(a)(1), substituted "that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;" for "of a purpose, on the part of that person, to thwart interception by changing facilities; and".

Par. (11)(b)(iii). Pub. L. 105–272, §604(a)(2), substituted "such showing has been adequately made; and" for "such purpose has been adequately shown."

Par. (11)(b)(iv). Pub. L. 105–272, §604(a)(3), added cl. (iv).

Par. (12). Pub. L. 105–272, § 604(b), substituted ''by reason of subsection (11)(a)'' for ''by reason of subsection (11)'', struck out ''the facilities from which, or'' after ''shall not begin until'', and struck out comma after ''the place where''.

1994—Par. (4). Pub. L. 103–414 inserted at end of concluding provisions ''Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.''

1986—Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline.

Par. (1). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in introductory provisions.

Par. (1)(b)(ii). Pub. L. 99–508, § 106(d)(1), inserted ''except as provided in subsection (11),''.

Par. (1)(e). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral''.

Par. (3). Pub. L. 99–508, §§ 101(c)(1)(A), 106(a), in introductory provisions, substituted ''wire, oral, or electronic'' for ''wire or oral'' and inserted ''(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)''.

Par. (3)(d). Pub. L. 99–508, §§ 101(c)(1)(A), 106(d)(2), inserted ''except as provided in subsection (11),'' and substituted ''wire, oral, or electronic'' for ''wire or oral''.

Par. (4). Pub. L. 99–508, §§ 101(c)(1)(A), (8), 106(b), substituted ''wire, oral, or electronic'' for ''wire or oral'' wherever appearing and, in closing provisions, substituted ''provider of wire or electronic communication service'' for ''communication common carrier'' wherever appearing, ''such service provider'' for ''such carrier'', and ''for reasonable expenses incurred in providing such facilities or assistance'' for ''at the prevailing rates''.

Par. (5). Pub. L. 99–508, §§ 101(c)(1)(A), 106(c), substituted ''wire, oral, or electronic'' for ''wire or oral'' and inserted provisions which related to beginning of thirty-day period, minimization where intercepted communication is in code or foreign language and expert in that code or foreign language is not immediately available, and conduct of interception by Government personnel or by individual operating under Government contract, acting under supervision of investigative or law enforcement officer authorized to conduct interception.

Pars. (7), (8)(a), (d)(3), (9). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' wherever appearing.

Par. (10)(c). Pub. L. 99–508, § 101(e), added subpar. (c).

Pars. (11), (12). Pub. L. 99–508, § 106(d)(3), added pars. (11) and (12).

1984—Par. (7). Pub. L. 98–473, § 1203(a), inserted '', the Deputy Attorney General, the Associate Attorney General,'' after ''Attorney General'' in provisions preceding subpar. (a).

Par. (7)(a). Pub. L. 98–473, § 1203(b), amended subpar. (a) generally, adding cl. (i) and designated existing provisions as cls. (ii) and (iii).

1978—Par. (1). Pub. L. 95–511, § 201(d), inserted ''under this chapter'' after ''communication''.

Par. (4). Pub. L. 95–511, § 201(e), inserted ''under this chapter'' after ''wire or oral communication'' wherever appearing.

Par. (9). Pub. L. 95–511, § 201(e), substituted ''any wire or oral communication intercepted pursuant to this chapter'' for ''any intercepted wire or oral communication''.

Par. (10). Pub. L. 95–511, § 201(g), substituted ''any wire or oral communication intercepted pursuant to this chapter,'' for ''any intercepted wire or oral communication,''.

1970—Par. (4). Pub. L. 91–358 inserted the provision that, upon the request of the applicant, an order authorizing the interception of a wire or oral communication direct that a communication common carrier, landlord, custodian, or other person furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services provided.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–511 effective Oct. 25, 1978, except as specifically provided, see section 401 of Pub. L. 95–511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 901(a) of Pub. L. 91–358.

§ 2519. Reports concerning intercepted wire, oral, or electronic communications

(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(a) the fact that an order or extension was applied for;

(b) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title);

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including

(i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, (iv) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order, and (v) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 222; amended Pub. L. 95–511, title II, § 201(h), Oct. 25, 1978, 92 Stat. 1798; Pub. L. 99–508, title I, §§ 101(c)(1)(A), 106(d)(4), Oct. 21, 1986, 100 Stat. 1851, 1857; Pub. L. 106–197, § 2(a), May 2, 2000, 114 Stat. 247.)

AMENDMENTS

2000—Par. (2)(b)(iv), (v). Pub. L. 106–197 added cl. (iv) and redesignated former cl. (iv) as (v).

1986—Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral'' in section catchline.

Par. (1)(b). Pub. L. 99–508, § 106(d)(4), inserted ''(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)''.

Par. (3). Pub. L. 99–508, § 101(c)(1)(A), substituted ''wire, oral, or electronic'' for ''wire or oral''.

1978—Par. (3). Pub. L. 95–511 inserted ''pursuant to this chapter'' after ''wire or oral communications'' and ''granted or denied''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–511 effective Oct. 25, 1978, except as specifically provided, see section 401 of Pub. L. 95–511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER SECTION 2518

Pub. L. 107–273, div. A, title III, § 305(b), Nov. 2, 2002, 116 Stat. 1782, provided that: ''At the same time that the Attorney General, or Assistant Attorney General specially designated by the Attorney General, submits to the Administrative Office of the United States Courts the annual report required by section 2519(2) of title 18, United States Code, that is respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, that contains the following information with respect to those orders described in that annual report that were applied for by law enforcement agencies of the Department of Justice and whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program)—

''(1) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of title 18, United States Code, did not apply by reason of section 2518 (11) of title 18);

''(2) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

''(3) the offense specified in the order or application, or extension of an order;

''(4) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application;

''(5) the nature of the facilities from which or place where communications were to be intercepted;

''(6) a general description of the interceptions made under such order or extension, including—

''(A) the approximate nature and frequency of incriminating communications intercepted;

''(B) the approximate nature and frequency of other communications intercepted;

''(C) the approximate number of persons whose communications were intercepted;

''(D) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order; and

''(E) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

''(7) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

''(8) the number of trials resulting from such interceptions;

''(9) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

''(10) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

''(11) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.''

ENCRYPTION REPORTING REQUIREMENTS

Pub. L. 106–197, § 2(b), May 2, 2000, 114 Stat. 247, provided that: ''The encryption reporting requirement in subsection (a) [amending this section] shall be effective for the report transmitted by the Director of the Administrative Office of the Courts for calendar year 2000 and in subsequent reports.''

§ 2520. Recovery of civil damages authorized

(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) RELIEF.—In an action under this section, appropriate relief includes—

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

(2) In any other action under this section, the court may assess as damages whichever is the greater of—

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

(d) DEFENSE.—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) or 2511(2)(i) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

(f) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(g) IMPROPER DISCLOSURE IS VIOLATION.—Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 223; amended Pub. L. 91–358, title II, § 211(c), July 29, 1970, 84 Stat. 654; Pub. L. 99–508, title I, § 103, Oct. 21, 1986, 100 Stat. 1853; Pub. L. 107–56, title II, § 223(a), Oct. 26, 2001, 115 Stat. 293; Pub. L. 107–296, title II, § 225(e), Nov. 25, 2002, 116 Stat. 2157.)

AMENDMENTS

2002—Subsec. (d)(3). Pub. L. 107–296 inserted ''or 2511(2)(i)'' after ''2511(3)''.

2001—Subsec. (a). Pub. L. 107–56, § 223(a)(1), inserted '', other than the United States,'' after ''person or entity''.

Subsecs. (f), (g). Pub. L. 107–56, § 223(a)(2), (3), added subsecs. (f) and (g).

1986—Pub. L. 99–508 amended section generally. Prior to amendment, section read as follows: ''Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and (2) be entitled to recover from any such person—

''(a) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

''(b) punitive damages; and

''(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.''

1970—Pub. L. 91–358 substituted provisions that a good faith reliance on a court order or legislative authorization constitute a complete defense to any civil or criminal action brought under this chapter or under any other law, for provisions that a good faith reliance on a court order or on the provisions of section 2518(7) of this chapter constitute a complete defense to any civil or criminal action brought under this chapter.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–508 effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 901(a) of Pub. L. 91–358.

§ 2521. Injunction against illegal interception

Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Added Pub. L. 99–508, title I, § 110(a), Oct. 21, 1986, 100 Stat. 1859.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as an Effective Date of 1986 Amendment note under section 2510 of this title.

§ 2522. Enforcement of the Communications Assistance for Law Enforcement Act

(a) ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER.—If a court authorizing an interception under this chapter, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206 or a State statute finds that a telecommunications carrier has failed to comply with the requirements of the Communications Assistance for Law Enforcement Act, the court may, in accordance with section 108 of such Act, direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission or switching equipment furnish forthwith modifications necessary for the carrier to comply.

(b) ENFORCEMENT UPON APPLICATION BY ATTORNEY GENERAL.—The Attorney General may, in a civil action in the appropriate United States district court, obtain an order, in accordance with section 108 of the Communications Assistance for Law Enforcement Act, directing that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services comply with such Act.

(c) CIVIL PENALTY.—

(1) IN GENERAL.—A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to $10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

(2) CONSIDERATIONS.—In determining whether to impose a civil penalty and in determining its amount, the court shall take into account—

(A) the nature, circumstances, and extent of the violation;

(B) the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

(C) such other matters as justice may require.

(d) DEFINITIONS.—As used in this section, the terms defined in section 102 of the Communications Assistance for Law Enforcement Act have the meanings provided, respectively, in such section.

(Added Pub. L. 103–414, title II, § 201(a), Oct. 25, 1994, 108 Stat. 4289.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

The Communications Assistance for Law Enforcement Act, referred to in subsecs. (a) and (b), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§ 1001 et seq.) of chapter 9 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Sections 102 and 108 of the Act are classified to sections 1001 and 1007, respectively, of Title 47.

For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

Sec.
2701. Unlawful access to stored communications.
2702. Voluntary disclosure of customer communications or records.
2703. Required disclosure of customer communications or records.
2704. Backup preservation.
2705. Delayed notice.
2706. Cost reimbursement.
2707. Civil action.
2708. Exclusivity of remedies.
2709. Counterintelligence access to telephone toll and transactional records.
2710. Wrongful disclosure of video tape rental or sale records.
2711. Definitions for chapter.
2712. Civil actions against the United States.

AMENDMENTS

2002—Pub. L. 107–273, div. B, title IV, § 4005(b), Nov. 2, 2002, 116 Stat. 1812, made technical correction to directory language of Pub. L. 107–56, title II, § 223(c)(2), Oct. 26, 2001, 115 Stat. 295, effective Oct. 26, 2001. See 2001 Amendment note below.

2001—Pub. L. 107–56, title II, §§ 223(c)(2), 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 107–273, div. B, title IV, § 4005(b), Nov. 2, 2002, 116 Stat. 1812, temporarily added item 2712.

Pub. L. 107–56, title II, §§ 212(a)(2), (b)(2), 224, Oct. 26, 2001, 115 Stat. 285, 295, temporarily substituted ''Voluntary disclosure of customer communications or records'' for ''Disclosure of contents'' in item 2702 and ''Required disclosure of customer communications or records'' for ''Requirements for governmental access'' in item 2703.

1988—Pub. L. 100–690, title VII, § 7067, Nov. 18, 1988, 102 Stat. 4405, which directed amendment of item 2710 by inserting ''for chapter'' after ''Definitions'' was executed by making the insertion in item 2711 to reflect the probable intent of Congress and the intervening redesignation of item 2710 as 2711 by Pub. L. 100–618, see below.

Pub. L. 100–618, § 2(b), Nov. 5, 1988, 102 Stat. 3197, added item 2710 and redesignated former item 2710 as 2711.

§ 2701. Unlawful access to stored communications

(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State—

(A) a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

(2) in any other case—

(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

(1) by the person or entity providing a wire or electronic communications service;

(2) by a user of that service with respect to a communication of or intended for that user; or

(3) in section 2703, 2704 or 2518 of this title.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 103–322, title XXXIII, § 330016(1)(K), (U), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–294, title VI, § 601(a)(3), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–296, title II, § 225(j)(2), Nov. 25, 2002, 116 Stat. 2158.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, § 225(j)(2)(A), in introductory provisions, inserted '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain''.

Subsec. (b)(1)(A). Pub. L. 107–296, § 225(j)(2)(B), substituted ''5 years'' for ''one year''.

Subsec. (b)(1)(B). Pub. L. 107–296, § 225(j)(2)(C), substituted ''10 years'' for ''two years''.

Subsec. (b)(2). Pub. L. 107–296, § 225(j)(2)(D), added par. (2) and struck out former par. (2) which read as follows: ''a fine under this title or imprisonment for not more than six months, or both, in any other case.''

1996—Subsec. (b)(1)(A), (2). Pub. L. 104–294 substituted ''fine under this title'' for ''fine of under this title''.

1994—Subsec. (b)(1)(A). Pub. L. 103–322, § 330016(1)(U), substituted ''under this title'' for ''not more than $250,000''.

Subsec. (b)(2). Pub. L. 103–322, § 330016(1)(K), substituted ''under this title'' for ''not more than $5,000''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section 202 of title II of Pub. L. 99–508 provided that: ''This title and the amendments made by this title [enacting this chapter] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–618, § 1, Nov. 5, 1988, 102 Stat. 3195, provided that: ''This Act [enacting section 2710 of this title and renumbering former section 2710 as 2711 of this

title] may be cited as the 'Video Privacy Protection Act of 1988'.''

§ 2702. Voluntary disclosure of customer communications or records

(a) PROHIBITIONS.—Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title;

(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032);

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime; or

[(B) Repealed. Pub. L. 108–21, title V, § 508(b)(1)(A), Apr. 30, 2003, 117 Stat. 684]

(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;

(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or

(6) to any person other than a governmental entity.

(d) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 100–690, title VII, § 7037, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 105–314, title VI, § 604(b), Oct. 30, 1998, 112 Stat. 2984; Pub. L. 107–56, title II, § 212(a)(1), Oct. 26, 2001, 115 Stat. 284; Pub. L. 107–296, title II, § 225(d)(1), Nov. 25, 2002, 116 Stat. 2157; Pub. L. 108–21, title V, § 508(b), Apr. 30, 2003, 117 Stat. 684; Pub. L. 109–177, title I, § 107(a), (b)(1), (c), Mar. 9, 2006, 120 Stat. 202, 203.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177, § 107(c), inserted ''or (c)'' after ''Except as provided in subsection (b)''.

Subsec. (b)(8). Pub. L. 109–177, § 107(b)(1)(A), struck out ''Federal, State, or local'' before ''governmental entity''.

Subsec. (c)(4). Pub. L. 109–177, § 107(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: ''to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information;''.

Subsec. (d). Pub. L. 109–177, § 107(a), added subsec. (d).

2003—Subsec. (b)(5). Pub. L. 108–21, § 508(b)(1)(C), which directed amendment of par. (5) by striking ''or'' at the end, could not be executed because ''or'' did not appear at the end. See 2002 Amendment note below.

Subsec. (b)(6). Pub. L. 108–21, § 508(b)(1)(D), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(B). Pub. L. 108–21, § 508(b)(1)(A), struck out subpar. (B) which read as follows: ''if required by section 227 of the Crime Control Act of 1990; or''.

Subsec. (b)(7), (8). Pub. L. 108–21, § 508(b)(1)(B), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (c)(5), (6). Pub. L. 108–21, § 508(b)(2), added par. (5) and redesignated former par. (5) as (6).

2002—Subsec. (b)(5). Pub. L. 107–296, § 225(d)(1)(A), struck out ''or'' at end.

Subsec. (b)(6)(A). Pub. L. 107–296, § 225(d)(1)(B), inserted ''or'' at end.

Subsec. (b)(6)(C). Pub. L. 107–296, § 225(d)(1)(C), struck out subpar. (C) which read as follows: ''if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.''

Subsec. (b)(7). Pub. L. 107–296, § 225(d)(1)(D), added par. (7).

2001—Pub. L. 107–56, § 212(a)(1)(A), substituted ''Voluntary disclosure of customer communications or records'' for ''Disclosure of contents'' in section catchline.

Subsec. (a)(3). Pub. L. 107–56, § 212(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 107–56, § 212(a)(1)(C), substituted ''Exceptions for disclosure of communications'' for ''Exceptions'' in heading and ''A provider described in subsection (a)'' for ''A person or entity'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 107–56, § 212(a)(1)(D), added subpar. (C).

Subsec. (c). Pub. L. 107–56, § 212(a)(1)(E), added subsec. (c).

1998—Subsec. (b)(6). Pub. L. 105–314 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''to a law enforcement agency, if such contents—

''(A) were inadvertently obtained by the service provider; and

''(B) appear to pertain to the commission of a crime.''

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''2517'' for ''2516''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2703. Required disclosure of customer communications or records

(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure;

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter.

(f) REQUIREMENT TO PRESERVE EVIDENCE.—

(1) IN GENERAL.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) PERIOD OF RETENTION.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1861; amended Pub. L. 100–690, title VII, §§ 7038, 7039, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103–322, title XXXIII, § 330003(b), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 103–414, title II, § 207(a), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 104–132, title VIII, § 804, Apr. 24, 1996, 110 Stat. 1305; Pub. L. 104–293, title VI, § 601(b), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 104–294, title VI, § 605(f), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 105–184, § 8, June 23, 1998, 112 Stat. 522; Pub. L. 107–56, title II, §§ 209(2), 210, 212(b)(1), 220(a)(1), (b), Oct. 26, 2001, 115 Stat. 283, 285, 291, 292; Pub. L. 107–273, div. B, title IV, § 4005(a)(2), div. C, title I, § 11010, Nov. 2, 2002, 116 Stat. 1812, 1822; Pub. L. 107–296, title II, § 225(h)(1), Nov. 25, 2002, 116 Stat. 2158; Pub. L. 109–162, title XI, § 1171(a)(1), Jan. 5, 2006, 119 Stat. 3123.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a), (b)(1)(A), and (c)(1)(B)(i), are set out in the Appendix to this title.

AMENDMENTS

2006—Subsec. (c)(1)(C). Pub. L. 109–162 struck out ''or'' at end.

2002—Subsec. (c)(1)(E). Pub. L. 107–273, § 4005(a)(2), realigned margins.

Subsec. (e). Pub. L. 107–296 inserted '', statutory authorization'' after ''subpoena''.

Subsec. (g). Pub. L. 107–273, § 11010, added subsec. (g).

2001—Pub. L. 107–56, § 212(b)(1)(A), substituted ''Required disclosure of customer communications or records'' for ''Requirements for governmental access'' in section catchline.

Subsec. (a). Pub. L. 107–56, §§ 209(2)(A), (B), 220(a)(1), substituted ''Contents of Wire or Electronic'' for ''Contents of Electronic'' in heading and ''contents of a wire or electronic'' for ''contents of an electronic'' in two places and ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in text.

Subsec. (b). Pub. L. 107–56, § 209(2)(A), substituted ''Contents of Wire or Electronic'' for ''Contents of Electronic'' in heading.

Subsec. (b)(1). Pub. L. 107–56, §§ 209(2)(C), 220(a)(1), substituted ''any wire or electronic communication'' for ''any electronic communication'' in introductory provisions and ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in subpar. (A).

Subsec. (b)(2). Pub. L. 107–56, § 209(2)(C), substituted ''any wire or electronic communication'' for ''any electronic communication'' in introductory provisions.

Subsec. (c)(1). Pub. L. 107–56, §§ 212(b)(1)(C), 220(a)(1), designated subpar. (A) and introductory provisions of subpar. (B) as par. (1), substituted ''A governmental entity may require a provider of electronic communication service or remote computing service to'' for ''(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may'' and a closing parenthesis for provisions which began with ''covered by subsection (a) or (b) of this section) to any person other than a governmental entity.'' in former subpar. (A) and ended with ''(B) A

provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity'', redesignated clauses (i) to (iv) of former subpar. (B) as subpars. (A) to (D), respectively, substituted ''using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation'' for ''under the Federal Rules of Criminal Procedure'' in subpar. (A) and ''; or'' for period at end of subpar. (D), added subpar. (E), and redesignated former subpar. (C) as par. (2).

Subsec. (c)(2). Pub. L. 107–56, § 210, amended par. (2), as redesignated by section 212 of Pub. L. 107–56, by substituting ''entity the—'' for ''entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber'' in introductory provisions, inserting subpars. (A) to (F), striking out ''and the types of services the subscriber or customer utilized,'' before ''when the governmental entity uses an administrative subpoena'', inserting ''of a subscriber'' at beginning of concluding provisions and designating ''to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).'' as remainder of concluding provisions.

Pub. L. 107–56, § 212(b)(1)(C)(iii), (D), redesignated subpar. (C) of par. (1) as par. (2) and temporarily substituted ''paragraph (1)'' for ''subparagraph (B)''.

Pub. L. 107–56, § 212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (c)(3). Pub. L. 107–56, § 212(b)(1)(B), redesignated par. (2) as (3).

Subsec. (d). Pub. L. 107–56, § 220(b), struck out ''described in section 3127(2)(A)'' after ''court of competent jurisdiction''.

1998—Subsec. (c)(1)(B)(iv). Pub. L. 105–184 added cl. (iv).

1996—Subsec. (c)(1)(C). Pub. L. 104–293 inserted ''local and long distance'' after ''address,''.

Subsec. (d). Pub. L. 104–294 substituted ''in section 3127(2)(A)'' for ''in section 3126(2)(A)''.

Subsec. (f). Pub. L. 104–132 added subsec. (f).

1994—Subsec. (c)(1)(B). Pub. L. 103–414, § 207(a)(1)(A), redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: ''uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury or trial subpoena;''.

Subsec. (c)(1)(C). Pub. L. 103–414, § 207(a)(1)(B), added subpar. (C).

Subsec. (d). Pub. L. 103–414, § 207(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry.''

Pub. L. 103–322 substituted ''section 3127(2)(A)'' for ''section 3126(2)(A)''.

1988—Subsecs. (b)(1)(B)(i), (c)(1)(B)(i). Pub. L. 100–690, § 7038, inserted ''or trial'' after ''grand jury''.

Subsec. (d). Pub. L. 100–690, § 7039, inserted ''may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and'' before ''shall issue''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 2704. Backup preservation

(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

(3) The service provider shall not destroy such backup copy until the later of—

(A) the delivery of the information; or

(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(B) has not initiated proceedings to challenge the request of the governmental entity.

(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry

or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term ''delivery'' has the meaning given that term in the Federal Rules of Civil Procedure.

(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1863.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 2705. Delayed notice

(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

(2) An adverse result for the purposes of paragraph (1) of this subsection is—

(A) endangering the life or physical safety of an individual;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

(A) states with reasonable specificity the nature of the law enforcement inquiry; and

(B) informs such customer or subscriber—

(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

(ii) that notification of such customer or subscriber was delayed;

(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

(iv) which provision of this chapter allowed such delay.

(6) As used in this subsection, the term ''supervisory official'' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appro-

priate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of potential witnesses; or

(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1864.)

§ 2706. Cost reimbursement

(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

(c) EXCEPTION.—The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 100–690, title VII, § 7061, Nov. 18, 1988, 102 Stat. 4404.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 inserted heading.

§ 2707. Civil action

(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) RELIEF.—In a civil action under this section, appropriate relief includes—

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c); and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

(d) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(e) DEFENSE.—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization (including a request of a governmental entity under section 2703(f) of this title);

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

(f) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

(g) IMPROPER DISCLOSURE.—Any willful disclosure of a ''record'', as that term is defined in section 552a(a) of title 5, United States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or from a device installed pursuant to section 3123 or 3125 of this

title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1866; amended Pub. L. 104–293, title VI, § 601(c), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title II, §§ 223(b), title VIII, § 815, Oct. 26, 2001, 115 Stat. 293, 384; Pub. L. 107–273, div. B, title IV, § 4005(f)(2), Nov. 2, 2002, 116 Stat. 1813.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–273 made technical correction to directory language of Pub. L. 107–56, § 815. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, § 223(b)(1), inserted ‘‘, other than the United States,’’ after ‘‘person or entity’’.

Subsec. (d). Pub. L. 107–56, § 223(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ‘‘If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise the question whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department concerned shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee.’’

Subsec. (e)(1). Pub. L. 107–56, § 815, as amended by Pub. L. 107–273, inserted ‘‘(including a request of a governmental entity under section 2703(f) of this title)’’ after ‘‘or a statutory authorization’’.

Subsec. (g). Pub. L. 107–56, § 223(b)(3), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–293, § 601(c)(1), substituted ‘‘other person’’ for ‘‘customer’’.

Subsec. (c). Pub. L. 104–293, § 601(c)(2), inserted at end ‘‘If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.’’

Subsecs. (d) to (f). Pub. L. 104–293, § 601(c)(3), (4), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(f)(2), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(f)(2) is effective Oct. 26, 2001.

§ 2708. Exclusivity of remedies

The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1867.)

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(c) PROHIBITION OF CERTAIN DISCLOSURE.—

(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

(f) LIBRARIES.—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (''electronic communication service'') of this title.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1867; amended Pub. L. 103–142, Nov. 17, 1993, 107 Stat. 1491; Pub. L. 104–293, title VI, § 601(a), Oct. 11, 1996, 110 Stat. 3469; Pub. L. 107–56, title V, § 505(a), Oct. 26, 2001, 115 Stat. 365; Pub. L. 109–177, title I, § 116(a), Mar. 9, 2006, 120 Stat. 213; Pub. L. 109–178, §§ 4(b), 5, Mar. 9, 2006, 120 Stat. 280, 281.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–177 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.''

Subsec. (c)(4). Pub. L. 109–178, § 4(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.''

Subsec. (f). Pub. L. 109–178, § 5, added subsec. (f).

2001—Subsec. (b). Pub. L. 107–56, § 505(a)(1), inserted ''at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director'' after ''Deputy Assistant Director'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–56, § 505(a)(2), struck out ''in a position not lower than Deputy Assistant Director'' after ''(or his designee'' and substituted ''made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States; and'' for ''made that—

''(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

''(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and''.

Subsec. (b)(2). Pub. L. 107–56, § 505(a)(3), struck out ''in a position not lower than Deputy Assistant Director'' after ''(or his designee'' and substituted ''made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.'' for ''made that—

''(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

''(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

''(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

''(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.''

1996—Subsec. (b)(1). Pub. L. 104–293 inserted ''local and long distance'' before ''toll billing records''.

1993—Subsec. (b). Pub. L. 103–142, § 1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

''(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

''(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).''

Subsec. (e). Pub. L. 103–142, § 2, inserted '', and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,'' after ''Senate''.

§ 2710. Wrongful disclosure of video tape rental or sale records

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''consumer'' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

(2) the term ''ordinary course of business'' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

(3) the term ''personally identifiable information'' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

(4) the term ''video tape service provider'' means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

(A) to the consumer;

(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages in an amount of $2,500;

(B) punitive damages;

(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(D) such other preliminary and equitable relief as the court determines to be appropriate.

(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

(4) No liability shall result from lawful disclosure permitted by this section.

(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

(f) PREEMPTION.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.

(Added Pub. L. 100–618, § 2(a)(2), Nov. 5, 1988, 102 Stat. 3195.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2)(C), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 2710 was renumbered section 2711 of this title.

§ 2711. Definitions for chapter

As used in this chapter—

(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section;

(2) the term ''remote computing service'' means the provision to the public of computer storage or processing services by means of an electronic communications system;

(3) the term ''court of competent jurisdiction'' has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation; and

(4) the term ''governmental entity'' means a department or agency of the United States or any State or political subdivision thereof.

(Added Pub. L. 99–508, title II, § 201[(a)], Oct. 21, 1986, 100 Stat. 1868, § 2710; renumbered § 2711, Pub. L. 100–618, § 2(a)(1), Nov. 5, 1988, 102 Stat. 3195; amended Pub. L. 107–56, title II, § 220(a)(2), Oct. 26, 2001, 115 Stat. 292; Pub. L. 109–177, title I, § 107(b)(2), Mar. 9, 2006, 120 Stat. 202.)

AMENDMENTS

2006—Par. (4). Pub. L. 109–177 added par. (4).

2001—Par. (3). Pub. L. 107–56 added par. (3).

1988—Pub. L. 100–618 renumbered section 2710 of this title as this section.

§ 2712. Civil actions against the United States

(a) IN GENERAL.—Any person who is aggrieved by any willful violation of this chapter or of chapter 119 of this title or of sections 106(a), 305(a), or 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) may commence an action in United States District Court against the United States to recover money damages. In any such action, if a person who is aggrieved successfully establishes such a violation of this chapter or of chapter 119 of this title or of the above specific provisions of title 50, the Court may assess as damages—

(1) actual damages, but not less than $10,000, whichever amount is greater; and

(2) litigation costs, reasonably incurred.

(b) PROCEDURES.—(1) Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code.

(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation.

(3) Any action under this section shall be tried to the court without a jury.

(4) Notwithstanding any other provision of law, the procedures set forth in section 106(f), 305(g), or 405(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which materials governed by those sections may be reviewed.

(5) An amount equal to any award against the United States under this section shall be reimbursed by the department or agency concerned to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, fund, or account that is available for the enforcement of any Federal law) that is available for the operating expenses of the department or agency concerned.

(c) ADMINISTRATIVE DISCIPLINE.—If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

(d) EXCLUSIVE REMEDY.—Any action against the United States under this subsection shall be the exclusive remedy against the United States for any claims within the purview of this section.

(e) STAY OF PROCEEDINGS.—(1) Upon the motion of the United States, the court shall stay any action commenced under this section if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or the prosecution of a related criminal case. Such a stay shall toll the limitations periods of paragraph (2) of subsection (b).

(2) In this subsection, the terms ''related criminal case'' and ''related investigation'' mean an actual prosecution or investigation in progress at the time at which the request for the stay or any subsequent motion to lift the stay is made. In determining whether an investigation or a criminal case is related to an action commenced under this section, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring that any one or more factors be identical.

(3) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclos-

ing any matter that may adversely affect a related investigation or a related criminal case. If the Government makes such an ex parte submission, the plaintiff shall be given an opportunity to make a submission to the court, not ex parte, and the court may, in its discretion, request further information from either party.

(Added Pub. L. 107–56, title II, § 223(c)(1), Oct. 26, 2001, 115 Stat. 294.)

REFERENCES IN TEXT

Sections 106, 305, and 405 of the Foreign Intelligence Surveillance Act of 1978, referred to in subsecs. (a) and (b)(4), are classified to sections 1806, 1825, and 1845, respectively, of Title 50, War and National Defense.

The Federal Tort Claims Act, referred to in subsec. (b)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

CHAPTER 123—PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec.
2721. Prohibition on release and use of certain personal information from State motor vehicle records.
2722. Additional unlawful acts.
2723. Penalties.
2724. Civil action.
2725. Definitions.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(a)(3), Oct. 11, 1996, 110 Stat. 3506, added analysis.

§ 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) IN GENERAL.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) PERMISSIBLE USES.—Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321–331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating

to a holder of a commercial driver's license that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) RESALE OR REDISCLOSURE.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) WAIVER PROCEDURES.—A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(e) PROHIBITION ON CONDITIONS.—No State may condition or burden in any way the issuance of an individual's motor vehicle record as defined in 18 U.S.C. 2725(1) to obtain express consent. Nothing in this paragraph shall be construed to prohibit a State from charging an administrative fee for issuance of a motor vehicle record.

(Added Pub. L. 103–322, title XXX, § 300002(a), Sept. 13, 1994, 108 Stat. 2099; amended Pub. L. 104–287, § 1, Oct. 11, 1996, 110 Stat. 3388; Pub. L. 104–294, title VI, § 604(b)(46), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 106–69, title III, § 350(c), (d), Oct. 9, 1999, 113 Stat. 1025; Pub. L. 106–346, § 101(a) [title III, § 309(c)–(e)], Oct. 23, 2000, 114 Stat. 1356, 1356A–24.)

REFERENCES IN TEXT

The Anti Car Theft Act of 1992, referred to in subsec. (b), is Pub. L. 102–519, Oct. 25, 1992, 106 Stat. 3384. For complete classification of titles I and IV of the Act to the Code, see Tables.

The Automobile Information Disclosure Act, referred to in subsec. (b), is Pub. L. 85–506, July 7, 1958, 72 Stat. 325, as amended, which is classified generally to chapter 28 (§ 1231 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1231 of Title 15 and Tables.

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–346, § 101(a) [title III, § 309(c)], reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record."

Subsec. (b). Pub. L. 106–346, § 101(a) [title III, § 309(d)], inserted ", subject to subsection (a)(2)," before "may be disclosed" in introductory provisions.

Subsec. (e). Pub. L. 106–346, § 101(a) [title III, § 309(e)], added subsec. (e).

1999—Subsec. (b)(11). Pub. L. 106–69, § 350(c), substituted "if the State has obtained the express consent of the person to whom such personal information pertains" for "if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures".

Subsec. (b)(12). Pub. L. 106–69, § 350(d), substituted "if the State has obtained the express consent of the person to whom such personal information pertains" for "if the motor vehicle department has implemented methods and procedures to ensure that—

"(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

"(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them".

1996—Subsec. (b). Pub. L. 104–287, § 1(1), in introductory provisions, substituted "titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321–331 of title 49" for "the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act".

Subsec. (b)(9). Pub. L. 104–287, § 1(2), substituted "chapter 313 of title 49" for "the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.)".

Subsec. (c). Pub. L. 104–294 substituted "covered by this chapter" for "covered by this title".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–69, title III, § 350(g)(2), Oct. 9, 1999, 113 Stat. 1025, provided that: "Subsections (b), (c), and (d) [amending this section] shall be effective on June 1, 2000, excluding the States of Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas that shall be in

compliance with subsections (b), (c), and (d) within 90 days of the next convening of the State legislature and excluding the States of Wisconsin, South Carolina, and Oklahoma that shall be in compliance within 90 days following the day of issuance of a final decision on Reno vs. Condon by the United States Supreme Court if the State legislature is in session, or within 90 days of the next convening of the State legislature following the issuance of such final decision if the State legislature is not in session.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE

Section 300003 of Pub. L. 103–322 provided that: ''The amendments made by section 300002 [enacting this chapter] shall become effective on the date that is 3 years after the date of enactment of this Act [Sept. 13, 1994]. After the effective date, if a State has implemented a procedure under section 2721(b)(11) and (12) of title 18, United States Code, as added by section 2902 [probably should be section ''300002(a)''], for prohibiting disclosures or uses of personal information, and the procedure otherwise meets the requirements of subsection (b)(11) and (12), the State shall be in compliance with subsection (b)(11) and (12) even if the procedure is not available to individuals until they renew their license, title, registration or identification card, so long as the State provides some other procedure for individuals to contact the State on their own initiative to prohibit such uses or disclosures. Prior to the effective date, personal information covered by the amendment made by section 300002 may be released consistent with State law or practice.''

SHORT TITLE

Section 300001 of title XXX of Pub. L. 103–322 provided that: ''This title [enacting this chapter] may be cited as the 'Driver's Privacy Protection Act of 1994'.''

RELATIONSHIP TO OTHER LAW

The Consumer Credit Reporting Reform Act of 1996 [see Short Title note set out under section 1601 of Title 15, Commerce and Trade] not to be considered to supersede or otherwise affect this section with respect to motor vehicle records for surveys, marketing, or solicitations, see section 2421 of Pub. L. 104–208, set out as a note under section 1681a of Title 15.

§ 2722. Additional unlawful acts

(a) PROCUREMENT FOR UNLAWFUL PURPOSE.—It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title.

(b) FALSE REPRESENTATION.—It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

(Added Pub. L. 103–322, title XXX, § 300002(a), Sept. 13, 1994, 108 Stat. 2101.)

§ 2723. Penalties

(a) CRIMINAL FINE.—A person who knowingly violates this chapter shall be fined under this title.

(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.—Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than $5,000 a day for each day of substantial noncompliance.

(Added Pub. L. 103–322, title XXX, § 300002(a), Sept. 13, 1994, 108 Stat. 2101.)

§ 2724. Civil action

(a) CAUSE OF ACTION.—A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) REMEDIES.—The court may award—

(1) actual damages, but not less than liquidated damages in the amount of $2,500;

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate.

(Added Pub. L. 103–322, title XXX, § 300002(a), Sept. 13, 1994, 108 Stat. 2101.)

§ 2725. Definitions

In this chapter—

(1) ''motor vehicle record'' means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(2) ''person'' means an individual, organization or entity, but does not include a State or agency thereof;

(3) ''personal information'' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.[1]

(4) ''highly restricted personal information'' means an individual's photograph or image, social security number, medical or disability information; and

(5) ''express consent'' means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106–229.

(Added Pub. L. 103–322, title XXX, § 300002(a), Sept. 13, 1994, 108 Stat. 2102; amended Pub. L. 106–346, § 101(a) [title III, § 309(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A–24.)

REFERENCES IN TEXT

Section 106(5) of Public Law 106–229, referred to in par. (5), is classified to section 7006(5) of Title 15, Commerce and Trade.

AMENDMENTS

2000—Pars. (4), (5). Pub. L. 106–346 added pars. (4) and (5).

PART II—CRIMINAL PROCEDURE

Chap.		Sec.
201.	**General provisions**	**3001**
203.	**Arrest and commitment**	**3041**

[1] So in original. The period probably should be a semicolon.

Chap.		Sec.
204.	**Rewards for information concerning terrorist acts and espionage**	**3071**
205.	**Searches and seizures**	**3101**
206.	**Pen Registers and Trap and Trace Devices[1]**	**3121**
207.	**Release and detention pending judicial proceedings**	**3141**
208.	**Speedy trial**	**3161**
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211.	**Jurisdiction and venue**	**3231**
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212A.	**Extraterritorial jurisdiction over certain trafficking in persons offenses**	**3271**
213.	**Limitations**	**3281**
215.	**Grand jury**	**3321**
216.	**Special grand jury**	**3331**
217.	**Indictment and information**	**3361**
219.	**Trial by United States magistrate judges**	**3401**
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223.	**Witnesses and evidence**	**3481**
224.	**Protection of witnesses**	**3521**
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227.	**Sentences**	**3551**
228.	**Death sentence**	**3591**
228A.	**Post-conviction DNA testing**	**3600**
229.	**Post-Sentence Administration[2]**	**3601**
[231.	**Repealed.]**	
232.	**Miscellaneous Sentencing Provisions[1]**	**3661**
232A.	**Special forfeiture of collateral profits of crime**	**3681**
233.	**Contempts**	**3691**
235.	**Appeal**	**3731**
237.	**Crime victims' rights**	**3771**

AMENDMENTS

2006—Pub. L. 109–164, title I, § 103(a)(2), Jan. 10, 2006, 119 Stat. 3563, added item for chapter 212A.

2004—Pub. L. 108–405, title I, § 102(b), title IV, § 411(a)(2), Oct. 30, 2004, 118 Stat. 2264, 2284, added items for chapters 228A and 237.

2000—Pub. L. 106–523, § 2(b), Nov. 22, 2000, 114 Stat. 2492, added item for chapter 212.

1994—Pub. L. 103–359, title VIII, § 803(c)(1), Oct. 14, 1994, 108 Stat. 3439, substituted ''terrorist acts and espionage'' for ''terrorists acts'' in item for chapter 204.

Pub. L. 103–322, title VI, § 60002(b), Sept. 13, 1994, 108 Stat. 1968, added item for chapter 228.

1988—Pub. L. 100–702, title IV, § 404(a)(1), Nov. 19, 1988, 102 Stat. 4651, struck out item 237 ''Rules of criminal procedure''.

1986—Pub. L. 99–646, § 41(d), Nov. 10, 1986, 100 Stat. 3600, struck out item for chapter 232 ''Special forfeiture of collateral profits of crime'' and added item for chapter 232A.

Pub. L. 99–508, title III, § 301(b), Oct. 21, 1986, 100 Stat. 1872, added item for chapter 206.

1984—Pub. L. 98–533, title I, § 101(b), Oct. 19, 1984, 98 Stat. 2708, added item for chapter 204.

Pub. L. 98–473, title II, §§ 203(d), 212(b), 1209(a), 1406(b), Oct. 12, 1984, 98 Stat. 1985, 2011, 2163, 2176, inserted ''and detention pending judicial proceedings'' in item for chapter 207, added items for chapters 224, 227, 229, 231, and 232, and struck out items for former chapters 227 ''Sentence, judgment, and execution'', 229 ''Fines, penalties and forfeitures'' and 231 ''Probation''.

1975—Pub. L. 93–619, title I, § 102, Jan. 3, 1975, 88 Stat. 2086, added item for chapter 208.

1970—Pub. L. 91–452, title I, § 101(b), Oct. 15, 1970, 84 Stat. 926, added item for chapter 216.

1968—Pub. L. 90–578, title III, § 301(c), Oct. 17, 1968, 82 Stat. 1115, substituted ''Trial by United States magistrates'' for ''Trial by commissioners'' in item for chapter 219.

1966—Pub. L. 89–465, § 5(e)(2), June 22, 1966, 80 Stat. 217, substituted ''Release'' for ''Bail'' in item for chapter 207.

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in item for chapter 219 pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 201—GENERAL PROVISIONS

Sec.
3001. Procedure governed by rules; scope, purpose and effect; definition of terms; local rules; forms—Rule.
3002. Courts always open—Rule.
3003. Calendars—Rule.
3004. Decorum in court room—Rule.
3005. Counsel and witnesses in capital cases.
3006. Assignment of counsel—Rule.
3006A. Adequate representation of defendants.
3007. Motions—Rule.
3008. Service and filing of papers—Rule.
3009. Records—Rule.
3010. Exceptions unnecessary—Rule.
3011. Computation of time—Rule.
3012. Repealed.
3013. Special assessment on convicted persons.

AMENDMENTS

1984—Pub. L. 98–473, title II, §§ 218(c), 1405(b), Oct. 12, 1984, 98 Stat. 2027, 2175, added item 3013 and substituted ''Repealed'' for ''Orders respecting persons in custody'' in item 3012.

1964—Pub. L. 88–455, § 4, Aug. 20, 1964, 78 Stat. 554, added item 3006A.

LAW ENFORCEMENT ASSISTANCE ACT OF 1965

Pub. L. 89–197, §§ 1–11, Sept. 22, 1965, 79 Stat. 828, as amended by Pub. L. 89–798, Nov. 8, 1966, 80 Stat. 1503, was repealed by Pub. L. 90–351, title I, § 405, June 19, 1968, 82 Stat. 204, subject to the provisions of section 3745 of Title 42, The Public Health and Welfare. See section 3701 et seq. (chapter 46) of Title 42. Such Act had provided for grants and contracts for improvement of quality of state and local personnel through professional training; grants and contracts to improve state and local law enforcement techniques; delegation and redelegation of powers; contributions to program by recipients, rules and regulations, necessary stipends, and allowances; studies by Attorney General and technical assistance to states; prohibition against control over local agencies; advisory committees, compensation, and expenses; term of program; appropriations; and reports to President and Congress.

COORDINATION OF FEDERAL LAW ENFORCEMENT AND CRIME PREVENTION PROGRAMS

Designation of Attorney General to coordinate Federal law enforcement and crime prevention program, see Ex. Ord. No. 11396, Feb. 7, 1968, 33 F.R. 2689, set out as a note preceding section 1 of this title.

§ 3001. Procedure governed by rules; scope, purpose and effect; definition of terms; local rules; forms—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Scope, rule 1.
Purpose and construction, rule 2.
Proceedings to which rules apply, rules 54 and 59.

[1] So in original. First word only of item should be capitalized.
[2] So in original. Does not conform to chapter heading and first word only of item should be capitalized.

Definition, rule 54(c).
Rules of District Courts and Circuit Courts of Appeal, rule 57.
Forms, rule 58.
Effective date, rule 59.
Citation of rule, rule 60.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3002. Courts always open—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Business hours, rule 56.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3003. Calendars—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Preference to criminal cases, rule 50.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3004. Decorum in court room—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Photographing or radio broadcasting prohibited, rule 53.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3005. Counsel and witnesses in capital cases

Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution.

(June 25, 1948, ch. 645, 62 Stat. 814; Pub. L. 103–322, title VI, § 60026, Sept. 13, 1994, 108 Stat. 1982.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 563 (R.S. § 1034).
Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases, and who shall have free access to the accused at all reasonable hours. In assigning counsel under this section, the court shall consider the recommendation of the Federal Public Defender organization, or, if no such organization exists in the district, of the Administrative Office of the United States Courts. The defendant shall" for "learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall".

§ 3006. Assignment of counsel—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Appointment by court, rule 44.
Accused to be informed of right to counsel, rules 5 and 44.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3006A. Adequate representation of defendants

(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation 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 Class A misdemeanor;

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

(C) is charged with a violation of probation;

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

(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

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

(G) is in custody as a material witness;

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

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

(J) is entitled to the appointment of counsel under section 4109 of this title.

(2) Whenever the United States magistrate judge 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 Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or

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

(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).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement

the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) APPOINTMENT OF COUNSEL.—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every case in which a person entitled to representation under a plan approved under subsection (a) appears without counsel, the United States magistrate judge or the court shall advise the person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the person waives representation by counsel, the United States magistrate judge or the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate judge or the court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate judge or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

(d) PAYMENT FOR REPRESENTATION.—

(1) HOURLY RATE.—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $60 per hour for time expended in court or before a United States magistrate judge and $40 per hour for time reasonably expended out of 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 judge 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[1] 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 may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate[2] or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section. The United States magistrate[2] or the court shall make determinations relating to reimbursement of expenses under this paragraph.

(2) MAXIMUM AMOUNTS.—For representation of a defendant before the United States magistrate judge or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $7,000 for each attorney in a case in which one or more felonies are charged, and $2,000 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $5,000 for each attorney in each court. For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court. For representation of an offender before the United States Parole Commission in a proceeding under section

[1] See References in Text note below.

[2] So in original. Probably should be ''United States magistrate judge''.

4106A of this title, the compensation shall not exceed $1,500 for each attorney in each proceeding; for representation of an offender in an appeal from a determination of such Commission under such section, the compensation shall not exceed $5,000 for each attorney in each court. For any other representation required or authorized by this section, the compensation shall not exceed $1,500 for each attorney in each proceeding.

(3) WAIVING MAXIMUM AMOUNTS.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate judge if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

(4) DISCLOSURE OF FEES.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

(B) PRE-TRIAL OR TRIAL IN PROGRESS.—If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—

(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

(I) Arraignment and or plea.
(II) Bail and detention hearings.
(III) Motions.
(IV) Hearings.
(V) Interviews and conferences.
(VI) Obtaining and reviewing records.
(VII) Legal research and brief writing.
(VIII) Travel time.
(IX) Investigative work.
(X) Experts.
(XI) Trial and appeals.
(XII) Other.

(C) TRIAL COMPLETED.—

(i) IN GENERAL.—If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

(ii) PROTECTION OF THE RIGHTS OF THE DEFENDANT.—If the court determines that defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

(D) CONSIDERATIONS.—The interests referred to in subparagraphs (B) and (C) are—

(i) to protect any person's 5th amendment right against self-incrimination;

(ii) to protect the defendant's 6th amendment rights to effective assistance of counsel;

(iii) the defendant's attorney-client privilege;

(iv) the work product privilege of the defendant's counsel;

(v) the safety of any person; and

(vi) any other interest that justice may require, except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code.

(E) NOTICE.—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.

(F) EFFECTIVE DATE.—The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, will apply only to cases filed on or after the effective date, and shall be in effect for no longer than 24 months after the effective date.

(5) FILING CLAIMS.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate judge and the court, and to each appellate court before which the attorney provided representation to the person involved. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate judge and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate judge, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate judge, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

(6) NEW TRIALS.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(7) PROCEEDINGS BEFORE APPELLATE COURTS.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so

without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(e) SERVICES OTHER THAN COUNSEL.—

(1) UPON REQUEST.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(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 $500 and expenses reasonably incurred.

(B) The court, or the United States magistrate judge (if the services were rendered in a case disposed of entirely before the United States magistrate judge), 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 $500.

(3) MAXIMUM AMOUNTS.—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed $1,600, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

(4) DISCLOSURE OF FEES.—The amounts paid under this subsection for services in any case shall be made available to the public.

(f) RECEIPT OF OTHER PAYMENTS.—Whenever the United States magistrate judge or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(g) DEFENDER ORGANIZATION.—

(1) QUALIFICATIONS.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2) TYPES OF DEFENDER ORGANIZATIONS.—

(A) FEDERAL PUBLIC DEFENDER ORGANIZATION.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the court of appeals of the circuit for incompetency, misconduct in office, or neglect of duty. 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. The compensation of the Federal Public Defender shall be fixed by the court of appeals of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him,

reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, in accordance with section 605 of title 28, a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

(B) COMMUNITY DEFENDER ORGANIZATION.—A Community Defender Organization shall be a non-profit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States:

(i) receive an initial grant for expenses necessary to establish the organization; and

(ii) in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

(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.

(h) RULES AND REPORTS.—Each district court and court of appeals of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(i) APPROPRIATIONS.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section, including funds for the continuing education and training of persons providing representational services under this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

(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.

(k) APPLICABILITY IN THE DISTRICT OF COLUMBIA.—The provisions of this section shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this section shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(Added Pub. L. 88–455, § 2, Aug. 20, 1964, 78 Stat. 552; amended Pub. L. 90–578, title III, § 301(a)(1), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 91–447, § 1, Oct. 14, 1970, 84 Stat. 916; Pub. L. 93–412, § 3, Sept. 3, 1974, 88 Stat. 1093; Pub. L. 97–164, title II, § 206(a), (b), Apr. 2, 1982, 96 Stat. 53; Pub. L. 98–473, title II, §§ 223(e), 405, 1901, Oct. 12, 1984, 98 Stat. 2028, 2067, 2185; Pub. L. 99–651, title I, §§ 102, 103, Nov. 14, 1986, 100 Stat. 3642, 3645; Pub. L. 100–182, § 19, Dec. 7, 1987, 101 Stat. 1270; Pub. L. 100–690, title VII, § 7101(f), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–132, title IX, § 903(a), Apr. 24, 1996, 110 Stat. 1318; Pub. L. 105–119, title III, § 308, Nov. 26, 1997, 111 Stat. 2493; Pub. L. 106–113, div. B, § 1000(a)(1) [title III, § 308(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–37; Pub. L. 106–518, title II, §§ 210, 211, Nov. 13, 2000, 114 Stat. 2415; Pub. L. 108–447, div. B, title III, § 304, Dec. 8, 2004, 118 Stat. 2894.)

REFERENCES IN TEXT

The effective date of the Criminal Justice Act Revision of 1986, referred to in subsec. (d)(1), is, with qualifications, 120 days after Nov. 14, 1986. See section 105 of Pub. L. 99–651, set out below as an Effective Date of 1986 Amendment note.

Section 5305 of title 5, referred to in subsec. (d)(1), was amended generally by Pub. L. 101–509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436, and, as so amended, does not relate to adjustments in the rate of pay under the General Schedule. See section 5303 of Title 5, Government Organization and Employees.

The amendment made by paragraph (4), referred to in subsec. (d)(4)(F), probably means the amendment by section 308 of Pub. L. 105–119, which struck out former par. (4) of subsec. (d) and inserted the new par. (4).

Enactment of this Act, referred to in subsec. (d)(4)(F), probably means the date of enactment of Pub. L. 105–119, which enacted subsec. (d)(4) of this section and was approved Nov. 26, 1997.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (g)(2)(A), are classified to section 3301 et seq. of Title 5.

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–447, § 304(a), substituted ''$7,000'' for ''$5,200'' and ''$2,000'' for ''$1,500'' in first sentence, ''$5,000'' for ''$3,700'' in second sentence, ''$1,500'' for ''$1,200'' and ''$5,000'' for ''$3,900'' in fifth sentence, and ''$1,500'' for ''$1,200'' in last sentence.

Subsec. (e)(2). Pub. L. 108–447, § 304(b)(1), substituted ''$500'' for ''$300'' in subpars. (A) and (B).

Subsec. (e)(3). Pub. L. 108–447, § 304(b)(2), substituted ''$1,600'' for ''$1,000'' in first sentence.

2000—Subsec. (d)(1). Pub. L. 106–518, § 211, substituted ''Attorneys may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized

by the United States magistrate or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section. The United States magistrate or the court shall make determinations relating to reimbursement of expenses under this paragraph.'' for ''Attorneys shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.''

Subsec. (d)(2). Pub. L. 106–518, § 210(4), (5), inserted after second sentence ''For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court.'' and substituted ''$1,200'' for ''$750'' in last sentence.

Pub. L. 106–518, § 210(1)–(3), in first sentence, substituted ''$5,200'' for ''$3,500'' and ''$1,500'' for ''$1,000'', in second sentence, substituted ''$3,700'' for ''$2,500'', and in third sentence, substituted ''$1,200'' for ''$750'' and ''$3,900'' for ''$2,500''.

1999—Subsec. (d)(4)(D)(vi). Pub. L. 106–113 inserted '', except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code'' after ''require''.

1997—Subsec. (d)(4). Pub. L. 105–119 reenacted par. heading without change and amended text generally. Prior to amendment, text read as follows: ''The amounts paid under this subsection, for representation in any case, shall be made available to the public.''

1996—Subsec. (d)(4) to (7). Pub. L. 104–132, § 903(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

Subsec. (e)(4). Pub. L. 104–132, § 903(a)(2), added par. (4).

1988—Subsec. (a)(1)(J). Pub. L. 100–690, § 7101(f)(1), added subpar. (J).

Subsec. (d)(2). Pub. L. 100–690, § 7101(f)(2), inserted provisions at end to representation of offender before United States Parole Commission, and in appeal from determination of such Commission.

1987—Subsec. (a)(1)(E) to (I). Pub. L. 100–182 added subpar. (E) and redesignated former subpars. (E) to (H) as (F) to (I), respectively.

1986—Subsec. (a). Pub. L. 99–651, § 103, made technical amendments to Pub. L. 98–473, § 223(e), see 1984 Amendment note below.

Pub. L. 99–651, § 102(a)(1), substituted ''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:'' and pars. (1) to (3) for prior provisions which read as follows: ''(1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), (4) whose mental condition is the subject of a hearing pursuant to chapter 313 of this title, or (5) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

''(1) attorneys furnished by a bar association or a legal aid agency; or

''(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).''

Subsec. (b). Pub. L. 99–651, § 102(a)(2), substituted ''In every case in which a person entitled to representation under a plan approved under subsection (a)'' for ''In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and'' and substituted ''person'' for ''defendant'' and ''persons'' for ''defendants'' wherever appearing.

Subsec. (d)(1). Pub. L. 99–651, § 102(a)(3)(A), substituted ''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'' for ''court. Such attorney''.

Subsec. (d)(2). Pub. L. 99–651, § 102(a)(3)(B), substituted ''$3,500'' for ''$2,000'', ''$1,000'' for ''$800'', ''$2,500'' for ''$2,000'', and substituted provision that for any other representation required or authorized by this section, the compensation shall not exceed $750 for each attorney in each proceeding, for provision that for representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation could not exceed $500 for each attorney in each proceeding in each court.

Subsec. (d)(3). Pub. L. 99–651, § 102(a)(3)(C), inserted provision that the chief judge of the circuit may delegate such approval authority to an active circuit judge.

Subsec. (d)(4). Pub. L. 99–651, § 102(a)(3)(D), substituted ''provided representation to the person involved'' for ''represented the defendant''.

Subsec. (e)(1). Pub. L. 99–651, § 102(a)(4)(A), substituted ''adequate representation'' for ''an adequate defense''.

Subsec. (e)(2). Pub. L. 99–651, § 102(a)(4)(B), designated existing provisions as subpar. (A), and substituted reference to adequate representation for reference to an adequate defense, inserted exception relating to subpar. (B), increased the authorized amount for services from $150 to $300, and added subpar. (B).

Subsec. (e)(3). Pub. L. 99–651, § 102(a)(4)(C), substituted ''$1,000'' for ''$300'' and inserted provision that the chief judge of the circuit may delegate such approval authority to an active circuit judge.

Subsec. (g). Pub. L. 99–651, § 102(b)(1), redesignated subsec. (h) as (g), and struck out former subsec. (g) which provided for discretionary appointments by the court or magistrate.

Subsec. (g)(2)(A), formerly (h)(2)(A). Pub. L. 99–651, § 102(a)(5)(A), substituted ''in accordance with section

605 of title 28'' for ''similarly as under title 28, United States Code, section 605, and subject to the conditions of that section'', and after fourth sentence inserted provision authorizing the continuation in office, upon a majority vote of the judges of the court of appeals, of a Federal Public Defender whose term has expired until appointment of a successor or until one year after the expiration of such Defender's term, whichever is earlier.

Subsec. (g)(2)(B), formerly (h)(2)(B). Pub. L. 99–651, § 102(a)(5)(B), substituted ''for the next fiscal year'' for ''for the coming year'' in introductory provisions.

Subsec. (g)(3), formerly (h)(3). Pub. L. 99–651, § 102(a)(5)(C), added par. (3).

Subsec. (h). Pub. L. 99–651, § 102(b)(1), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 99–651, § 102(a)(6), (b)(1), redesignated subsec. (j) as (i) and inserted provision for funding continuing education and training of persons providing representational services under this section. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 99–651, § 102(b), redesignated subsec. (k) as (j), and amended subsec. (j) generally to include the District Court for the Northern Mariana Islands. Former subsec. (j) redesignated (i).

Subsecs. (k), (*l*). Pub. L. 99–651, § 102(a)(7), (b)(1), redesignated subsec. (*l*) as (k) and substituted ''this section shall apply'' for ''this Act, other than subsection (h) of section 1, shall apply'' and ''this section shall not apply'' for ''this Act shall not apply''. Former subsec. (k) redesignated (j).

1984—Subsec. (a). Pub. L. 98–473, § 405(a), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (a)(1)(A). Pub. L. 98–473, § 223(e)(1), as amended by Pub. L. 99–651, § 103, substituted ''Class A misdemeanor'' for ''misdemeanor (other than a petty offense as defined in section 1 of this title)''.

Subsec. (a)(1)(E) to (I). Pub. L. 98–473, § 223(e)(2), as amended by Pub. L. 99–651, § 103, redesignated subpars. (F) to (I) as (E) to (H), respectively, and struck out former subpar. (E) which required that representation be provided for any financially eligible person who was entitled to appointment of counsel in parole proceedings under chapter 311 of this title.

Subsec. (a)(2)(A). Pub. L. 98–473, § 223(e)(3), as amended by Pub. L. 99–651, § 103, substituted ''Class B or C misdemeanor, or an infraction'' for ''petty offense''.

Subsec. (d)(1). Pub. L. 98–473, § 1901(1)–(3), substituted ''$60'' for ''$30'' and ''$40'' for ''$20'', and struck out '', or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district'' at end of first sentence.

Subsec. (d)(2). Pub. L. 98–473, § 1901(4)–(6), substituted ''$2,000'' for ''$1,000'' in two places, ''$800'' for ''$400'', and ''$500'' for ''$250''.

Subsec. (g). Pub. L. 98–473, § 405(b), struck out reference to section 4245 of title 18.

1982—Subsec. (h)(2)(A). Pub. L. 97–164, § 206(a), substituted ''court of appeals'' for ''judicial council'' wherever appearing and ''court of appeals of the circuit'' for ''Judicial Council of the Circuit''.

Subsec. (i). Pub. L. 97–164, § 206(b), substituted ''court of appeals'' for ''judicial council''.

1974—Subsec. (*l*). Pub. L. 93–412 substituted ''shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals'', for ''shall be applicable in the District of Columbia'', and struck out provisions that the plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.

1970—Subsec. (a). Pub. L. 91–447, § 1(a), expanded coverage of district court plan for furnishing representation to financially disabled persons to include defendants charged with violation of probation, any person under arrest when such representation is required by law, any person who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief as provided in subsec. (g) of this section, and any person for whom the Sixth Amendment to the Constitution requires appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel, and required each plan to include a provision for participation by private attorneys in a substantial proportion of cases, as well as permitting attorneys to be furnished by bar, legal aid, or defender organizations in accordance with subsec. (h) of this section.

Subsec. (b). Pub. L. 91–447, § 1(a), provided for appointment of counsel from a bar association, legal aid agency, or defender organization as well as from a panel of attorneys approved by the court, expanded advice to defendant of right to appointment of counsel where defendant is charged with juvenile delinquency by the commission of an act which, if committed by an adult, would be a felony or misdemeanor or with violation of probation, and provided for appointment of counsel to be retroactive so as to include any representation furnished pursuant to the plan prior to appointment.

Subsec. (c). Pub. L. 91–447, § 1(a), expanded the scope of representation by appointed counsel to include ancillary matters appropriate to the proceedings.

Subsec. (d). Pub. L. 91–447, § 1(a), raised the rate of compensation not to exceed $30 per hour for time expended in court and $20 per hour for time reasonably expended out of court, increased the limit to $1,000 for each attorney in a case involving one or more alleged felonies and $400 for each attorney in a case in which one or more misdemeanors are charged, established a $1,000 maximum for each attorney in each court for cases on appeal and provided a $250 maximum for each attorney for representation in connection with a post-trial motion, probation revocation proceedings and matters covered by subsec. (g) such as parole revocation and collateral relief proceedings, provided for waiver of maximum amounts and payment in excess of those amounts for extended or complex representation upon approval of the chief judge of the circuit, provided for separate claims of compensation to be submitted to the appropriate court, thus a U.S. magistrate fixes compensation in cases before him, appellate court fixes compensation in cases before it and in all other instances claims are to be made to the district court, provided a court order granting a new trial is deemed to initiate a new case for the purpose of compensation, and facilitate appellate proceedings by allowing a defendant for whom counsel is appointed to appeal or petition for a writ of certiorari without prepayment of fees and cost of security therefore and without filing the affidavit required by section 1915(a).

Subsec. (e). Pub. L. 91–447, § 1(a), limited to $150, plus reasonable expenses, subject to later review and approval by the court, the cost of investigative, expert, or other services necessary for an adequate defense where these services are obtained without prior authorization because circumstances prevented counsel from securing prior court authorization, maintained existing limit on payment for authorized services at a $300 maximum but permitted waiver of that maximum if the court certifies that payment in excess of that limit is necessary to provide fair compensation, and provided that the amount of any excess payment must be approved by the chief judge of the circuit.

Subsec. (f). Pub. L. 91–447, § 1(a), substantially reenacted subsec. (f).

Subsecs. (g) to (k). Pub. L. 91–447, § 1(b), added subsecs. (g) and (h) and redesignated existing subsecs. (g) to (i) as (i) to (k), respectively.

Subsec. (*l*). Pub. L. 91–447, § 1(c), added subsec. (*l*).

1968—Subsecs. (b) to (d). Pub. L. 90–578 substituted ''United States magistrate'' for ''United States commissioner'' wherever appearing.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(1) [title III, §308(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–37, provided that: ''This section [amending this section] shall apply to all disclosures made under section 3006A(d) of title 18, United States Code, related to any criminal trial or appeal involving a sentence of death where the underlying alleged criminal conduct took place on or after April 19, 1995.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 903(c) of Pub. L. 104–132 provided that: ''The amendments made by this section [amending this section and section 848 of Title 21, Food and Drugs] apply to—

''(1) cases commenced on or after the date of the enactment of this Act [Apr. 24, 1996]; and

''(2) appellate proceedings, in which an appeal is perfected, on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 26 of Pub. L. 100–182 provided that: ''The amendments made by this Act [amending this section, sections 3553, 3561, 3563, 3564, 3583, 3663, 3672, 3742, and 4106 of this title, section 994 of Title 28, Judiciary and Judicial Procedure, and sections 504 and 1111 of Title 29, Labor, enacting provisions set out as notes under sections 3551 and 3553 of this title, rule 35 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and section 994 of Title 28, and amending provisions set out as a note under section 3551 of this title] shall apply with respect to offenses committed after the enactment of this Act [Dec. 7, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 105 of title I of Pub. L. 99–651 provided that: ''This title and the amendments made by this title [amending this section and section 1825 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under this section] shall take effect one hundred and twenty days after the date of enactment of this Act [Nov. 14, 1986]. 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.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(e) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–412 provided in part that the amendment of subsec. (*l*) of this section by Pub. L. 93–412 shall take effect on Sept. 3, 1974.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91–447 provided that: ''The amendments made by section 1 of this Act [amending this section] shall become effective one hundred and twenty days after the date of enactment [Oct. 14, 1970].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE OF 1986 AMENDMENT

Section 101 of title I of Pub. L. 99–651 provided that: ''This title [amending this section and section 1825 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under this section] may be referred to as the 'Criminal Justice Act Revision of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1901 of chapter XIX (§1901) of title II of Pub. L. 98–473 provided in part that: ''This chapter [amending this section] may be cited as the 'Criminal Justice Act Revision of 1984'.''

SHORT TITLE

Section 1 of Pub. L. 88–455 provided: ''That this Act [enacting this section and provisions set out as a note under this section] may be cited as the 'Criminal Justice Act of 1964.' ''

SAVINGS PROVISION

Section 206(c) of Pub. L. 97–164 provided that: ''The amendments made by subsection (a) of this section [amending subsec. (h)(2)(A) of this section] shall not affect the term of existing appointments.''

AWARD OF ATTORNEY'S FEES AND LITIGATION EXPENSES TO DEFENSE

Section 617 of Pub. L. 105–119 provided that: ''During fiscal year 1998 and in any fiscal year thereafter, the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act [Nov. 26, 1997], may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. To determine whether or not to award fees and costs under this section, the court, for good cause shown, may receive evidence ex parte and in camera (which shall include the submission of classified evidence or evidence that reveals or might reveal the identity of an informant or undercover agent or matters occurring before a grand jury) and evidence or testimony so received shall be kept under seal. Fees and other expenses awarded under this provision to a party shall be paid by the agency over which the party prevails from any funds made available to the agency by appropriation. No new appropriations shall be made as a result of this provision.''

GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS

Pub. L. 102–572, title VII, § 702, Oct. 29, 1992, 106 Stat. 4515, provided that: ''The Administrator of General Services, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.''

STUDY OF FEDERAL DEFENDER PROGRAM

Pub. L. 101–650, title III, § 318, Dec. 1, 1990, 104 Stat. 5116, as amended by Pub. L. 102–198, § 9, Dec. 9, 1991, 105 Stat. 1626, directed Judicial Conference of the United States to conduct a study of effectiveness of Federal defender program and to transmit a report on results of study to Committees on the Judiciary of Senate and House of Representatives no later than Mar. 31, 1993, with report to include recommendations for legislation, a proposed formula for compensation of Federal defender program counsel, and suggestions for procedural and operational changes by courts.

FUNDS FOR PAYMENT OF COMPENSATION AND REIMBURSEMENT

Pub. L. 101–45, title II, § 102, June 30, 1989, 103 Stat. 122, provided in part: ''That compensation and reimbursement of attorneys and others as authorized under section 3006A of title 18, United States Code, and section 1875(d) of title 28, United States Code, may hereinafter be paid from funds appropriated for 'Defender Services' in the year in which payment is required.''

CERTIFICATION BY ATTORNEY GENERAL TO ADMINISTRATIVE OFFICE OF UNITED STATES COURTS OF PAYMENT OF OBLIGATED EXPENSES

Section 5(c) of Pub. L. 95–144, Oct. 28, 1977, 91 Stat. 1222, provided that: ''The Attorney General shall certify to the Administrative Office of the United States Courts those expenses which it is obligated to pay on behalf of an indigent offender under section 3006A of title 18, United States Code, and similar statutes.''

POWER AND FUNCTION OF A UNITED STATES COMMISSIONER

Section 2 of Pub. L. 91–447 provided that a United States commissioner for a district could exercise any power, function, or duty authorized to be performed by a United States magistrate under the amendments made by section 1 of Pub. L. 91–447, which amended this section, if such commissioner had authority to perform such power, function, or duty prior to the enactment of such amendments.

SUBMISSION OF PLANS

Section 3 of Pub. L. 88–455 directed each district court to submit a plan in accord with section 3006A of this title and the rules of the Judicial Conference of the United States to the judicial council of the circuit within 6 months from Aug. 20, 1964, further directed each judicial council to approve and send to the Administrative Office of the United States courts a plan for each district in its circuit within 9 months from Aug. 20, 1964, and also directed each district court and court of appeals to place its approved plan in operation within 1 year from Aug. 20, 1964.

§ 3007. Motions—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motions substituted for pleas in abatement and special pleas in bar, rule 12.

Form and contents, rule 47.

(June 25, 1948, ch. 645, 62 Stat. 814.)

§ 3008. Service and filing of papers—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Requirement and manner of service; notice of orders; filing papers, rule 49.

(June 25, 1948, ch. 645, 62 Stat. 815.)

§ 3009. Records—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Keeping of records by district court clerks and magistrate judges, rule 55.

(June 25, 1948, ch. 645, 62 Stat. 815; Pub. L. 90–578, title III, § 301(a)(4), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Pub. L. 90–578 substituted ''magistrates'' for ''commissioners''.

CHANGE OF NAME

Words ''magistrate judges'' substituted for ''magistrates'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3010. Exceptions unnecessary—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Objections substituted for exceptions, rule 51.

(June 25, 1948, ch. 645, 62 Stat. 815.)

§ 3011. Computation of time—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Computation: enlargement; expiration of term; motions and affidavits; service by mail, rule 45.

(June 25, 1948, ch. 645, 62 Stat. 815.)

[§ 3012. Repealed. Pub. L. 98–473, title II, § 218(a)(2), Oct. 12, 1984, 98 Stat. 2027]

Section, act June 25, 1948, ch. 645, 62 Stat. 815, related to orders respecting prisoners or persons in custody.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor—

(A) if the defendant is an individual—

(i) the amount of $5 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $10 in the case of a class B misdemeanor; and

(iii) the amount of $25 in the case of a class A misdemeanor; and

(B) if the defendant is a person other than an individual—

(i) the amount of $25 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $50 in the case of a class B misdemeanor; and

(iii) the amount of $125 in the case of a class A misdemeanor;

(2) in the case of a felony—

(A) the amount of $100 if the defendant is an individual; and

(B) the amount of $400 if the defendant is a person other than an individual.

(b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(c) The obligation to pay an assessment ceases five years after the date of the judgment. This subsection shall apply to all assessments irrespective of the date of imposition.

(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.

(Added Pub. L. 98–473, title II, § 1405(a), Oct. 12, 1984, 98 Stat. 2174; amended Pub. L. 100–185, § 3, Dec. 11, 1987, 101 Stat. 1279; Pub. L. 100–690, title VII, §§ 7082(b), 7085, Nov. 18, 1988, 102 Stat. 4407, 4408; Pub. L. 101–647, title XXXV, § 3569, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 104–132, title II, § 210, Apr. 24, 1996, 110 Stat. 1240; Pub. L. 104–294, title VI, § 601(r)(4), Oct. 11, 1996, 110 Stat. 3502.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–294 struck out ''not less than'' before ''$100'' in subpar. (A) and before ''$400'' in subpar. (B).

Pub. L. 104–132 substituted ''not less than $100'' for ''$50'' in subpar. (A) and ''not less than $400'' for ''$200'' in subpar. (B).

1990—Subsec. (a)(1)(B). Pub. L. 101–647 substituted ''an infraction'' for ''a infraction'' in cl. (i) and a semicolon for a period at end of cl. (iii).

1988—Subsec. (a)(1). Pub. L. 100–690, § 7085, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''in the case of a misdemeanor—

''(A) the amount of $25 if the defendant is an individual; and

''(B) the amount of $100 if the defendant is a person other than an individual; and''.

Subsec. (c). Pub. L. 100–690, § 7082(b), inserted at end ''This subsection shall apply to all assessments irrespective of the date of imposition.''

1987—Subsecs. (c), (d). Pub. L. 100–185 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98–473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

CHAPTER 203—ARREST AND COMMITMENT

Sec.
3041. Power of courts and magistrates.
3042. Extraterritorial jurisdiction.
[3043. Repealed.]
3044. Complaint—Rule.
3045. Internal revenue violations.
3046. Warrants or summons—Rule.[1]
3047. Multiple warrants unnecessary.
3048. Commitment to another district; removal—Rule.
3049. Warrant for removal.
3050. Bureau of Prisons employees' powers.
3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives[2]
3052. Powers of Federal Bureau of Investigation.
3053. Powers of marshals and deputies.
[3054. Repealed.]
3055. Officers' powers to suppress Indian liquor traffic.
3056. Powers, authorities, and duties of United States Secret Service.
3056A. Powers, authorities, and duties of United States Secret Service Uniformed Division.
3057. Bankruptcy investigations.
3058. Interned belligerent nationals.
3059. Rewards and appropriations therefor.[3]
3059A. Special rewards for information relating to certain financial institution offenses.[3]
3059B. General reward authority.[3]
3060. Preliminary examination.
3061. Investigative powers of Postal Service personnel.
3062. General arrest authority for violation of release conditions.
3063. Powers of Environmental Protection Agency.
3064. Powers of Federal Motor Carrier Safety Administration.

AMENDMENTS

2006—Pub. L. 109–177, title VI, § 605(b), Mar. 9, 2006, 120 Stat. 255, added item 3056A.

Pub. L. 109–162, title XI, § 1172(a), Jan. 5, 2006, 119 Stat. 3123, added item 3051.

2005—Pub. L. 109–59, title IV, § 4143(c)(2), Aug. 10, 2005, 119 Stat. 1748, added item 3064.

1996—Pub. L. 104–294, title VI, § 605(n), Oct. 11, 1996, 110 Stat. 3510, added item 3059B.

1994—Pub. L. 103–322, title XXXIII, § 330010(18), Sept. 13, 1994, 108 Stat. 2144, inserted a period at end of item 3059A.

1990—Pub. L. 101–647, title XXXV, § 3570, Nov. 29, 1990, 104 Stat. 4928, struck out item 3054 ''Officer's powers involving animals and birds''.

Pub. L. 101–647, title XXV, § 2587(b), Nov. 29, 1990, 104 Stat. 4905, as amended, effective as of date section 2587(b) of Pub. L. 101–647 took effect, by Pub. L. 103–322, title XXXIII, § 330011(a), Sept. 13, 1994, 108 Stat. 2144, added item 3059A.

1988—Pub. L. 100–690, title VI, § 6251(b), Nov. 18, 1988, 102 Stat. 4362, substituted ''Investigative powers of Postal Service personnel'' for ''Powers of postal personnel'' in item 3061.

Pub. L. 100–582, § 4(b), Nov. 1, 1988, 102 Stat. 2959, added item 3063.

1984—Pub. L. 98–587, § 1(b), Oct. 30, 1984, 98 Stat. 3111, substituted ''Powers, authorities, and duties of United States Secret Service'' for ''Secret Service powers'' in item 3056.

Pub. L. 98–473, title II, § 204(e), Oct. 12, 1984, 98 Stat. 1986, substituted ''Repealed'' for ''Security of the peace and good behavior'' in item 3043 and added item 3062.

1970—Pub. L. 91–375, § 6(j)(38)(B), Aug. 12, 1970, 84 Stat. 782, substituted ''postal personnel'' for ''postal inspectors'' in item 3061.

1968—Pub. L. 90–578, title III, § 303(b), Oct. 17, 1968, 82 Stat. 1118, struck out reference to ''Rule'' in item 3060.

Pub. L. 90–560, § 5(b), Oct. 12, 1968, 82 Stat. 998, added item 3061.

1951—Act Oct. 31, 1951, ch. 655, § 56(f), 65 Stat. 729, struck out item 3051 ''Extradition agent's powers''.

§ 3041. Power of courts and magistrates

For any offense against the United States, the offender may, by any justice or judge of the

[1] So in original. Does not conform to section catchline.

[2] So in original. Probably should be followed by a period.

[3] Section repealed by Pub. L. 107–273 without corresponding amendment of chapter analysis.

United States, or by any United States magistrate judge, or by any chancellor, judge of a supreme or superior court, chief or first judge of the common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned or released as provided in chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such court, together with the recognizances of the witnesses for their appearances to testify in the case.

A United States judge or magistrate judge shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial or to discharge him from arrest.

(June 25, 1948, ch. 645, 62 Stat. 815; Pub. L. 89–465, § 5(a), June 22, 1966, 80 Stat. 217; Pub. L. 90–578, title III, § 301(a)(1), (3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 98–473, title II, § 204(a), Oct. 12, 1984, 98 Stat. 1985; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 591 (R.S. § 1014; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956).

This section was completely rewritten to omit all provisions superseded by Federal Rules of Criminal Procedure, rules 3, 4, 5, 40 and 54(a) which prescribed the procedure for preliminary proceedings and examinations before United States judges and commissioners and for removal proceedings but not for preliminary examinations before State magistrates.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial'' for ''determining to hold the prisoner for trial''.

1968—Pub. L. 90–578 substituted ''United States magistrate'' and ''magistrate'' for ''United States commissioner'' and ''commissioner'', respectively.

1966—Pub. L. 89–465 substituted ''or released as provided in chapter 207 of this title'' for ''or bailed''.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–465 effective ninety days after June 22, 1966, see section 6 of Pub. L. 89–465, set out as an Effective Date note under section 3146 of this title.

§ 3042. Extraterritorial jurisdiction

Section 3041 of this title shall apply in any country where the United States exercises extraterritorial jurisdiction for the arrest and removal therefrom to the United States of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States, and shall also apply throughout the United States for the arrest and removal therefrom to the jurisdiction of any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction, of any citizen or national of the United States who is a fugitive from justice charged with or convicted of the commission of any offense against the United States in any country where it exercises extraterritorial jurisdiction.

Such fugitive first mentioned may, by any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction and agreeably to the usual mode of process against offenders subject to such jurisdiction, be arrested and detained or conditionally released pursuant to section 3142 of this title, as the case may be, pending the issuance of a warrant for his removal, which warrant the principal officer or representative of the United States vested with judicial authority in the country where the fugitive shall be found shall seasonably issue, and the United States marshal or corresponding officer shall execute.

Such marshal or other officer, or the deputies of such marshal or officer, when engaged in executing such warrant without the jurisdiction of the court to which they are attached, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safekeeping and the execution of the warrant.

(June 25, 1948, ch. 645, 62 Stat. 815; Pub. L. 98–473, title II, § 204(b), Oct. 12, 1984, 98 Stat. 1985.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662b (Mar. 22, 1934, ch. 73, § 1, 48 Stat. 454).

Words ''crime or'' before ''offense'' were omitted as unnecessary.

Words ''and the Philippine Islands'' were deleted in two places as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

Words ''its Territories, Districts, or possessions, including the Panama Canal Zone or any other territory governed, occupied, or controlled by it'' were omitted as covered by section 5 of this title defining the term ''United States''.

Minor changes were made in phraseology.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''detained or conditionally released pursuant to section 3142 of this title'' for ''imprisoned or admitted to bail''.

[§ 3043. Repealed. Pub. L. 98–473, title II, § 204(c), Oct. 12, 1984, 98 Stat. 1986]

Section, acts June 25, 1948, ch. 645, 62 Stat. 816; Oct. 17, 1968, Pub. L. 90–578, title III, § 301(a)(2), 82 Stat. 1115,

related to authority of justices, judges, and magistrates to hold to security of the peace and for good behavior. See section 3142 of this title.

§ 3044. Complaint—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Contents of complaint; oath, Rule 3.

(June 25, 1948, ch. 645, 62 Stat. 816.)

§ 3045. Internal revenue violations

Warrants of arrest for violations of internal revenue laws may be issued by United States magistrate judges upon the complaint of a United States attorney, assistant United States attorney, collector, or deputy collector of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States attorney.

(June 25, 1948, ch. 645, 62 Stat. 816; Pub. L. 90–578, title III, § 301(a)(2), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 594 (May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956).

Minor changes were made in phraseology.

REFERENCES IN TEXT

The internal revenue laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1968—Pub. L. 90–578 substituted ''United States magistrates'' for ''United States commissioners''.

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

ABOLITION OF OFFICES OF COLLECTOR AND DEPUTY COLLECTOR OF INTERNAL REVENUE

Offices of Collector and Deputy Collector of Internal Revenue abolished by Reorg. Plan No. 1 of 1952, § 1, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, set out in the Appendix to Title 5, Government Organization and Employees, and the offices of ''district commissioner of internal revenue'', and so many other offices, with titles to be determined by Secretary of the Treasury, were established by section 2(a) of the Plan.

§ 3046. Warrant or summons—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Issuance upon complaint, Rule 4.

Issuance upon indictment, Rule 9.

Summons on request of government; form; contents; service; return, Rules 4, 9.

(June 25, 1948, ch. 645, 62 Stat. 816.)

§ 3047. Multiple warrants unnecessary

When two or more charges are made, or two or more indictments are found against any person, only one writ or warrant shall be necessary to commit him for trial. It shall be sufficient to state in the writ the name or general character of the offenses, or to refer to them only in general terms.

(June 25, 1948, ch. 645, 62 Stat. 816.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 602 (R.S. § 1027).

Minor changes were made in phraseology.

§ 3048. Commitment to another district; removal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Arrest in nearby or distant districts; informative statement by judge or magistrate judge; hearing and removal; warrant; Rule 40.

(June 25, 1948, ch. 645, 62 Stat. 817; Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Pub. L. 90–578 substituted ''magistrate'' for ''commissioner''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3049. Warrant for removal

Only one writ or warrant is necessary to remove a prisoner from one district to another. One copy thereof may be delivered to the sheriff or jailer from whose custody the prisoner is taken, and another to the sheriff or jailer to whose custody he is committed, and the original writ, with the marshal's return thereon, shall be returned to the clerk of the district to which he is removed.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 604 (R.S. § 1029).

§ 3050. Bureau of Prisons employees' powers

An officer or employee of the Bureau of Prisons may—

(1) make arrests on or off of Bureau of Prisons property without warrant for violations of the following provisions regardless of where the violation may occur: sections 111 (assaulting officers), 751 (escape), and 752 (assisting escape) of title 18, United States Code, and section 1826(c) (escape) of title 28, United States Code;

(2) make arrests on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violations occurring thereon of the following provisions: sections 661 (theft), 1361 (depredation of property), 1363 (destruction of prop-

erty), 1791 (contraband), 1792 (mutiny and riot), and 1793 (trespass) of title 18, United States Code; and

(3) arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property;

if such officer or employee has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of such person's escaping before an arrest warrant can be obtained. If the arrested person is a fugitive from custody, such prisoner shall be returned to custody. Officers and employees of the said Bureau of Prisons may carry firearms under such rules and regulations as the Attorney General may prescribe.

(June 25, 1948, ch. 645, 62 Stat. 817; Pub. L. 99–646, § 65, Nov. 10, 1986, 100 Stat. 3615.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753k (June 29, 1940, ch. 449, § 5, 54 Stat. 693).

Section was broadened to include authority to make arrests for mutiny, riot or traffic in dangerous instrumentalities, by reference to section 1792 of this title.

Minor changes were made in phraseology and provision for taking arrested person before magistrate was omitted as covered by rule 5(a) of the Federal Rules of Criminal Procedure.

AMENDMENTS

1986—Pub. L. 99–646 amended first sentence generally and substituted "such prisoner" for "he" in second sentence. Prior to amendment, first sentence read as follows: "An officer or employee of the Bureau of Prisons of the Department of Justice may make arrests without warrant for violations of any of the provisions of sections 751, 752, 1791, or 1792 of this title, if he has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of his escaping before a warrant can be obtained for his arrest."

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3051. Powers of Special Agents[1] of Bureau of Alcohol, Tobacco, Firearms, and Explosives

(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

(A) the seizure, summary and judicial forfeiture, and condemnation of property;

(B) the disposition of such property;

(C) the remission or mitigation of such forfeiture; and

(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.

(Added Pub. L. 107–296, title XI, § 1113, Nov. 25, 2002, 116 Stat. 2279.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c)(1), (2), are classified generally to Title 19, Customs Duties.

Section 5872(b) of the Internal Revenue Code of 1986, referred to in subsec. (c)(3), is classified to section 5872(b) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 3051, act June 25, 1948, ch. 645, § 1, 62 Stat. 817, related to powers of extradition agents, prior to repeal by act Oct. 31, 1951, ch. 655, § 56(f), 65 Stat. 729. Substantially identical provisions are contained in section 3193 of this title.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as a note under section 101 of Title 6, Domestic Security.

§ 3052. Powers of Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and

[1] So in original. The words "Special Agents" probably should not be capitalized.

make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(June 25, 1948, ch. 645, 62 Stat. 817; Jan. 10, 1951, ch. 1221, § 1, 64 Stat. 1239.)

HISTORICAL AND REVISION NOTES

Based on section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (June 18, 1934, ch. 595, 48 Stat. 1008; Mar. 22, 1935, ch. 39, title II, 49 Stat. 77).

Language relating to seizures under warrant is in section 3107 of this title.

Minor changes were made in phraseology particularly with respect to omission of provision covered by rule 5(a) of Federal Rules of Criminal Procedure.

AMENDMENTS

1951—Act Jan. 10, 1951, allowed F. B. I. personnel to make arrests without a warrant for any offense against the United States committed in their presence.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3053. Powers of marshals and deputies

United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on section 504a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 15, 1935, ch. 259, § 2, 49 Stat. 378).

Minor changes were made in phraseology.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

[§ 3054. Repealed. Pub. L. 97–79, § 9(b)(3), Nov. 16, 1981, 95 Stat. 1079]

Section, acts June 25, 1948, ch. 645, 62 Stat. 817; Dec. 5, 1969, Pub. L. 91–135, § 7(b), 83 Stat. 281, provided for an officer's power to act in enforcing sections 42, 43, and 44 of this title relating to animals and birds. See section 3375 of Title 16, Conservation.

§ 3055. Officers' powers to suppress Indian liquor traffic

The chief special officer for the suppression of the liquor traffic among Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs or the Secretary of the Interior may execute all warrants of arrest and other lawful precepts issued under the authority of the United States and in the execution of his duty he may command all necessary assistance.

(June 25, 1948, ch. 645, 62 Stat. 817.)

HISTORICAL AND REVISION NOTES

Based on section 250 of title 25, U.S.C., 1940 ed., Indians (Aug. 24, 1912, ch. 388, § 1, 37 Stat. 519).

The only change was to delete the words at the beginning of the section, "The powers conferred by section 504 of title 28 upon marshals and their deputies are conferred upon." and the addition, at the end of the section, of the phrase expressing such powers beginning with the words "may execute all warrants".

§ 3056. Powers, authorities, and duties of United States Secret Service

(a) Under the direction of the Secretary of Homeland Security, the United States Secret Service is authorized to protect the following persons:

(1) The President, the Vice President (or other officer next in the order of succession to the Office of President), the President-elect, and the Vice President-elect.

(2) The immediate families of those individuals listed in paragraph (1).

(3) Former Presidents and their spouses for their lifetimes, except that protection of a spouse shall terminate in the event of remarriage unless the former President did not serve as President prior to January 1, 1997, in which case, former Presidents and their spouses for a period of not more than ten years from the date a former President leaves office, except that—

(A) protection of a spouse shall terminate in the event of remarriage or the divorce from, or death of a former President; and

(B) should the death of a President occur while in office or within one year after leaving office, the spouse shall receive protection for one year from the time of such death:

Provided, That the Secretary of Homeland Security shall have the authority to direct the Secret Service to provide temporary protection for any of these individuals at any time if the Secretary of Homeland Security or designee determines that information or conditions warrant such protection.

(4) Children of a former President who are under 16 years of age for a period not to exceed ten years or upon the child becoming 16 years of age, whichever comes first.

(5) Visiting heads of foreign states or foreign governments.

(6) Other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad when the President directs that such protection be provided.

(7) Major Presidential and Vice Presidential candidates and, within 120 days of the general Presidential election, the spouses of such candidates. As used in this paragraph, the term ''major Presidential and Vice Presidential candidates'' means those individuals identified as such by the Secretary of Homeland Security after consultation with an advisory committee consisting of the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority and minority leaders of the Senate, and one additional member selected by the other members of the committee. The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

The protection authorized in paragraphs (2) through (7) may be declined.

(b) Under the direction of the Secretary of Homeland Security, the Secret Service is authorized to detect and arrest any person who violates—

(1) section 508, 509, 510, 871, or 879 of this title or, with respect to the Federal Deposit Insurance Corporation, Federal land banks, and Federal land bank associations, section 213, 216,[1] 433, 493, 657, 709, 1006, 1007, 1011, 1013, 1014, 1907, or 1909 of this title;

(2) any of the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments; or

(3) any of the laws of the United States relating to electronic fund transfer frauds, access device frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution; except that the authority conferred by this paragraph shall be exercised subject to the agreement of the Attorney General and the Secretary of Homeland Security and shall not affect the authority of any other Federal law enforcement agency with respect to those laws.

(c)(1) Under the direction of the Secretary of Homeland Security, officers and agents of the Secret Service are authorized to—

(A) execute warrants issued under the laws of the United States;

(B) carry firearms;

(C) make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(D) offer and pay rewards for services and information leading to the apprehension of persons involved in the violation or potential violation of those provisions of law which the Secret Service is authorized to enforce;

(E) pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of Homeland Security and accounted for solely on the Secretary's certificate; and

(F) perform such other functions and duties as are authorized by law.

(2) Funds expended from appropriations available to the Secret Service for the purchase of counterfeits and subsequently recovered shall be reimbursed to the appropriations available to the Secret Service at the time of the reimbursement.

(d) Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this section or by section 1752 of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(e)(1) When directed by the President, the United States Secret Service is authorized to participate, under the direction of the Secretary of Homeland Security, in the planning, coordination, and implementation of security operations at special events of national significance, as determined by the President.

(2) At the end of each fiscal year, the President through such agency or office as the President may designate, shall report to the Congress—

(A) what events, if any, were designated special events of national significance for security purposes under paragraph (1); and

(B) the criteria and information used in making each designation.

(f) Under the direction of the Secretary of Homeland Security, the Secret Service is authorized, at the request of any State or local law enforcement agency, or at the request of the National Center for Missing and Exploited Children, to provide forensic and investigative assistance in support of any investigation involving missing or exploited children.

(g) The United States Secret Service shall be maintained as a distinct entity within the Department of Homeland Security and shall not be merged with any other Department function. No personnel and operational elements of the United States Secret Service shall report to an individual other than the Director of the United States Secret Service, who shall report directly to the Secretary of Homeland Security without being required to report through any other official of the Department.

(June 25, 1948, ch. 645, 62 Stat. 818; July 16, 1951, ch. 226, § 4, 65 Stat. 122; Aug. 31, 1954, ch. 1143, § 2, 68 Stat. 999; Pub. L. 86–168, title I, § 104(h), Aug. 18, 1959, 73 Stat. 387; Pub. L. 87–791, Oct. 10, 1962, 76 Stat. 809; Pub. L. 87–829, § 3, Oct. 15, 1962, 76 Stat. 956; Pub. L. 89–186, Sept. 15, 1965, 79 Stat. 791; Pub. L. 89–218, Sept. 29, 1965, 79 Stat. 890; Pub. L. 90–608, ch. XI, § 1101, Oct. 21, 1968, 82 Stat. 1198; Pub. L. 91–644, title V, § 19, Jan. 2, 1971, 84 Stat. 1892; Pub. L. 91–651, § 4, Jan. 5, 1971, 84 Stat. 1941; Pub. L. 93–346, § 8, July 12, 1974, as added Pub. L. 93–552, title VI, § 609(a), Dec. 27, 1974, 88 Stat. 1765; Pub. L. 94–408, § 2, Sept. 11, 1976, 90 Stat. 1239; Pub. L. 97–297, § 3, Oct. 12, 1982, 96 Stat. 1318; Pub. L. 97–308, § 2, Oct. 14, 1982, 96 Stat. 1452; Pub. L. 98–151, § 115(b), Nov. 14, 1983, 97 Stat. 977; Pub. L. 98–587, § 1(a), Oct. 30, 1984, 98 Stat. 3110; Pub. L. 103–329, title V, § 530, Sept. 30, 1994, 108 Stat. 2412; Pub. L. 104–294, title VI, § 605(i), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 106–544, § 3, Dec. 19, 2000, 114 Stat. 2716; Pub. L. 107–56, title V, § 506(b), Oct. 26, 2001, 115 Stat. 367;

[1] See References in Text note below.

Pub. L. 107–296, title XVII, § 1703(a)(1), Nov. 25, 2002, 116 Stat. 2313; Pub. L. 108–21, title III, § 322, Apr. 30, 2003, 117 Stat. 665; Pub. L. 109–177, title VI, §§ 604, 607, 608(a), Mar. 9, 2006, 120 Stat. 253, 256.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 148, and on sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, § 12B, subsection (x), as added June 16, 1933, ch. 89, § 8, 48 Stat. 178; July 17, 1916, ch. 245, § 31, sixth paragraph, 39 Stat. 382 (384); Dec. 11, 1926, ch. 2, § 3, 44 Stat. 918; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684, 703).

Section consolidates said section 148 of title 18, U.S.C., 1940 ed., and said sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking.

Said section 148 of title 12, U.S.C., 1940 ed., Banks and Banking, was concerned with offenses relating to counterfeiting and passing, etc., of transportation requests and to the unlawful possession or making of plates, stones, etc., used in making such requests, which were defined in sections 146 and 147 of said title 18, now sections 508 and 509 of this title.

Said sections 264(x) and 986 of title 12, U.S.C., 1940 ed., Banks and Banking, were concerned with various offenses as defined in sections 981–985, 987 of said title 12, relating to Federal land banks, joint-stock land banks and national farm loan associations, and as defined in section 264 of said title 12 relating to the Federal Deposit Insurance Corporation. All of the provisions of said sections 981–985, 987 of said title 12, and the criminal provisions of said section 264 of said title 12, were transferred to this title where they were, in some instances, consolidated with similar provisions from other sections. Such provisions are now incorporated in sections 218, 221, 433, 493, 657, 709, 1006, 1007, 1011, 1013, 1014, 1907, and 1909 of this title. In most instances, these sections, as the result of the consolidations, relate to other organizations as well as those mentioned above, but, by enumerating the Federal Deposit Insurance Corporation, Federal land banks, joint-stock land banks, and national farm loan associations in this section, the powers of the Secret Service are not broadened beyond what they were in said sections 264(x) and 986 of said title 12.

In this section, the wording of said section 148 of title 18, U.S.C., 1940 ed., and section 986 of title 12, U.S.C., 1940 ed., Banks and Banking reading ''The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department'' was adopted, rather than the wording of said section 264(x) of said title 12, which read ''The Secret Service Division of the Treasury Department is authorized.''

Words ''of the United States marshal having jurisdiction'', following ''custody'' in all three of said sections, were omitted as surplusage.

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(7), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 216 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 98–473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146.

AMENDMENTS

2006—Subsec. (a)(7). Pub. L. 109–177, § 608(a), which directed amendment of subsec. (a)(7) by inserting ''The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).'' after ''other members of the Committee.'', was executed by making the insertion after ''other members of the committee.'', to reflect the probable intent of Congress.

Subsec. (f). Pub. L. 109–177, § 604, substituted ''the Secret Service is'' for ''officers and agents of the Secret Service are''.

Subsec. (g). Pub. L. 109–177, § 607, added subsec. (g).

2003—Subsec. (f). Pub. L. 108–21 added subsec. (f).

2002—Subsecs. (a) to (c)(1), (e)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of the Treasury'' wherever appearing.

2001—Subsec. (b)(3). Pub. L. 107–56 substituted ''access device frauds, false identification documents or devices, and any fraud or other criminal or unlawful activity in or against any federally insured financial institution'' for ''credit and debit card frauds, and false identification documents or devices''.

2000—Subsec. (e). Pub. L. 106–544 added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–294 redesignated subpars. (1) and (2) as (A) and (B), respectively, and realigned margins.

1994—Subsec. (a)(3). Pub. L. 103–329, § 530(a), inserted before period at end ''unless the former President did not serve as President prior to January 1, 1997, in which case, former Presidents and their spouses for a period of not more than ten years from the date a former President leaves office, except that—

''(1) protection of a spouse shall terminate in the event of remarriage or the divorce from, or death of a former President; and

''(2) should the death of a President occur while in office or within one year after leaving office, the spouse shall receive protection for one year from the time of such death:

Provided, That the Secretary of the Treasury shall have the authority to direct the Secret Service to provide temporary protection for any of these individuals at any time if the Secretary of the Treasury or designee determines that information or conditions warrant such protection''.

Subsec. (a)(4). Pub. L. 103–329, § 530(b), inserted before period at end ''for a period not to exceed ten years or upon the child becoming 16 years of age, whichever comes first''.

1984—Pub. L. 98–587 amended section generally, providing authority for the Secret Service to conduct criminal investigations of, make arrests in, and present for prosecutorial consideration, cases relating to electronic fund transfer frauds, and providing the Secret Service with authority to conduct investigations and make arrests relating to credit and debit card frauds, and false identification documents and devices, to be exercised subject to the agreement of the Attorney General and the Secretary of the Treasury.

1983—Subsec. (a). Pub. L. 98–151 inserted reference to section 510 of this section in fifth clause.

1982—Subsec. (a). Pub. L. 97–297, § 3(1), substituted ''871, and 879 of this title'' for ''and 871 of this title''.

Pub. L. 97–297, § 3(2), substituted ''and Federal land bank associations are concerned, of sections 213, 216'' for '', joint-stock land banks and Federal land bank associations are concerned, of sections 218, 221''.

Subsec. (b). Pub. L. 97–308 increased the limitation on fines to $1,000 from $300.

1976—Subsec. (a). Pub. L. 94–408 substituted '', and the members of their immediate families unless the members decline such protection;'' for ''; protect the members of the immediate family of the Vice-President, unless such protection is declined;''.

Subsec. (b). Pub. L. 94–408 inserted reference to other Federal law enforcement agents.

1974—Subsec. (a). Pub. L. 93–552 inserted provisions relating to the protection of the immediate family of the Vice President unless declined, and the payment of expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on his certificate.

1971—Pub. L. 91–651 authorized the Secret Service to protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad, and substituted ''Director, Deputy Director, Assistant Directors, Assistants to the Director'' for ''Chief, Deputy Chief, Assistant Chief''.

Pub. L. 91–644 designated existing provisions as subsec. (a) and added subsec. (b).

1968—Pub. L. 90–608 substituted the death or remarriage of a former President's widow and the attainment by his minor children of age 16 for the passage of a period of four years after he leaves or dies in office as the events terminating Secret Service protection for the widow and minor children, respectively, of a former President.

1965—Pub. L. 89–218 authorized the Chief, Deputy Chief, Assistant Chief, inspectors, and agents of the Secret Service to make arrests without warrant for offenses committed against the United States in their presence or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing the felony and substituted ''508, 509, and 871'' for ''508 and 509''.

Pub. L. 89–186 substituted provision for the protection of the person of a former President and his wife during his lifetime and the person of a widow and minor children of a former President for a period of four years after he leaves or dies in office, unless the protection is declined, for provision calling for the protection of a former President, at his request, for a reasonable period after he leaves office.

1962—Pub. L. 87–829 authorized the protection of the Vice President, without requiring his request therefor, and any officer next in the order of succession to the office of President, the Vice-President-elect, and of a former president, at his request, for a reasonable period after he leaves office.

Pub. L. 87–791 required moneys expended from Secret Service appropriations for the purchase of counterfeits and subsequently recovered to be reimbursed to the appropriation current at the time of deposit.

1959—Pub. L. 86–168 substituted ''Federal land bank associations'' for ''national farm loan associations''.

1954—Act Aug. 31, 1954, struck out ''detect, and arrest any person violating any laws of the United States directly concerning official matters administered by and under the direct control of the Treasury Department''.

1951—Act July 16, 1951, provided basic authority for the Secret Service to perform certain functions and activities heretofore carried out by virtue of authority contained in appropriation acts.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, § 1703(b), Nov. 25, 2002, 116 Stat. 2314, provided that: ''The amendments made by this section [amending this section and former sections 202 and 208 of Title 3, The President] shall take effect on the date of transfer of the United States Secret Service to the Department [of Homeland Security].''

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–552, title VI, § 609(b), Dec. 27, 1974, 88 Stat. 1765, provided that: ''Except as otherwise provided therein, the amendment made by subsection (a) of this section [amending this section, former section 202 of Title 3, The President, and provisions set out as a note under section 111 of Title 3] shall become effective July 12, 1974.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–168 effective Dec. 31, 1959, see section 104(k) of Pub. L. 86–168.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

USE OF FUNDS FOR UNITED STATES SECRET SERVICE PROTECTION

Pub. L. 109–295, title V, § 517(b), Oct. 4, 2006, 120 Stat. 1380, provided that: ''Beginning in fiscal year 2008, none of the funds appropriated by this or any other Act to the United States Secret Service shall be made available for the protection of a person, other than persons granted protection under section 3056(a) of title 18, United States Code, and the Secretary of Homeland Security: *Provided*, That the Director of the United States Secret Service may enter into an agreement to perform such protection on a fully reimbursable basis for protectees not designated under section 3056(a) of title 18, United States Code.''

FUNDS FOR TRAINING

Pub. L. 108–90, title II, Oct. 1, 2003, 117 Stat. 1145, provided in part: ''That in fiscal year 2004 and thereafter, subject to the reimbursement of actual costs to this account, funds appropriated in this account shall be available, at the discretion of the Director, for the following: training United States Postal Service law enforcement personnel and Postal police officers, training Federal law enforcement officers, training State and local government law enforcement officers on a space-available basis, and training private sector security officials on a space-available basis''.

EXPANSION OF NATIONAL ELECTRONIC CRIME TASK FORCE INITIATIVE

Pub. L. 107–56, title I, § 105, Oct. 26, 2001, 115 Stat. 277, as amended by Pub. L. 109–177, title VI, § 608(b), Mar. 9, 2006, 120 Stat. 256, provided that: ''The Director of the United States Secret Service shall take appropriate actions to develop a national network of electronic crime task forces, based on the New York Electronic Crimes Task Force model, throughout the United States, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. The electronic crimes task forces shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2) [5 U.S.C. App.].''

NATIONAL THREAT ASSESSMENT CENTER

Pub. L. 106–544, § 4, Dec. 19, 2000, 114 Stat. 2716, provided that:

''(a) ESTABLISHMENT.—The United States Secret Service (hereafter in this section referred to as the 'Service'), at the direction of the Secretary of the Treasury, may establish the National Threat Assessment Center (hereafter in this section referred to as the 'Center') as a unit within the Service.

''(b) FUNCTIONS.—The Service may provide the following to Federal, State, and local law enforcement agencies through the Center:

''(1) Training in the area of threat assessment.

''(2) Consultation on complex threat assessment cases or plans.

''(3) Research on threat assessment and the prevention of targeted violence.

''(4) Facilitation of information sharing among all such agencies with protective or public safety responsibilities.

''(5) Programs to promote the standardization of Federal, State, and local threat assessments and investigations involving threats.

''(6) Any other activities the Secretary determines are necessary to implement a comprehensive threat assessment capability.

''(c) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 19, 2000], the Service shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives detailing the manner in which the Center will operate.''

TELECOMMUNICATIONS SUPPORT TO UNITED STATES SECRET SERVICE BY WHITE HOUSE COMMUNICATIONS AGENCY

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8100], Sept. 30, 1996, 110 Stat. 3009–71, 3009–108, as

amended by Pub. L. 106–92, § 2, Nov. 9, 1999, 113 Stat. 1309, provided that: ''Beginning in fiscal year 1997 and thereafter, and notwithstanding any other provision of law, fixed and mobile telecommunications support shall be provided by the White House Communications Agency (WHCA) to the United States Secret Service (USSS), without reimbursement, in connection with the Secret Service's duties directly related to the protection of the President or the Vice President or other officer immediately next in order of succession to the office of the President at the White House Security Complex in the Washington, D.C. Metropolitan Area and Camp David, Maryland. For these purposes, the White House Security Complex includes the White House, the White House grounds, the Dwight D. Eisenhower Executive Office Building, the New Executive Office Building, the Blair House, the Treasury Building, and the Vice President's Residence at the Naval Observatory.''

OFF-SET OF COSTS OF PROTECTING FORMER PRESIDENTS AND SPOUSES

Pub. L. 104–208, div. A, title I, § 101(f) [title V, § 509], Sept. 30, 1996, 110 Stat. 3009–314, 3009–345, provided that: ''The United States Secret Service may, during the fiscal year ending September 30, 1997, and hereafter, accept donations of money to off-set costs incurred while protecting former Presidents and spouses of former Presidents when the former President or spouse travels for the purpose of making an appearance or speech for a payment of money or any thing of value.''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 104–52, title V, § 509, Nov. 19, 1995, 109 Stat. 492.

Pub. L. 103–329, title V, § 514, Sept. 30, 1994, 108 Stat. 2410.

Pub. L. 103–123, title V, § 515, Oct. 28, 1993, 107 Stat. 1253.

Pub. L. 102–393, title V, § 519, Oct. 6, 1992, 106 Stat. 1759.

Pub. L. 102–141, title V, § 522, Oct. 28, 1991, 105 Stat. 865.

Pub. L. 101–509, title V, § 525, Nov. 5, 1990, 104 Stat. 1426.

FORMER VICE PRESIDENT OR SPOUSE; PROTECTION

Pub. L. 103–1, Jan. 15, 1993, 107 Stat. 3, provided: ''That—

''(1) the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to—

''(A) the person occupying the Office of Vice President of the United States immediately preceding January 20, 1993, or

''(B) his spouse,

if the President determines that such person may thereafter be in significant danger; and

''(2) protection of any such person, pursuant to the authority provided in paragraph (1), shall continue only for such period as the President determines, except that such protection shall not continue beyond July 20, 1993, unless otherwise permitted by law.''

Pub. L. 96–503, Dec. 5, 1980, 94 Stat. 2740, provided: ''That the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to (a) the person occupying the Office of Vice President of the United States immediately preceding January 20, 1981, or (b) his spouse, if the President determines that such person may thereafter be in significant danger: *Provided, however*, That protection of any such person shall continue only for such period as the President determines and shall not continue beyond July 20, 1981, unless otherwise permitted by law.''

SECRET SERVICE PROTECTION OF FORMER FEDERAL OFFICIALS

Pub. L. 95–1, Jan. 19, 1977, 91 Stat. 3, provided: ''That the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to a person who (a) as a Federal Government official has been receiving protection by the United States Secret Service for a period immediately preceding January 20, 1977, or (b) as a member of such official's immediate family has been receiving protection by either the United States Secret Service or other security personnel of the official's department immediately preceding January 20, 1977, if the President determines that such person may thereafter be in significant danger: *Provided, however*, That protection of any such person shall continue only for such period as the President determines and shall not continue beyond July 20, 1977, unless otherwise permitted by law.''

PRESIDENTIAL PROTECTION ASSISTANCE ACT OF 1976

Pub. L. 94–524, Oct. 17, 1976, 90 Stat. 2475, as amended by Pub. L. 99–190, § 143, Dec. 19, 1985, 99 Stat. 1324; Pub. L. 101–136, title V, § 527, Nov. 3, 1989, 103 Stat. 815; Pub. L. 101–509, title V, § 531(a), Nov. 5, 1990, 104 Stat. 1469; Pub. L. 102–141, title V, § 533, Oct. 28, 1991, 105 Stat. 867; Pub. L. 104–52, title V, § 529, Nov. 19, 1995, 109 Stat. 496; Pub. L. 104–316, title I, § 109(a), Oct. 19, 1996, 110 Stat. 3832, provided: ''That this Act may be cited as the 'Presidential Protection Assistance Act of 1976'.

''SEC. 2. As used in this Act the term—

''(1) 'Secret Service' means the United States Secret Service, the Department of the Treasury;

''(2) 'Director' means the Director of the Secret Service;

''(3) 'protectee' means any person eligible to receive the protection authorized by section 3056 of title 18, United States Code, or Public Law 90–331 (82 Stat. 170) [set out as a note above];

''(4) 'Executive departments' has the same meaning as provided in section 101 of title 5, United States Code;

''(5) 'Executive agencies' has the same meaning as provided in section 105 of title 5, United States Code;

''(6) 'Coast Guard' means the United States Coast Guard, Department of Transportation or such other Executive department or Executive agency to which the United States Coast Guard may subsequently be transferred;

''(7) 'duties' means all responsibilities of an Executive department or Executive agency relating to the protection of any protectee; and

''(8) 'non-Governmental property' means any property owned, leased, occupied, or otherwise utilized by a protectee which is not owned or controlled by the Government of the United States of America.

''SEC. 3. (a) Each protectee may designate one non-governmental property to be fully secured by the Secret Service on a permanent basis.

''(b) A protectee may thereafter designate a different non-Governmental property in lieu of the non-Governmental property previously designated under subsection (a) (hereinafter in this Act referred to as the 'previously designated property') as the one non-Governmental property to be fully secured by the Secret Service on a permanent basis under subsection (a). Thereafter, any expenditures by the Secret Service to maintain a permanent guard detail or for permanent facilities, equipment, and services to secure the non-Governmental property previously designated under subsection (a) shall be subject to the limitations imposed under section 4.

''(c) For the purposes of this section, where two or more protectees share the same domicile, such protectees shall be deemed a single protectee.

''SEC. 4. Expenditures by the Secret Service for maintaining a permanent guard detail and for permanent facilities, equipment, and services to secure any non-Governmental property in addition to the one non-Governmental property designated by each protectee under subsection 3(a) or 3(b) may not exceed a cumulative total of $200,000 at each such additional non-Governmental property, unless expenditures in excess of that amount are specifically approved by resolutions adopted by the Committees on Appropriations of the House and Senate, respectively.

''SEC. 5. (a) All improvements and other items acquired by the Federal Government and used for the purpose of securing any non-Governmental property in the performance of the duties of the Secret Service shall be the property of the United States.

''(b) Upon termination of Secret Service protection at any non-Governmental property all such improvements and other items shall be removed from the non-Governmental property unless the Director determines that it would not be economically feasible to do so; except that such improvements and other items shall be removed and the non-Governmental property shall be restored to its original state if the owner of such property at the time of termination requests the removal of such improvements or other items. If any such improvements or other items are not removed, the owner of the non-Governmental property at the time of termination shall compensate the United States for the original cost of such improvements or other items or for the amount by which they have increased the fair market value of the property, as determined by the Director, as of the date of termination, whichever is less.

''(c) In the event that any non-Governmental property becomes a previously designated property and Secret Service protection at that property has not been terminated, all such improvements and other items which the Director determines are not necessary to secure the previously designated property within the limitations imposed under section 4 shall be removed or compensated for in accordance with the procedures set forth under Subsection (b) of this section.

''SEC. 6. Executive departments and Executive agencies shall assist the Secret Service in the performance of its duties by providing services, equipment, and facilities on a temporary and reimbursable basis when requested by the Director and on a permanent and reimbursable basis upon advance written request of the Director; except that the Department of Defense and the Coast Guard shall provide such assistance on a temporary basis without reimbursement when assisting the Secret Service in its duties directly related to the protection of the President or the Vice President or other officer immediately next in order of succession to the office of the President.

''SEC. 7. No services, equipment, or facilities may be ordered, purchased, leased, or otherwise procured for the purposes of carrying out the duties of the Secret Service by persons other than officers or employees of the Federal Government duly authorized by the Director to make such orders, purchases, leases, or procurements.

''SEC. 8. No funds may be expended or obligated for the purpose of carrying out the purposes of section 3056 of title 18, United States Code, and section 1 of Public Law 90–331 [set out as a note above] other than funds specifically appropriated to the Secret Service for those purposes with the exception of—

''(1) expenditures made by the Department of Defense or the Coast Guard from funds appropriated to the Department of Defense or the Coast Guard in providing assistance on a temporary basis to the Secret Service in the performance of its duties directly related to the protection of the President or the Vice President or other officer next in order of succession to the office of the President; and

''(2) expenditures made by Executive departments and agencies, in providing assistance at the request of the Secret Service in the performance of its duties, and which will be reimbursed by the Secret Service under section 6 of this Act.

''SEC. 9. The Director, the Secretary of Defense, and the Commandant of the Coast Guard shall each transmit a detailed semi-annual report of expenditures made pursuant to this Act during the six-month period immediately preceding such report by the Secret Service, the Department of Defense, and the Coast Guard, respectively, to the Committees on Appropriations, Committees on the Judiciary, and Committees on Government Operations [now Committee on Government Reform of the House of Representatives and Committee on Homeland Security and Governmental Affairs of the Senate] of the House of Representatives and the Senate, respectively, on March 31 and September 30, of each year.

''SEC. 10. Expenditures made pursuant to this Act shall be subject to audit by the Comptroller General and his authorized representatives, who shall have access to all records relating to such expenditures. The Comptroller General shall transmit a report of the results of any such audit to the Committees on Appropriations, Committees on the Judiciary, and Committees on Government Operations [now Committee on Government Reform of the House of Representatives and Committee on Homeland Security and Governmental Affairs of the Senate] of the House of Representatives and the Senate, respectively.

''SEC. 11. Section 2 of Public Law 90–331 (82 Stat. 170) [formerly set out as a note below] is repealed.

''SEC. 12. In carrying out the protection of the President of the United States, pursuant to section 3056(a) of title 18, at the one non-governmental property designated by the President of the United States to be fully secured by the United States Secret Service on a permanent basis, as provided in section 3.(a) of Public Law 94–524 [section 3(a) of this note], or at an airport facility used for travel en route to or from such property[,] the Secretary of the Treasury may utilize, with their consent, the law enforcement services, personnel, equipment, and facilities of the affected State and local governments. Further, the Secretary of the Treasury is authorized to reimburse such State and local governments for the utilization of such services, personnel, equipment, and facilities. All claims for such reimbursement by the affected governments will be submitted to the Secretary of the Treasury on a quarterly basis. Expenditures for this reimbursement are authorized not to exceed $300,000 at the one non-governmental property, and $70,000 at the airport facility, in any one fiscal year: *Provided*, That the designated site is located in a municipality or political subdivision of any State where the permanent resident population is 7,000 or less and where the absence of such Federal assistance would place an undue economic burden on the affected State and local governments: *Provided further*, That the airport facility is wholly or partially located in a municipality or political subdivison [sic] of any State where the permanent resident population is 7,000 or less, the airport is located within 25 nautical miles of the designated nongovernmental property, and where the absence of such Federal assistance would place an undue economic burden on the affected State and local governments.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

MAJOR PRESIDENTIAL OR VICE PRESIDENTIAL CANDIDATES AND SPOUSES; PERSONAL PROTECTION

Pub. L. 90–331, June 6, 1968, 82 Stat. 170, as amended by Pub. L. 94–408, § 1, Sept. 11, 1976, 90 Stat. 1239; Pub. L. 94–524, § 11, Oct. 17, 1976, 90 Stat. 2477; Pub. L. 96–329, Aug. 11, 1980, 94 Stat. 1029, which had provided for personal protection of major presidential or vice presidential candidates and had authorized protection of spouses commencing not more than 120 days before the general Presidential election, and appropriated for fiscal year ending June 30, 1968, $400,000 for execution of such provisions, was repealed by Pub. L. 98–587, § 2, Oct. 30, 1984, 98 Stat. 3111. See subsec. (a)(7) of this section.

EXTENSION OF PROTECTION OF PRESIDENT'S WIDOW AND CHILDREN

Pub. L. 90–145, Nov. 17, 1967, 81 Stat. 466, extended until Mar. 1, 1969, the authority vested in the United

States Secret Service by section 3056 of this title, as it existed prior to the amendment in 1968 by Pub. L. 90–608, to protect the widow and minor children of a former President who were receiving such protection on Nov. 17, 1967.

APPLICABILITY OF REORG. PLAN NO. 26 OF 1950

Section 5 of Pub. L. 91–651 provided that: ''Section 3056 of title 18, United States Code, as amended by section 4 of this Act, shall be subject to Reorganization Plan Numbered 26 of 1950 (64 Stat. 1280) [set out in the Appendix to Title 5, Government Organization and Employees].''

§ 3056A. Powers, authorities, and duties of United States Secret Service Uniformed Division

(a) There is hereby created and established a permanent police force, to be known as the ''United States Secret Service Uniformed Division''. Subject to the supervision of the Secretary of Homeland Security, the United States Secret Service Uniformed Division shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following:

(1) The White House in the District of Columbia.

(2) Any building in which Presidential offices are located.

(3) The Treasury Building and grounds.

(4) The President, the Vice President (or other officer next in the order of succession to the Office of President), the President-elect, the Vice President-elect, and their immediate families.

(5) Foreign diplomatic missions located in the metropolitan area of the District of Columbia.

(6) The temporary official residence of the Vice President and grounds in the District of Columbia.

(7) Foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) in the United States where there are located twenty or more such missions headed by full-time officers, except that such protection shall be provided only—

(A) on the basis of extraordinary protective need;

(B) upon request of an affected metropolitan area; and

(C) when the extraordinary protective need arises at or in association with a visit to—

(i) a permanent mission to, or an observer mission invited to participate in the work of, an international organization of which the United States is a member; or

(ii) an international organization of which the United States is a member;

except that such protection may also be provided for motorcades and at other places associated with any such visit and may be extended at places of temporary domicile in connection with any such visit.

(8) Foreign consular and diplomatic missions located in such areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct.

(9) Visits of foreign government officials to metropolitan areas (other than the District of Columbia) where there are located twenty or more consular or diplomatic missions staffed by accredited personnel, including protection for motorcades and at other places associated with such visits when such officials are in the United States to conduct official business with the United States Government.

(10) Former Presidents and their spouses, as provided in section 3056(a)(3) of title 18.

(11) An event designated under section 3056(e) of title 18 as a special event of national significance.

(12) Major Presidential and Vice Presidential candidates and, within 120 days of the general Presidential election, the spouses of such candidates, as provided in section 3056(a)(7) of title 18.

(13) Visiting heads of foreign states or foreign governments.

(b)(1) Under the direction of the Director of the Secret Service, members of the United States Secret Service Uniformed Division are authorized to—

(A) carry firearms;

(B) make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) perform such other functions and duties as are authorized by law.

(2) Members of the United States Secret Service Uniformed Division shall possess privileges and powers similar to those of the members of the Metropolitan Police of the District of Columbia.

(c) Members of the United States Secret Service Uniformed Division shall be furnished with uniforms and other necessary equipment.

(d) In carrying out the functions pursuant to paragraphs (7) and (9) of subsection (a), the Secretary of Homeland Security may utilize, with their consent, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments, and is authorized to reimburse such State and local governments for the utilization of such services, personnel, equipment, and facilities. The Secretary of Homeland Security may carry out the functions pursuant to paragraphs (7) and (9) of subsection (a) by contract. The authority of this subsection may be transferred by the President to the Secretary of State. In carrying out any duty under paragraphs (7) and (9) of subsection (a), the Secretary of State is authorized to utilize any authority available to the Secretary under title II of the State Department Basic Authorities Act of 1956.

(Added Pub. L. 109–177, title VI, § 605(a), Mar. 9, 2006, 120 Stat. 253.)

REFERENCES IN TEXT

Title II of the State Department Basic Authorities Act of 1956, referred to in subsec. (d), is title II of act Aug. 1, 1956, ch. 841, as added Aug. 24, 1982, Pub. L. 97–241, title II, § 202(b), 96 Stat. 283, known as the Foreign Missions Act, which is classified principally to chapter 53 (§ 4301 et seq.) of Title 22, Foreign Relations

and Intercourse. For complete classification of title II to the Code, see Short Title note set out under section 4301 of Title 22 and Tables.

CHANGE OF NAME

Pub. L. 95–179, Nov. 15, 1977, 91 Stat. 1371, provided in part that: ''Any reference in any other law or in any regulation, document, record, or other paper of the United States to the Executive Protective Service shall be held to be a reference to the United States Secret Service Uniformed Division.''

Pub. L. 91–297, title II, § 202, June 30, 1970, 84 Stat. 358, provided that: ''All laws of the United States in force on the date of enactment of this title [June 30, 1970] in which reference is made to the White House Police force are amended by substituting 'Executive Protective Service' for each such reference.''

SAVINGS PROVISIONS

Pub. L. 109–177, title VI, § 606, Mar. 9, 2006, 120 Stat. 256, provided that:

''(a) This title [see Tables for classification] does not affect the retirement benefits of current employees or annuitants that existed on the day before the effective date of this Act [probably means Mar. 9, 2006, the date of enactment of Pub. L. 109–177].

''(b) This title does not affect any Executive order transferring to the Secretary of State the authority of section 208 of title 3 (now section 3056A(d) of title 18) in effect on the day before the effective date of this Act.''

CONVERSION TO NEW SALARY SCHEDULE

Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 905], Dec. 21, 2000, 114 Stat. 2763, 2763A–306, provided that:

''(a) IN GENERAL.—

''(1) DETERMINATION OF RATES OF BASIC PAY.—Effective on the first day of the 1st pay period beginning 6 months after the date of enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury shall fix the rates of basic pay for officers and members of the United States Secret Service Uniformed Division, and the Secretary of the Interior shall fix the rates of basic pay for officers and members of the United States Park Police, in accordance with this subsection.

''(2) PLACEMENT ON REVISED SALARY SCHEDULE.—

''(A) IN GENERAL.—Each officer and member shall be placed in and receive basic compensation at the corresponding scheduled service step of the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 [Pub. L. 85–584, title V, Aug. 1, 1958, 72 Stat. 485] (as amended by section 902(a)) in accordance with the member's total years of creditable service, receiving credit for all service step adjustments. If the scheduled rate of pay for the step to which the officer or member would be assigned in accordance with this paragraph is lower than the officer's or member's salary immediately prior to the enactment of this paragraph, the officer or member will be placed in and receive compensation at the next higher service step.

''(B) CREDIT FOR INCREASES DURING TRANSITION.—Each member whose position is to be converted to the salary schedule under section 501(b) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by subsection (a)) and who, prior to the effective date of this section [set out below] has earned, but has not been credited with, an increase in his or her rate of pay shall be afforded that increase before such member is placed in the corresponding service step in the salary schedule under section 501(b).

''(C) CREDITABLE SERVICE DESCRIBED.—For purposes of this paragraph, an officer's or member's creditable service is any police service in pay status with the United States Secret Service Uniformed Division, United States Park Police, or Metropolitan Police Department.

''(b) HOLD HARMLESS FOR CURRENT TOTAL COMPENSATION.—Notwithstanding any other provision of law, if the total rate of compensation for an officer or employee for any pay period occurring after conversion to the salary schedule pursuant to subsection (a) (determined by taking into account any locality-based comparability adjustments, longevity pay, and other adjustments paid in addition to the rate of basic compensation) is less than the officer's or employee's total rate of compensation (as so determined) on the date of enactment [Dec. 21, 2000], the rate of compensation for the officer or employee for the pay period shall be equal to—

''(1) the rate of compensation on the date of enactment (as so determined); increased by

''(2) a percentage equal to 50 percent of sum of the percentage adjustments made in the rate of basic compensation under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by subsection (a)) for pay periods occurring after the date of enactment and prior to the pay period involved.

''(c) CONVERSION NOT TREATED AS TRANSFER OR PROMOTION.—The conversion of positions and individuals to appropriate classes of the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by section 902(a)) and the initial adjustments of rates of basic pay of those positions and individuals in accordance with subsection (a) shall not be considered to be transfers or promotions within the meaning of section 304 of the District of Columbia Police and Firemen's Salary Act of 1958 [Pub. L. 85–584, title III, Aug. 1, 1958, 72 Stat. 484] (sec. 4–413, D.C. Code).

''(d) TRANSFER OF CREDIT FOR SATISFACTORY SERVICE.—Each individual whose position is converted to the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by section 902(a)) in accordance with subsection (a) shall be granted credit for purposes of such individual's first service step adjustment under the salary schedule in such section 501(c) for all satisfactory service performed by the individual since the individual's last increase in basic pay prior to the adjustment under that section.

''(e) ADJUSTMENT TO TAKE INTO ACCOUNT GENERAL SCHEDULE ADJUSTMENTS DURING TRANSITION.—The rates provided under the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by section 902(a)) shall be increased by the percentage of any annual adjustment applicable to the General Schedule authorized under section 5303 of title 5, United States Code, which takes effect during the period which begins on the date of the enactment of this Act [Dec. 21, 2000] and ends on the first day of the first pay period beginning 6 months after the date of enactment of this Act.

''(f) CONVERSION NOT TREATED AS SALARY INCREASE FOR PURPOSES OF CERTAIN PENSIONS AND ALLOWANCES.—The conversion of positions and individuals to appropriate classes of the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (as amended by section 2[902](a)) and the initial adjustments of rates of basic pay of those positions and individuals in accordance with subsection (a) shall not be treated as an increase in salary for purposes of section 3 of the Act entitled 'An Act to provide increased pensions for widows and children of deceased members of the Police Department and the Fire Department of the District of Columbia', approved August 4, 1949 [ch. 394, 63 Stat. 566] (sec. 4–604, D.C. Code), or section 301 of the District of Columbia Police and Firemen's Salary Act of 1953 [June 20, 1953, ch. 146, title III, 67 Stat. 75] (sec. 4–605, D.C. Code).''

[Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 909], Dec. 21, 2000, 114 Stat. 2763, 2763A–310, provided that: ''Except as provided in section 908(c) [114 Stat. 2763A–310], this title [enacting provisions set out as notes above and under sections 5301, 5304, and 5305 of Title 5, Government Organization and Employees, and amending pro-

visions set out as a note under section 5305 of Title 5] and the amendments made by this title shall become effective on the first day of the first pay period beginning 6 months after the date of enactment [Dec. 21, 2000].''']

SECRET SERVICE UNIFORMED DIVISION COMPENSATION

Pub. L. 105–61, title I, § 118, Oct. 10, 1997, 111 Stat. 1285, provided that:

''(a) NEW RATES OF BASIC PAY.—[Amended Pub. L. 85–584, title V, § 501, Aug. 1, 1958, 72 Stat. 485.]

''(b) CONVERSION TO NEW SALARY SCHEDULE.—

''(1)(A) Effective on the first day of the first pay period beginning after the date of enactment of this section [Oct. 10, 1997], the Secretary of the Treasury shall fix the rates of basic pay for members of the United States Secret Service Uniformed Division in accordance with this paragraph.

''(B) Subject to subparagraph (C), each officer and member receiving basic compensation, immediately prior to the effective date of this section, at one of the scheduled rates in the salary schedule in section 101 of the District of Columbia Police and Firemen's Salary Act of 1958 [Pub. L. 85–584, title I, Aug. 1, 1958, 72 Stat. 481], as adjusted by law and as in effect prior to the effective date of this section, shall be placed in and receive basic compensation at the corresponding scheduled service step of the salary schedule under subsection (a)(4).

''(C)(i) The Assistant Chief and the Chief of the United States Secret Service Uniformed Division shall be placed in and receive basic compensation in salary class 10 and salary class 11, respectively, in the appropriate service step in the new salary class in accordance with section 304 of the District of Columbia Police and Firemen's Salary Act of 1958 [Pub. L. 85–584, title III, Aug. 1, 1958, 72 Stat. 484] (District of Columbia Code, section 4–413).

''(ii) Each member whose position is to be converted to the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 [Pub. L. 85–584, title V, Aug. 1, 1958, 72 Stat. 485] (District of Columbia Code, section 4–416(c)) as amended by this section, in accordance with subsection (a) of this section, and who, prior to the effective date of this section has earned, but has not been credited with, an increase in his or her rate of pay shall be afforded that increase before such member is placed in the corresponding service step in the salary schedule under section 501(c).

''(2) Except in the cases of the Assistant Chief and the Chief of the United States Secret Service Uniformed Division, the conversion of positions and individuals to appropriate classes of the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (District of Columbia Code, section 4–416(c)) as amended by this section, and the initial adjustments of rates of basic pay of those positions and individuals, in accordance with paragraph (1) of this subsection, shall not be considered to be transfers or promotions within the meaning of section 304 of the District of Columbia Police and Firemen's Salary Act of 1958 (District of Columbia Code, section 4–413).

''(3) Each member whose position is converted to the salary schedule under section 501(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (District of Columbia Code, section 4–416(c)) as amended by this section, in accordance with subsection (a) of this section, shall be granted credit for purposes of such member's first service step adjustment under the salary schedule in such section 510(c) for all satisfactory service performed by the member since the member's last increase in basic pay prior to the adjustment under that section.

''(c) LIMITATION ON PAY PERIOD EARNINGS.—[Amended act Aug. 15, 1950, ch. 715, 64 Stat. 477.]

''(d) SAVINGS PROVISION.—On the effective date of this section, any existing special salary rates authorized for members of the United States Secret Service Uniformed Division under section 5305 of title 5, United States Code (or any previous similar provision of law) and any special rates of pay or special pay adjustments under section 403, 404, or 405 of the Federal Law Enforcement Pay Reform Act of 1990 [Pub. L. 101–509, § 529 [title IV, §§ 403–405], 5 U.S.C. 5305 note] applicable to members of the United States Secret Service Uniformed Division shall be rendered inapplicable.

''(e) CONFORMING AMENDMENT.—[Amended Pub. L. 101–509, § 529 [title IV, § 405], set out as a note under section 5305 of Title 5, Government Organization and Employees.]

''(f) EFFECTIVE DATE.—The provisions of this section shall become effective on the first day of the first pay period beginning after the date of enactment of this Act [Oct. 10, 1997].''

EX. ORD. NO. 12478. TRANSFER OF AUTHORITY TO THE SECRETARY OF STATE TO MAKE REIMBURSEMENTS FOR PROTECTION OF FOREIGN MISSIONS TO INTERNATIONAL ORGANIZATIONS

Ex. Ord. No. 12478, May 23, 1984, 49 F.R. 22053, provided:

By authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Act of December 31, 1975, Public Law 94–196 (89 Stat. 1109), codified as [former] sections 202(7) and 208(a) of Title 3, United States Code, as amended, it is hereby ordered as follows:

SECTION 1. There is transferred to the Secretary of State authority to determine the need for and to approve terms and conditions of the provision of reimbursable extraordinary protective activities for foreign diplomatic missions pursuant to [former] section 202(7), and the authority to make reimbursements to State and local governments for services, personnel, equipment, and facilities pursuant to [former] section 208(a) of Title 3, United States Code;

SEC. 2. There are transferred to the Secretary of State such unexpended moneys as may have been appropriated to the Department of the Treasury for the purpose of permitting reimbursements to be made under the provisions of [former] section 208(a) of Title 3, United States Code;

SEC. 3. The authority transferred pursuant to this Order shall be exercised in coordination with protective security programs administered by the Secretary of State under the Foreign Missions Act of 1982 [22 U.S.C. 4301 et seq.]; authority available under that Act may also be applied to any foreign mission to which [former] section 202(7) applies; and

SEC. 4. This Order shall be effective on October 1, 1984.

RONALD REAGAN.

§ 3057. Bankruptcy investigations

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he

shall report the facts to the Attorney General for his direction.

(June 25, 1948, ch. 645, 62 Stat. 818; May 24, 1949, ch. 139, § 48, 63 Stat. 96; Pub. L. 95–598, title III, § 314(i), Nov. 6, 1978, 92 Stat. 2677.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 52(e)(1), (2) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29e(1), (2), as added by May 27, 1926, ch. 406, § 11, 44 Stat. 665, 666; June 22, 1938, ch. 575, § 1, 52 Stat. 840, 856).

Remaining provisions of section 52 of title 11, U.S.C., 1940 ed., Bankruptcy, constitute sections 151–154, and 3284 of this title.

The words ''or laws relating to insolvent debtors, receiverships, or reorganization plans'' were inserted to avoid reference to ''Title 11''.

Minor changes were made in phraseology.

1949 ACT

This section [section 48] clarifies the meaning of section 3057 of title 18, U.S.C., by expressly limiting to laws ''of the United States'', violations of laws which are to be reported to the United States attorney.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–598, § 314(i), substituted ''judge'' for ''referee'' and ''violation under chapter 9 of this title'' for ''violations of the bankruptcy laws''.

Subsec. (b). Pub. L. 95–598, § 314(i)(1), substituted ''judge'' for ''referee''.

1949—Subsec. (a). Act May 24, 1949, substituted ''or other laws of the United States'' for ''or laws''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3058. Interned belligerent nationals

Whoever, belonging to the armed land or naval forces of a belligerent nation or belligerent faction and being interned in the United States, in accordance with the law of nations, leaves or attempts to leave said jurisdiction, or leaves or attempts to leave the limits of internment without permission from the proper official of the United States in charge, or willfully overstays a leave of absence granted by such official, shall be subject to arrest by any marshal or deputy marshal of the United States, or by the military or naval authorities thereof, and shall be returned to the place of internment and there confined and safely kept for such period of time as the official of the United States in charge shall direct.

(June 25, 1948, ch. 645, 62 Stat. 818; Pub. L. 101–647, title XXXV, § 3571, Nov. 29, 1990, 104 Stat. 4928.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 37 (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223).

Said section 37 was incorporated in this section and section 756 of this title.

Minor verbal changes were made.

AMENDMENTS

1990—Pub. L. 101–647 substituted ''belligerent'' for ''beligerent'' before ''nation''.

[§§ 3059 to 3059B. Repealed. Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781]

Section 3059, act June 25, 1948, ch. 645, 62 Stat. 818; Pub. L. 97–258, § 2(d)(2), Sept. 13, 1982, 96 Stat. 1058; Pub. L. 103–322, title XXV, § 250004, Sept. 13, 1994, 108 Stat. 2086, related to rewards and appropriations therefor.

Section 3059A, added Pub. L. 101–647, title XXV, § 2587(a), Nov. 29, 1990, 104 Stat. 4904; amended Pub. L. 103–322, title XXXII, § 320607, title XXXIII, § 330010(10), (17), Sept. 13, 1994, 108 Stat. 2120, 2143, 2144; Pub. L. 104–294, title VI, §§ 601(f)(4), 604(b)(24), Oct. 11, 1996, 110 Stat. 3499, 3508, related to special rewards for information relating to certain financial institution offenses.

Section 3059B, added Pub. L. 104–132, title VIII, § 815(e)(1), Apr. 24, 1996, 110 Stat. 1315, set forth general reward authority.

§ 3060. Preliminary examination

(a) Except as otherwise provided by this section, a preliminary examination shall be held within the time set by the judge or magistrate judge pursuant to subsection (b) of this section, to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.

(b) The date for the preliminary examination shall be fixed by the judge or magistrate judge at the initial appearance of the arrested person. Except as provided by subsection (c) of this section, or unless the arrested person waives the preliminary examination, such examination shall be held within a reasonable time following initial appearance, but in any event not later than—

(1) the tenth day following the date of the initial appearance of the arrested person before such officer if the arrested person is held in custody without any provision for release, or is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or

(2) the twentieth day following the date of the initial appearance if the arrested person is released from custody under any condition other than a condition described in paragraph (1) of this subsection.

(c) With the consent of the arrested person, the date fixed by the judge or magistrate judge for the preliminary examination may be a date later than that prescribed by subsection (b), or may be continued one or more times to a date

subsequent to the date initially fixed therefor. In the absence of such consent of the accused, the judge or magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(d) Except as provided by subsection (e) of this section, an arrested person who has not been accorded the preliminary examination required by subsection (a) within the period of time fixed by the judge or magistrate judge in compliance with subsections (b) and (c), shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him upon the charge upon which he was arrested.

(e) No preliminary examination in compliance with subsection (a) of this section shall be required to be accorded an arrested person, nor shall such arrested person be discharged from custody or from the requirement of bail or any other condition of release pursuant to subsection (d), if at any time subsequent to the initial appearance of such person before a judge or magistrate judge and prior to the date fixed for the preliminary examination pursuant to subsections (b) and (c) an indictment is returned or, in appropriate cases, an information is filed against such person in a court of the United States.

(f) Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. A copy of the record of such proceeding shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(June 25, 1948, ch. 645, 62 Stat. 819; Pub. L. 90–578, title III, § 303(a), Oct. 17, 1968, 82 Stat. 1117; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 109–162, title XI, § 1179, Jan. 5, 2006, 119 Stat. 3126.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–162 substituted ''In the absence of such consent of the accused, the judge or magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.'' for ''In the absence of such consent of the accused, the date fixed for the preliminary hearing may be a date later than that prescribed by subsection (b), or may be continued to a date subsequent to the date initially fixed therefor, only upon the order of a judge of the appropriate United States district court after a finding that extraordinary circumstances exist, and that the delay of the preliminary hearing is indispensable to the interests of justice.''

1968—Pub. L. 90–578 substituted provisions of subsecs. (a) to (f) of this section detailing preliminary examination content for prior provisions which directed attention to the rule in section catchline, and directed one to see Federal Rules of Criminal Procedure, including ''Proceedings before commissioner, appearance, advice as to right to counsel, hearing, Rule 5.''.

CHANGE OF NAME

Words ''magistrate judge'' and ''United States magistrate judges'' substituted for ''magistrate'' and ''United States magistrates'', respectively, wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3061. Investigative powers of Postal Service personnel

(a) Subject to subsection (b) of this section, Postal Inspectors and other agents of the United States Postal Service designated by the Board of Governors to investigate criminal matters related to the Postal Service and the mails may—

(1) serve warrants and subpoenas issued under the authority of the United States;

(2) make arrests without warrant for offenses against the United States committed in their presence;

(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(4) carry firearms; and

(5) make seizures of property as provided by law.

(b) The powers granted by subsection (a) of this section shall be exercised only—

(1) in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, and other postal offenses; and

(2) to the extent authorized by the Attorney General pursuant to agreement between the Attorney General and the Postal Service, in the enforcement of other laws of the United States, if the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the Postal Service.

(c)(1) The Postal Service may employ police officers for duty in connection with the protection of property owned or occupied by the Postal Service or under the charge and control of the Postal Service, and persons on that property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

(2) With respect to such property, such officers shall have the power to—

(A) enforce Federal laws and regulations for the protection of persons and property;

(B) carry firearms; and

(C) make arrests without a warrant for any offense against the Unites[1] States committed in the presence of the officer or for any felony cognizable under the laws of the United States if the officer has reasonable grounds to believe

[1] So in original. Probably should be ''United''.

that the person to be arrested has committed or is committing a felony.

(3) With respect to such property, such officers may have, to such extent as the Postal Service may by regulations prescribe, the power to—

(A) serve warrants and subpoenas issued under the authority of the United States; and

(B) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Postal Service or persons on the property.

(4)(A) As to such property, the Postmaster General may prescribe regulations necessary for the protection and administration of property owned or occupied by the Postal Service and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in subparagraph (B), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

(B) A person violating a regulation prescribed under this subsection shall be fined under this title, imprisoned for not more than 30 days, or both.

(Added Pub. L. 90–560, § 5(a), Oct. 12, 1968, 82 Stat. 998; amended Pub. L. 91–375, § 6(j)(38)(A), Aug. 12, 1970, 84 Stat. 781; Pub. L. 100–690, title VI, § 6251(a), Nov. 18, 1988, 102 Stat. 4362; Pub. L. 109–435, title X, § 1001, Dec. 20, 2006, 120 Stat. 3254.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–435 added subsec. (c).

1988—Pub. L. 100–690 substituted ''Investigative powers of Postal Service personnel'' for ''Powers of postal personnel'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) Subject to subsection (b) of this section, officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—

''(1) serve warrants and subpenas issued under the authority of the United States;

''(2) make arrests without warrant for offenses against the United States committed in their presence; and

''(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

''(b) The powers granted by subsection (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other postal offenses.''

1970—Pub. L. 91–375, § 6(j)(38)(A)(i), substituted ''postal personnel'' for ''postal inspectors'' in section catchline.

Subsec. (a). Pub. L. 91–375, § 6(j)(38)(A)(ii), substituted ''officers and employees of the Postal Service performing duties related to the inspection of postal matters may, to the extent authorized by the Board of Governors—'' for ''postal inspectors may, to the extent authorized by the Postmaster General—''.

Subsec. (b). Pub. L. 91–375, § 6(j)(38)(A)(iii), substituted ''Postal Service, including property of the Postal Service,'' for ''postal service''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 3062. General arrest authority for violation of release conditions

A law enforcement officer, who is authorized to arrest for an offense committed in his presence, may arrest a person who is released pursuant to chapter 207 if the officer has reasonable grounds to believe that the person is violating, in his presence, a condition imposed on the person pursuant to section 3142(c)(1)(B)(iv), (v), (viii), (ix), or (xiii), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(1)(B)(x).

(Added Pub. L. 98–473, title II, § 204(d), Oct. 12, 1984, 98 Stat. 1986; amended Pub. L. 100–690, title VII, § 7052, Nov. 18, 1988, 102 Stat. 4401.)

AMENDMENTS

1988—Pub. L. 100–690 substituted ''section 3142(c)(1)(B)(iv), (v), (viii), (ix), or (xiii)'' for ''section 3142(c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(M)'' and ''section 3142(c)(1)(B)(x)'' for ''section 3142(c)(2)(J)''.

§ 3063. Powers of Environmental Protection Agency

(a) Upon designation by the Administrator of the Environmental Protection Agency, any law enforcement officer of the Environmental Protection Agency with responsibility for the investigation of criminal violations of a law administered by the Environmental Protection Agency, may—

(1) carry firearms;

(2) execute and serve any warrant or other processes issued under the authority of the United States; and

(3) make arrests without warrant for—

(A) any offense against the United States committed in such officer's presence; or

(B) any felony offense against the United States if such officer has probable cause to believe that the person to be arrested has committed or is committing that felony offense.

(b) The powers granted under subsection (a) of this section shall be exercised in accordance with guidelines approved by the Attorney General.

(Added Pub. L. 100–582, § 4(a), Nov. 1, 1988, 102 Stat. 2958.)

§ 3064. Powers of Federal Motor Carrier Safety Administration

Authorized employees of the Federal Motor Carrier Safety Administration may direct a driver of a commercial motor vehicle (as defined in section 31132 of title 49) to stop for inspection of the vehicle, driver, cargo, and required records at or in the vicinity of an inspection site.

(Added Pub. L. 109–59, title IV, § 4143(b), Aug. 10, 2005, 119 Stat. 1748.)

CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS AND ESPIONAGE

Sec.
3071. Information for which rewards authorized.
3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness.
3073. Protection of identity.
3074. Exception of governmental officials.
3075. Authorization for appropriations.[1]
3076. Eligibility for witness security program.
3077. Definitions.

AMENDMENTS

1994—Pub. L. 103–359, title VIII, § 803(c)(2), Oct. 14, 1994, 108 Stat. 3439, inserted ''AND ESPIONAGE'' after ''TERRORIST ACTS'' in chapter heading.

§ 3071. Information for which rewards authorized

(a) With respect to acts of terrorism primarily within the territorial jurisdiction of the United States, the Attorney General may reward any individual who furnishes information—

(1) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or

(2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

(3) leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property.

(b) With respect to acts of espionage involving or directed at the United States, the Attorney General may reward any individual who furnishes information—

(1) leading to the arrest or conviction, in any country, of any individual or individuals for commission of an act of espionage against the United States;

(2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of espionage against the United States; or

(3) leading to the prevention or frustration of an act of espionage against the United States.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2706; amended Pub. L. 103–359, title VIII, § 803(a), Oct. 14, 1994, 108 Stat. 3438.)

AMENDMENTS

1994—Pub. L. 103–359 designated existing provisions as subsec. (a) and added subsec. (b).

SHORT TITLE

Section 1 of Pub. L. 98–533 provided that: ''This Act [enacting this chapter and section 2708 of Title 22, Foreign Relations and Intercourse, amending sections 2669, 2678 and 2704 of Title 22, enacting provisions set out as a note under section 5928 of Title 5, Government Organization and Employees and amending provisions set out as a note under section 2651 of Title 22] may be cited as the '1984 Act to Combat International Terrorism'.''

[1] Section repealed by Pub. L. 107–273 without corresponding amendment of chapter analysis.

ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS TO COMBAT TERRORISM

Pub. L. 107–56, title V, § 501, Oct. 26, 2001, 115 Stat. 363, which provided that funds available to Attorney General could be used for payment of rewards to combat terrorism and defend Nation against terrorist acts, in accordance with procedures and regulations established or issued by Attorney General, and set forth conditions in making such rewards, was repealed by Pub. L. 107–273, div. A, title III, § 301(c)(1), Nov. 2, 2002, 116 Stat. 1781.

§ 3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness

The Attorney General shall determine whether an individual furnishing information described in section 3071 is entitled to a reward and the amount to be paid.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707; amended Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781.)

AMENDMENTS

2002—Pub. L. 107–273, which directed amendment of section 3072 of chapter 203, was executed to this section, which is in chapter 204, by striking out at end ''A reward under this section may be in an amount not to exceed $500,000. A reward of $100,000 or more may not be made without the approval of the President or the Attorney General personally. A determination made by the Attorney General or the President under this chapter shall be final and conclusive, and no court shall have power or jurisdiction to review it.''

§ 3073. Protection of identity

Any reward granted under this chapter shall be certified for payment by the Attorney General. If it is determined that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General may take such measures in connection with the payment of the reward as deemed necessary to effect such protection.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

§ 3074. Exception of governmental officials

No officer or employee of any governmental entity who, while in the performance of his or her official duties, furnishes the information described in section 3071 shall be eligible for any monetary reward under this chapter.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

[§ 3075. Repealed. Pub. L. 107–273, div. A, title III, § 301(c)(2), Nov. 2, 2002, 116 Stat. 1781]

Section, added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707, authorized appropriations for the purpose of this chapter.

Pub. L. 107–273, which directed the repeal of section 3075 of chapter 203, was executed to this section which is in chapter 204.

§ 3076. Eligibility for witness security program

Any individual (and the immediate family of such individual) who furnishes information which would justify a reward by the Attorney General under this chapter or by the Secretary

of State under section 36 of the State Department Basic Authorities Act of 1956 may, in the discretion of the Attorney General, participate in the Attorney General's witness security program authorized under chapter 224 of this title.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707; amended Pub. L. 99–646, § 45, Nov. 10, 1986, 100 Stat. 3601.)

REFERENCES IN TEXT

Section 36 of the State Department Basic Authorities Act of 1956, referred to in text, is classified to section 2708 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1986—Pub. L. 99–646 substituted ''chapter 224 of this title'' for ''title V of the Organized Crime Control Act of 1970''.

§ 3077. Definitions

As used in this chapter, the term—

(1) ''act of terrorism'' means an act of domestic or international terrorism as defined in section 2331;

(2) ''United States person'' means—

(A) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(B) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(C) any person within the United States;

(D) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

(E) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

(F) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States, and a foreign subsidiary of such corporation;

(3) ''United States property'' means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any Federal or State governmental entity of the United States;

(4) ''United States'', when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States;

(5) ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

(6) ''government entity'' includes the Government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal, or other political subdivision of a foreign country;

(7) ''Attorney General'' means the Attorney General of the United States or that official designated by the Attorney General to perform the Attorney General's responsibilities under this chapter; and

(8) ''act of espionage'' means an activity that is a violation of—

(A) section 793, 794, or 798 of this title; or

(B) section 4 of the Subversive Activities Control Act of 1950.

(Added Pub. L. 98–533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707; amended Pub. L. 100–690, title VII, § 7051, Nov. 18, 1988, 102 Stat. 4401; Pub. L. 101–647, title XXXV, § 3572, Nov. 29, 1990, 104 Stat. 4929; Pub. L. 103–322, title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub. L. 103–359, title VIII, § 803(b), Oct. 14, 1994, 108 Stat. 3439; Pub. L. 104–294, title VI, § 605(g), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 107–56, title VIII, § 802(b), Oct. 26, 2001, 115 Stat. 376.)

REFERENCES IN TEXT

Section 4 of the Subversive Activities Control Act of 1950, referred to in par. (8)(B), is classified to section 783 of Title 50, War and National Defense.

AMENDMENTS

2001—Par. (1). Pub. L. 107–56 amended par. (1) generally. Prior to amendment, par. (1) read as follows: '' 'act of terrorism' means an activity that—

''(A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

''(B) appears to be intended—

''(i) to intimidate or coerce a civilian population;

''(ii) to influence the policy of a government by intimidation or coercion; or

''(iii) to affect the conduct of a government by assassination or kidnapping;''.

1996—Par. (8)(A). Pub. L. 104–294 substituted ''this title'' for ''title 18, United States Code''.

1994—Par. (1)(B)(iii). Pub. L. 103–322 substituted ''kidnapping'' for ''kidnaping''.

Par. (8). Pub. L. 103–359 added par. (8).

1990—Pub. L. 101–647 substituted a semicolon for a period at end of pars. (1) to (3), moved the comma from before the close quotation mark to after that mark in par. (4), substituted a semicolon for a period at end of par. (5), and substituted ''; and'' for period at end of par. (6).

1988—Par. (4). Pub. L. 100–690 amended par. (4) generally. Prior to amendment, par. (4) read as follows: '' 'United States'—

''(A) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

''(B) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).''

CHAPTER 205—SEARCHES AND SEIZURES

Sec.
3101. Effect of rules of court—Rule.
3102. Authority to issue search warrant—Rule.
3103. Grounds for issuing search warrant—Rule.
3103a. Additional grounds for issuing warrant.
3104. Issuance of search warrant; contents—Rule.
3105. Persons authorized to serve search warrant.
3106. Officer authorized to serve search warrant—Rule.
3107. Service of warrants and seizures by Federal Bureau of Investigation.
3108. Execution, service, and return—Rule.
3109. Breaking doors or windows for entry or exit.
3110. Property defined—Rule.
3111. Property seizable on search warrant—Rule.

Sec.
[3112. Repealed.]
3113. Liquor violations in Indian country.
3114. Return of seized property and suppression of evidence; motion—Rule.
3115. Inventory upon execution and return of search warrant—Rule.
3116. Records of examining magistrate judge; return to clerk of court—Rule.
3117. Mobile tracking devices.
3118. Implied consent for certain tests.

CODIFICATION

Pub. L. 90–351 enacted section 3103a of this title as part of chapter 204, and Pub. L. 90–462, § 3, Aug. 8, 1968, 82 Stat. 638, corrected the chapter designation from 204 to 205.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3573(d), Nov. 29, 1990, 104 Stat. 4929, struck out item 3112 ''Search warrants for seizure of animals, birds, or eggs'' and renumbered item 3117, ''Implied consent for certain tests'', as 3118.

1988—Pub. L. 100–690, title VI, § 6477(b)(2), Nov. 18, 1988, 102 Stat. 4381, added item 3117 ''Implied consent for certain tests''.

1986—Pub. L. 99–508, title I, § 108(b), Oct. 21, 1986, 100 Stat. 1858, added item 3117 ''Mobile tracking devices''.

1968—Pub. L. 90–351, title IX, § 1401(b), June 19, 1968, 82 Stat. 238, added item 3103a.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in item 3116 pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3101. Effect of rules of court—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Rules generally applicable throughout United States, Rule 54.

Acts of Congress superseded, Rule 41(g).

(June 25, 1948, ch. 645, 62 Stat. 819.)

REFERENCES IN TEXT

Rule 41(g), referred to in text, was relettered 41(h) by 1972 amendment eff. Oct. 1, 1972.

§ 3102. Authority to issue search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Federal, State or Territorial Judges, or U.S. magistrate judges authorized to issue search warrants, Rule 41(a).

(June 25, 1948, ch. 645, 62 Stat. 819; Pub. L. 90–578, title III, § 301(a)(4), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Pub. L. 90–578 substituted ''magistrates'' for ''Commissioners''.

CHANGE OF NAME

''U.S. magistrate judges'' substituted for ''U.S. magistrates'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3103. Grounds for issuing search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Grounds prescribed for issuance of search warrant, Rule 41(b).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3103a. Additional grounds for issuing warrant

(a) IN GENERAL.—In addition to the grounds for issuing a warrant in section 3103 of this title, a warrant may be issued to search for and seize any property that constitutes evidence of a criminal offense in violation of the laws of the United States.

(b) DELAY.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if—

(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705, except if the adverse results consist only of unduly delaying a trial)[1];

(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

(3) the warrant provides for the giving of such notice within a reasonable period not to exceed 30 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay.

(c) EXTENSIONS OF DELAY.—Any period of delay authorized by this section may be extended by the court for good cause shown, subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay should be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay.

(d) REPORTS.—

(1) REPORT BY JUDGE.—Not later than 30 days after the expiration of a warrant authorizing delayed notice (including any extension thereof) entered under this section, or the denial of such warrant (or request for extension), the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(A) the fact that a warrant was applied for;

(B) the fact that the warrant or any extension thereof was granted as applied for, was modified, or was denied;

[1] So in original. The closing parenthesis probably should follow ''section 2705''.

(C) the period of delay in the giving of notice authorized by the warrant, and the number and duration of any extensions; and

(D) the offense specified in the warrant or application.

(2) REPORT BY ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Beginning with the fiscal year ending September 30, 2007, the Director of the Administrative Office of the United States Courts shall transmit to Congress annually a full and complete report summarizing the data required to be filed with the Administrative Office by paragraph (1), including the number of applications for warrants and extensions of warrants authorizing delayed notice, and the number of such warrants and extensions granted or denied during the preceding fiscal year.

(3) REGULATIONS.—The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, is authorized to issue binding regulations dealing with the content and form of the reports required to be filed under paragraph (1).

(Added Pub. L. 90–351, title IX, § 1401(a), June 19, 1968, 82 Stat. 238; amended Pub. L. 107–56, title II, § 213, Oct. 26, 2001, 115 Stat. 285; Pub. L. 109–177, title I, § 114, Mar. 9, 2006, 120 Stat. 210.)

CODIFICATION

Pub. L. 90–351 enacted section 3103a of this title as part of chapter 204, and Pub. L. 90–462, § 3, Aug. 8, 1968, 82 Stat. 638, corrected the chapter designation from 204 to 205.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–177, § 114(b), inserted ‘‘, except if the adverse results consist only of unduly delaying a trial’’ after ‘‘2705’’.

Subsec. (b)(3). Pub. L. 109–177, § 114(a)(1), added par. (3) and struck out former par. (3) which read as follows: ‘‘the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.’’

Subsecs. (c), (d). Pub. L. 109–177, § 114(a)(2), (c), added subsecs. (c) and (d).

2001—Pub. L. 107–56 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 3104. Issuance of search warrant; contents—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Issuance of search warrant on affidavit; contents to identify persons or place; command to search forthwith, Rule 41(c).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3105. Persons authorized to serve search warrant

A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(June 25, 1948, ch. 645, 62 Stat. 819.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 617 (June 15, 1917, ch. 30, title XI, § 7, 40 Stat. 229).

Minor change was made in phraseology.

§ 3106. Officer authorized to serve search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Officer to whom search warrant shall be directed, Rule 41(c).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3107. Service of warrants and seizures by Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to make seizures under warrant for violation of the laws of the United States.

(June 25, 1948, ch. 645, 62 Stat. 819; Jan. 10, 1951, ch. 1221, § 2, 64 Stat. 1239.)

HISTORICAL AND REVISION NOTES

Based on section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (June 18, 1934, ch. 595, 48 Stat. 1008; Mar. 22, 1935, ch. 39, title II, 49 Stat. 77).

Section 300a of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, was used as the basis for this section and section 3052 of this title.

AMENDMENTS

1951—Act Jan. 10, 1951, included within its provisions the Associate Director and the Assistant to the Director.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3108. Execution, service, and return—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Method and time for execution, service and return of search warrant, Rule 41(c), (d).

(June 25, 1948, ch. 645, 62 Stat. 819.)

§ 3109. Breaking doors or windows for entry or exit

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

(June 25, 1948, ch. 645, 62 Stat. 820.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 618, 619 (June 15, 1917, ch. 30, title XI, §§ 8, 9, 40 Stat. 229).

Said sections 618 and 619 were consolidated with minor changes in phraseology but without change of substance.

§ 3110. Property defined—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Term ''property'' as used in Rule 41 includes documents, books, papers and any other tangible objects, Rule 41(g).

(June 25, 1948, ch. 645, 62 Stat. 820.)

REFERENCES IN TEXT

Rule 41(g), referred to in text, was redesignated 41(h) by 1972 amendment eff. Oct. 1, 1972.

§ 3111. Property seizable on search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Specified property seizable on search warrant, Rule 41(b).

(June 25, 1948, ch. 645, 62 Stat. 820.)

[§ 3112. Repealed. Pub. L. 97–79, § 9(b)(3), Nov. 16, 1981, 95 Stat. 1079]

Section, acts June 25, 1948, ch. 645, 62 Stat. 820; Dec. 5, 1969, Pub. L. 91–135, § 7(c), 83 Stat. 281; Nov. 8, 1978, Pub. L. 95–616, § 3(j)(1), 92 Stat. 3112, provided for issuance of search warrants for seizure of animals, birds, and eggs. See section 3375 of Title 16, Conservation.

§ 3113. Liquor violations in Indian country

If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision has probable cause to believe that any person is about to introduce or has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.

Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army.

(June 25, 1948, ch. 645, 62 Stat. 820; Oct. 31, 1951, ch. 655, § 30, 65 Stat. 721; Pub. L. 103–322, title XXXIII, § 330004(15), Sept. 13, 1994, 108 Stat. 2142.)

HISTORICAL AND REVISION NOTES

Based on sections 246, 248, 252 of title 25, U.S.C., 1940 ed., Indians (R.S. § 2140; Mar. 1, 1907, ch. 2285, 34 Stat. 1017; May 18, 1916, ch. 125, § 1, 39 Stat. 124).

Said sections 246, 248, and 252 were consolidated. References to Indian agent and subagent were deleted since those positions no longer exist. See section 64 of title 25, U.S.C., 1940 ed., Indians, and notes thereunder.

Words ''except such as are kept or used for scientific, sacramental, medicinal or mechanical purposes'' were inserted. See reviser's note under section 1154 of this title.

Words ''conveyances and packages'' were substituted for the enumeration, ''boats, teams, wagons and sleds * * * and goods, packages and peltries.''

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 struck out last par. which read as follows: ''In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses.''

1951—Act Oct. 31, 1951, substituted ''Department of the Army'' for ''War Department'' in second par.

§ 3114. Return of seized property and suppression of evidence; motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Return of property and suppression of evidence upon motion, Rule 41(e).

(June 25, 1948, ch. 645, 62 Stat. 820.)

§ 3115. Inventory upon execution and return of search warrant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Inventory of property seized under search warrant and copies to persons affected, Rule 41(d).

(June 25, 1948, ch. 645, 62 Stat. 820.)

§ 3116. Records of examining magistrate judge; return to clerk of court—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Magistrate judges and clerks of court to keep records as prescribed by Director of the Administrative Office of the United States Courts, Rule 55.

Return or filing of records with clerk, Rule 41(f).

(June 25, 1948, ch. 645, 62 Stat. 821; Pub. L. 90–578, title III, § 301(a)(4), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Section 627 of title 18, U.S.C., 1940 ed., relating to the filing of search warrants and companion papers, was omitted as unnecessary in view of Rule 41(f) of the Federal Rules of Criminal Procedure.

REFERENCES IN TEXT

Rule 41(f), referred to in text, was redesignated 41(g) by 1972 amendment eff. Oct. 1, 1972.

AMENDMENTS

1968—Pub. L. 90–578 substituted ''Magistrates'' for ''Commissioners''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in section catchline and ''Magistrate judges'' substituted for ''Magistrates'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3117. Mobile tracking devices

(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

(b) DEFINITION.—As used in this section, the term ''tracking device'' means an electronic or mechanical device which permits the tracking of the movement of a person or object.

(Added Pub. L. 99–508, title I, § 108(a), Oct. 21, 1986, 100 Stat. 1858.)

CODIFICATION

Another section 3117 was renumbered section 3118 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1986, and, in case of conduct pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions, see section 111 of Pub. L. 99–508, set out as an Effective Date of 1986 Amendment note under section 2510 of this title.

§ 3118. Implied consent for certain tests

(a) CONSENT.—Whoever operates a motor vehicle in the special maritime and territorial jurisdiction of the United States consents thereby to a chemical test or tests of such person's blood, breath, or urine, if arrested for any offense arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. The test or tests shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving a motor vehicle upon the special maritime and territorial jurisdiction of the United States while under the influence of drugs or alcohol in violation of the laws of a State, territory, possession, or district.

(b) EFFECT OF REFUSAL.—Whoever, having consented to a test or tests by reason of subsection (a), refuses to submit to such a test or tests, after having first been advised of the consequences of such a refusal, shall be denied the privilege of operating a motor vehicle upon the special maritime and territorial jurisdiction of the United States during the period of a year commencing on the date of arrest upon which such test or tests was refused, and such refusal may be admitted into evidence in any case arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. Any person who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States after having been denied such privilege under this subsection shall be treated for the purposes of any civil or criminal proceedings arising out of such operation as operating such vehicle without a license to do so.

(Added Pub. L. 100–690, title VI, § 6477(b)(1), Nov. 18, 1988, 102 Stat. 4381, § 3117; renumbered § 3118, Pub. L. 101–647, title XXXV, § 3574, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Pub. L. 101–647 renumbered second section 3117 of this title as this section.

CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

Sec.
3121. General prohibition on pen register and trap and trace device use; exception.
3122. Application for an order for a pen register or a trap and trace device.
3123. Issuance of an order for a pen register or a trap and trace device.
3124. Assistance in installation and use of a pen register or a trap and trace device.
3125. Emergency pen register and trap and trace device installation.
3126. Reports concerning pen registers and trap and trace devices.
3127. Definitions for chapter.

AMENDMENTS

1988—Pub. L. 100–690, title VII, §§ 7068, 7092(c), Nov. 18, 1988, 102 Stat. 4405, 4411, substituted ''trap and trace'' for ''trap or trace'' in item 3123, added item 3125, and redesignated former items 3125 and 3126 as 3126 and 3127, respectively.

§ 3121. General prohibition on pen register and trap and trace device use; exception

(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (3) where the consent of the user of that service has been obtained.

(c) LIMITATION.—A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications.

(d) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1868; amended Pub. L. 103–414, title

II, § 207(b), Oct. 25, 1994, 108 Stat. 4292; Pub. L. 107–56, title II, § 216(a), Oct. 26, 2001, 115 Stat. 288.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–56 inserted ''or trap and trace device'' after ''pen register'' and '', routing, addressing,'' after ''dialing'' and substituted ''the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications'' for ''call processing''.

1994—Subsecs. (c), (d). Pub. L. 103–414 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE

Section 302 of title III of Pub. L. 99–508 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting this chapter and section 1367 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

''(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

''(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

''(2) the date two years after the date of the enactment of this Act [Oct. 21, 1986].''

§ 3122. Application for an order for a pen register or a trap and trace device

(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1869.)

§ 3123. Issuance of an order for a pen register or a trap and trace device

(a) IN GENERAL.—

(1) ATTORNEY FOR THE GOVERNMENT.—Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served.

(2) STATE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.—Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(3)(A) Where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify—

(i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;

(ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;

(iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and

(iv) any information which has been collected by the device.

To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the

record shall be maintained electronically throughout the installation and use of such device.

(B) The record maintained under subparagraph (A) shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof).

(b) CONTENTS OF ORDER.—An order issued under this section—

(1) shall specify—

(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

(B) the identity, if known, of the person who is the subject of the criminal investigation;

(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and

(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

(1) the order be sealed until otherwise ordered by the court; and

(2) the person owning or leasing the line or other facility to which the pen register or a trap and trace device is attached or applied, or who is obligated by the order to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1869; amended Pub. L. 107–56, title II, § 216(b), Oct. 26, 2001, 115 Stat. 288.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–56, § 216(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.''

Subsec. (b)(1)(A). Pub. L. 107–56, § 216(b)(2)(A), inserted ''or other facility'' after ''telephone line'' and ''or applied'' before semicolon at end.

Subsec. (b)(1)(C). Pub. L. 107–56, § 216(b)(2)(B), added subpar. (C) and struck out former subpar (C) which read as follows: ''the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and''.

Subsec. (d)(2). Pub. L. 107–56, § 216(b)(3), inserted ''or other facility'' after ''leasing the line'' and substituted ''or applied, or who is obligated by the order'' for '', or who has been ordered by the court''.

§ 3124. Assistance in installation and use of a pen register or a trap and trace device

(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line or other facility and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished, pursuant to section 3123(b) or section 3125 of this title, to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, cus-

todian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with a court order under this chapter or request pursuant to section 3125 of this title.

(e) DEFENSE.—A good faith reliance on a court order under this chapter, a request pursuant to section 3125 of this title, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

(f) COMMUNICATIONS ASSISTANCE ENFORCEMENT ORDERS.—Pursuant to section 2522, an order may be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1870; amended Pub. L. 100–690, title VII, §§ 7040, 7092(b), (d), Nov. 18, 1988, 102 Stat. 4399, 4411; Pub. L. 101–647, title XXXV, § 3575, Nov. 29, 1990, 104 Stat. 4929; Pub. L. 103–414, title II, § 201(b)(2), Oct. 25, 1994, 108 Stat. 4290; Pub. L. 107–56, title II, § 216(c)(5), (6), Oct. 26, 2001, 115 Stat. 290.)

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in subsec. (f), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§ 1001 et seq.) of chapter 9 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–56, § 216(c)(6), inserted ''or other facility'' after ''the appropriate line''.

Subsec. (d). Pub. L. 107–56, § 216(c)(5), struck out ''the terms of'' before ''a court order''.

1994—Subsec. (f). Pub. L. 103–414 added subsec. (f).

1990—Subsec. (b). Pub. L. 101–647 substituted ''section 3123(b)'' for ''subsection 3123(b)''.

1988—Subsec. (b). Pub. L. 100–690, §§ 7040, 7092(d), inserted '', pursuant to subsection 3123(b) or section 3125 of this title,'' after ''shall be furnished'' and ''order'' after last reference to ''court''.

Subsec. (d). Pub. L. 100–690, § 7092(b)(1), inserted ''or request pursuant to section 3125 of this title'' after ''this chapter''.

Subsec. (e). Pub. L. 100–690, § 7092(b)(2), inserted ''under this chapter, a request pursuant to section 3125 of this title'' after ''court order''.

ASSISTANCE TO LAW ENFORCEMENT AGENCIES

Pub. L. 107–56, title II, § 222, Oct. 26, 2001, 115 Stat. 292, provided that: ''Nothing in this Act [see Short Title of 2001 Amendment note set out under section 1 of this title] shall impose any additional technical obligation or requirement on a provider of a wire or electronic communication service or other person to furnish facilities or technical assistance. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to section 216 [amending this section and sections 3121, 3123, and 3127 of this title] shall be reasonably compensated for such reasonable expenditures incurred in providing such facilities or assistance.''

§ 3125. Emergency pen register and trap and trace device installation

(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(1) an emergency situation exists that involves—

(A) immediate danger of death or serious bodily injury to any person;

(B) conspiratorial activities characteristic of organized crime;

(C) an immediate threat to a national security interest; or

(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;

that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and

(2) there are grounds upon which an order could be entered under this chapter to authorize such installation and use;

may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with section 3123 of this title.

(b) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

(c) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to subsection (a) without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter.

(d) A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(Added Pub. L. 100–690, title VII, § 7092(a)(2), Nov. 18, 1988, 102 Stat. 4410; amended Pub. L. 103–322, title XXXIII, § 330008(3), Sept. 13, 1994, 108 Stat. 2142; Pub. L. 104–294, title VI, § 601(f)(5), Oct. 11, 1996, 110 Stat. 3499; Pub. L. 107–296, title II, § 225(i), Nov. 25, 2002, 116 Stat. 2158.)

PRIOR PROVISIONS

A prior section 3125 was renumbered section 3126 of this title.

AMENDMENTS

2002—Subsec. (a)(1)(C), (D). Pub. L. 107–296 added subpars. (C) and (D).

1996—Subsec. (a). Pub. L. 104–294 struck out closing quotation mark at end.

1994—Subsec. (a). Pub. L. 103–322, § 330008(3)(A), (B), substituted ''use;'' for ''use'' in par. (2) and directed that matter beginning with ''may have installed'' and ending with ''section 3123 of this title'' be realigned so that it is flush to the left margin, which was executed to text containing a period after ''section 3123 of this title'', to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 103–322, § 330008(3)(C), substituted ''provider of'' for ''provider for''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 3126. Reports concerning pen registers and trap and trace devices

The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice, which report shall include information concerning—

(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(2) the offense specified in the order or application, or extension of an order;

(3) the number of investigations involved;

(4) the number and nature of the facilities affected; and

(5) the identity, including district, of the applying investigative or law enforcement agency making the application and the person authorizing the order.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1871, § 3125; renumbered § 3126, Pub. L. 100–690, title VII, § 7092(a)(1), Nov. 18, 1988, 102 Stat. 4410; amended Pub. L. 106–197, § 3, May 2, 2000, 114 Stat. 247.)

PRIOR PROVISIONS

A prior section 3126 was renumbered section 3127 of this title.

AMENDMENTS

2000—Pub. L. 106–197 substituted '', which report shall include information concerning—'' and pars. (1) to (5) for period at end.

1988—Pub. L. 100–690 renumbered section 3125 of this title as this section.

REPORT ON USE OF DCS 1000 (CARNIVORE) TO IMPLEMENT ORDERS UNDER SECTION 3123

Pub. L. 107–273, div. A, title III, § 305(a), Nov. 2, 2002, 116 Stat. 1782, provided that: ''At the same time that the Attorney General submits to Congress the annual reports required by section 3126 of title 18, United States Code, that are respectively next due after the end of each of the fiscal years 2002 and 2003, the Attorney General shall also submit to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, on the number of orders under section 3123 applied for by law enforcement agencies of the Department of Justice whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program), which report shall include information concerning—

''(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

''(2) the offense specified in the order or application, or extension of an order;

''(3) the number of investigations involved;

''(4) the number and nature of the facilities affected;

''(5) the identity of the applying investigative or law enforcement agency making the application for an order; and

''(6) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.''

§ 3127. Definitions for chapter

As used in this chapter—

(1) the terms ''wire communication'', ''electronic communication'', ''electronic communication service'', and ''contents'' have the meanings set forth for such terms in section 2510 of this title;

(2) the term ''court of competent jurisdiction'' means—

(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or

(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

(3) the term ''pen register'' means a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication, but such term does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(4) the term ''trap and trace device'' means a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication;

(5) the term ''attorney for the Government'' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

(6) the term ''State'' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.

(Added Pub. L. 99–508, title III, § 301(a), Oct. 21, 1986, 100 Stat. 1871, § 3126; renumbered § 3127, Pub. L. 100–690, title VII, § 7092(a)(1), Nov. 18, 1988, 102 Stat. 4410; amended Pub. L. 107–56, title II, § 216(c)(1)–(4), Oct. 26, 2001, 115 Stat. 290.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in par. (5), are set out in the Appendix to this title.

AMENDMENTS

2001—Par. (1). Pub. L. 107–56, § 216(c)(4), struck out ''and'' after '''electronic communication','' and inserted '', and 'contents'" after '''electronic communication service'''.

Par. (2)(A). Pub. L. 107–56, § 216(c)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''a district court of the United States (including a magistrate judge of such a court) or a United States Court of Appeals; or''.

Par. (3). Pub. L. 107–56, § 216(c)(2), substituted ''dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication'' for ''electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached'' and inserted ''or process'' after ''device'' wherever appearing.

Par. (4). Pub. L. 107–56, § 216(c)(3), inserted ''or process'' after ''means a device'' and substituted ''or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication;'' for ''of an instrument or device from which a wire or electronic communication was transmitted;''.

1988—Pub. L. 100–690 renumbered section 3126 of this title as this section.

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

Sec.
3141. Release and detention authority generally.
3142. Release or detention of a defendant pending trial.
3143. Release or detention of a defendant pending sentence or appeal.
3144. Release or detention of a material witness.
3145. Review and appeal of a release or detention order.
3146. Penalty for failure to appear.
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3148. Sanctions for violation of a release condition.
3149. Surrender of an offender by a surety.
3150. Applicability to a case removed from a State court.
[3150a. Repealed.]
3151. Refund of forfeited bail.
3152. Establishment of pretrial services.
3153. Organization and administration of pretrial services.
3154. Functions and powers relating to pretrial services.
3155. Annual reports.
3156. Definitions.

AMENDMENTS

1988—Pub. L. 100–690, title VII, § 7084(b), Nov. 18, 1988, 102 Stat. 4408, added item 3151.

1984—Pub. L. 98–473, title II, § 203(e), Oct. 12, 1984, 98 Stat. 1985, inserted ''AND DETENTION PENDING JUDICIAL PROCEEDING'' in chapter heading, added new items 3141 to 3150, and struck out former items 3141 to 3151 as follows: item 3141 ''Power of courts and magistrates'', item 3142 ''Surrender by bail'', item 3143 ''Additional bail'', item 3144 ''Cases removed from State courts'', item 3145 ''Parties and witnesses—Rule'', item 3146 ''Release in noncapital cases prior to trial'', item 3147 ''Appeal from conditions of release'', item 3148 ''Release in capital cases or after conviction'', item 3149 ''Release of material witnesses'', item 3150 ''Penalties for failure to appear'', item 3150a ''Refund of forfeited bail'', item 3151 ''Contempt''.

1982—Pub. L. 97–267, § 6, Sept. 27, 1982, 96 Stat. 1138, struck out ''agencies'' after ''services'' in item 3152, substituted ''and administration of pretrial services'' for ''of pretrial services agencies'' in item 3153, ''relating to pretrial services'' for ''of pretrial services agencies'' in item 3154, and ''Annual reports'' for ''Report to Congress'' in item 3155.

Pub. L. 97–258, § 2(d)(3)(A), Sept. 13, 1982, 96 Stat. 1058, added item 3150a.

1975—Pub. L. 93–619, title II, § 202, Jan. 3, 1975, 88 Stat. 2089, added items 3153 to 3156, and in item 3152, substituted ''Establishment of Pretrial Services Agencies'' for ''Definitions''.

1966—Pub. L. 89–465, §§ 3(b), 5(e)(1), June 22, 1966, 80 Stat. 216, 217, substituted ''RELEASE'' for ''BAIL'' in chapter heading and ''Release in noncapital cases prior to trial'' for ''Jumping Bail'' in item 3146, and added items 3147 to 3152.

1954—Act Aug. 20, 1954, ch. 772, § 2, 68 Stat. 748, added item 3146.

§ 3141. Release and detention authority generally

(a) PENDING TRIAL.—A judicial officer authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released or detained, pending judicial proceedings, under this chapter.

(b) PENDING SENTENCE OR APPEAL.—A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a Federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained under this chapter.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976; amended Pub. L. 99–646, § 55(a), (b), Nov. 10, 1986, 100 Stat. 3607.)

PRIOR PROVISIONS

A prior section 3141, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89–465, § 5(b), 80 Stat. 217, related to powers of courts and magistrates with respect to release on bail or otherwise, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–646, § 55(a), (b), substituted ''authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released'' for ''who is authorized to order the arrest of a person pursuant to section 3041 of this title shall order that an arrested person who is brought before him be released'' and ''under this chapter'' for ''pursuant to the provisions of this chapter''.

Subsec. (b). Pub. L. 99–646, § 55(a), substituted ''under this chapter'' for ''pursuant to the provisions of this chapter''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 55(j) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section and sections 3142 to 3144, 3146 to 3148, and 3156 of this title] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6951, Dec. 17, 2004, 118 Stat. 3775, provided that: ''This subtitle [subtitle K (§§ 6951, 6952) of title VI of Pub. L. 108–458, amending section 3142 of this title] may be cited as the 'Pretrial Detention of Terrorists Act of 2004'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–647, title IX, § 901, Nov. 29, 1990, 104 Stat. 4826, provided that: ''This title [amending sections 3143 and 3145 of this title] may be cited as the 'Mandatory Detention for Offenders Convicted of Serious Crimes Act'.''

SHORT TITLE OF 1984 AMENDMENT

Section 202 of chapter I (§§ 202–210) of title II of Pub. L. 98–473 provided that: ''This chapter [enacting sections 3062 and 3141 to 3150 of this title, amending sections 3041, 3042, 3154, 3156, 3731, 3772, and 4282 of this title and section 636 of Title 28, Judiciary and Judicial Procedure, repealing sections 3043 and 3141 to 3151 of this title, and amending rules 5, 15, 40, 46, and 54 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and rule 9 of the Federal Rules of Appellate Procedure, set out in the Appendix to Title 28] may be cited as the 'Bail Reform Act of 1984'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–267, § 1, Sept. 27, 1982, 96 Stat. 1136, provided: ''That this Act [amending sections 3152 to 3155 of this title and section 604 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 3141 and 3152 of this title] may be cited as the 'Pretrial Services Act of 1982'.''

SHORT TITLE

Section 1 of Pub. L. 89–465 provided: ''That this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title, and enacting provisions set out as a note below] may be cited as the 'Bail Reform Act of 1966'.''

PURPOSE OF BAIL REFORM ACT OF 1966

Section 2 of Pub. L. 89–465 provided that: ''The purpose of this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title and enacting provisions set out as a note above] is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.''

§ 3142. Release or detention of a defendant pending trial

(a) IN GENERAL.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) RELEASE ON CONDITIONS.—(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a

sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE, DEPORTATION, OR EXCLUSION.—If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) DETENTION.—If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(1) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(2) the offense described in paragraph (1) of this subsection was committed while the person was on release pending trial for a Federal, State, or local offense; and

(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably

assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) FACTORS TO BE CONSIDERED.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) CONTENTS OF RELEASE ORDER.—In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) CONTENTS OF DETENTION ORDER.—In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) PRESUMPTION OF INNOCENCE.—Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976; amended Pub. L. 99–646, §§ 55(a), (c), 72, Nov. 10, 1986, 100 Stat. 3607, 3617; Pub. L. 100–690, title VII, § 7073, Nov. 18, 1988, 102 Stat. 4405; Pub. L. 101–647, title X, § 1001(b), title XXXVI, §§ 3622–3624, Nov. 29, 1990, 104 Stat. 4827, 4965; Pub. L. 104–132, title VII, §§ 702(d), 729, Apr. 24, 1996, 110 Stat. 1294, 1302; Pub. L. 108–21, title II, § 203, Apr. 30, 2003, 117 Stat. 660; Pub. L. 108–458, title VI, § 6952, Dec. 17, 2004, 118 Stat. 3775; Pub. L. 109–162, title X, § 1004(b), Jan. 5, 2006, 119 Stat. 3085; Pub. L. 109–248, title II, § 216, July 27, 2006, 120 Stat. 617; Pub. L. 109–304, § 17(d)(7), Oct. 6, 2006, 120 Stat. 1707.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsecs. (e) and (f)(1)(C), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (e) and (f)(1)(C), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

PRIOR PROVISIONS

A prior section 3142, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89–465, § 5(c), 80 Stat. 217, set forth provisions relating to surrender by bail, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

2006—Subsecs. (b), (c)(1)(A). Pub. L. 109–162 inserted "and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)" after "period of release".

Subsec. (c)(1)(B). Pub. L. 109–248, § 216(1), inserted concluding provisions.

Subsecs. (e), (f)(1)(C). Pub. L. 109–304 substituted "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

Subsec. (f)(1)(E). Pub. L. 109–248, § 216(2), added subpar. (E).

Subsec. (g)(1). Pub. L. 109–248, § 216(3), added par. (1) and struck out former par. (1) which read as follows: "the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed or involves a narcotic drug;".

2004—Subsec. (e). Pub. L. 108–458, § 6952(1), in concluding provisions, inserted "or" before "the Maritime" and "or an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed" after "or 2332b of this title,".

Subsecs. (f)(1)(A), (g)(1). Pub. L. 108–458, § 6952(2), inserted ", or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed" after "violence".

2003—Subsec. (e). Pub. L. 108–21, in concluding provisions, substituted "1901 et seq.)," for "1901 et seq.), or" and "of this title, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title" for "of title 18 of the United States Code".

1996—Subsec. (e). Pub. L. 104–132, § 702(d), inserted ", 956(a), or 2332b" after "section 924(c)" in concluding provisions.

Subsec. (f). Pub. L. 104–132, § 729, in concluding provisions, inserted "(not including any intermediate Saturday, Sunday, or legal holiday)" after "five days" and after "three days".

1990—Subsec. (c)(1)(B)(xi). Pub. L. 101–647, § 3622, amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: "execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;".

Subsec. (c)(1)(B)(xii). Pub. L. 101–647, § 3623, amended cl. (xii) generally. Prior to amendment, cl. (xii) read as follows: "execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;".

Subsecs. (e), (f)(1)(C). Pub. L. 101–647, § 1001(b), substituted "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)" for "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)".

Subsec. (g)(4). Pub. L. 101–647, § 3624, substituted ''subsection (c)(1)(B)(xi) or (c)(1)(B)(xii)'' for ''subsection (c)(2)(K) or (c)(2)(L)''.

1988—Subsec. (c)(3). Pub. L. 100–690 substituted ''the order'' for ''order''.

1986—Subsec. (a). Pub. L. 99–646, § 55(a), (c)(1), in par. (1) struck out ''his'' after ''released on'' and substituted ''under subsection (b) of this section'' for ''pursuant to the provisions of subsection (b)'', in par. (2) substituted ''under subsection (c) of this section'' for ''pursuant to the provisions of subsection (c)'', in par. (3) substituted ''under subsection (d) of this section'' for ''pursuant to provisions of subsection (d)'', and in par. (4) substituted ''under subsection (e) of this section'' for ''pursuant to provisions of subsection (e)''.

Subsec. (b). Pub. L. 99–646, § 55(c)(2), struck out ''his'' after ''person on'' and ''period of''.

Subsec. (c). Pub. L. 99–646, § 55(c)(3), designated existing provision as par. (1) and redesignated former pars. (1) and (2) as subpars. (A) and (B), in provision preceding subpar. (A) substituted ''subsection (b) of this section'' for ''subsection (b)'' and ''such judicial officer'' for ''he'', in subpar. (B) redesignated subpars. (A) to (N) as cls. (i) to (xiv), in provision preceding cl. (i) substituted ''such judicial officer'' for ''he'', in cl. (i) substituted ''assume supervision'' for ''supervise him'', in cl. (iv) substituted ''on personal'' for ''on his personal'', in cl. (x) substituted ''medical, psychological,'' for ''medical'', designated provision relating to the judicial officer not imposing a financial condition that results in the pretrial detention of a person as par. (2), and designated provision permitting the judicial officer to impose at any time additional or different conditions of release as par. (3), and in par. (3) struck out ''his'' after ''amend''.

Subsec. (d). Pub. L. 99–646, § 55(c)(4), in pars. (1) and (2) substituted ''such person'' for ''the person'' and in concluding provisions substituted ''such person'' for ''the person'' in four places, ''such judicial officer'' for ''he'', ''paragraph (1)(B) of this subsection'' for ''paragraph (1)(B)'', and ''such person's United States citizenship or lawful admission'' for ''that he is a citizen of the United States or is lawfully admitted''.

Subsec. (e). Pub. L. 99–646, § 55(c)(5), in introductory provisions inserted ''of this section'' after ''subsection (f)'' and substituted ''such judicial officer'' for ''he'', ''before'' for ''prior to'', ''described in subsection (f)(1) of this section'' for ''described in (f)(1)'', and ''if such judicial officer'' for ''if the judge'', in par. (1) inserted ''of this section'' after ''subsection (f)(1)'' in two places, and in pars. (2) and (3) inserted ''of this section'' after ''paragraph (1)''.

Subsec. (f). Pub. L. 99–646, § 72, in par. (1)(D) substituted ''any felony if the person has been convicted of two or more offenses'' for ''any felony committed after the person had been convicted of two or more prior offenses'' and inserted '', or a combination of such offenses'', in par. (2)(A) inserted ''or'' after ''flee;'', and in concluding provisions, inserted provision permitting the hearing to be reopened at any time before trial if the judicial officer finds that information exists that was unknown to the movant at the time of the hearing and that has a material bearing on whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

Pub. L. 99–646, § 55(c)(6), substituted ''such person'' for ''the person'' wherever appearing, in introductory provision inserted ''of this section'' after ''subsection (c)'' and struck out ''in a case'' after ''community'', in par. (1) inserted ''in a case'' and in subpar. (D) of par. (1) inserted ''of this paragraph'' in two places, in par. (2) substituted ''upon'' for ''Upon'' and inserted ''in a case'', and in concluding provisions, substituted ''sua sponte'' for ''on his own motion'', ''whether such person is an addict'' for ''whether he is an addict'', and ''financially'' for ''he is financially'', and struck out ''for him'' after ''appointed'' and ''on his own behalf'' after ''witnesses''.

Subsec. (g). Pub. L. 99–646, § 55(c)(7), in par. (3)(A) substituted ''the person's'' for ''his'', in par. (3)(B) substituted ''the person'' for ''he'', and in par. (4) inserted ''of this section''.

Subsec. (h). Pub. L. 99–646, § 55(a), (c)(8), in introductory provision substituted ''under'' for ''pursuant to the provisions of'' and inserted ''of this section'' and in par. (2)(C) struck out ''the provisions of'' before ''sections 1503''.

Subsec. (i). Pub. L. 99–646, § 55(a), (c)(9), in introductory provision substituted ''under'' for ''pursuant to the provisions of'' and inserted ''of this section'' and in par. (3) struck out ''his'' after ''consultation with''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 3622 to 3624 of Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 3143. Release or detention of a defendant pending sentence or appeal

(a) RELEASE OR DETENTION PENDING SENTENCE.—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c).

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

(b) RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.

(c) RELEASE OR DETENTION PENDING APPEAL BY THE GOVERNMENT.—The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States under section 3731 of this title, in accordance with section 3142 of this title, unless the defendant is otherwise subject to a release or detention order. Except as provided in subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall—

(1) if the person has been sentenced to a term of imprisonment, order that person detained; and

(2) in any other circumstance, release or detain the person under section 3142.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1981; amended Pub. L. 98–473, title II, § 223(f), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–646, §§ 51(a), (b), 55(a), (d), Nov. 10, 1986, 100 Stat. 3605–3607, 3609; Pub. L. 100–690, title VII, § 7091, Nov. 18, 1988, 102 Stat. 4410; Pub. L. 101–647, title IX, § 902(a), (b), title X, § 1001(a), Nov. 29, 1990, 104 Stat. 4826, 4827; Pub. L. 102–572, title VII, § 703, Oct. 29, 1992, 106 Stat. 4515.)

PRIOR PROVISIONS

A prior section 3143, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89–465, § 5(d), 80 Stat. 217, related to additional bail, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–572 substituted ''subparagraph (B)(iv) of this paragraph'' for ''paragraph (b)(2)(D)''.

1990—Subsec. (a). Pub. L. 101–647, § 902(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the judicial officer'' for ''The judicial officer'', and added par. (2).

Subsec. (a)(1). Pub. L. 101–647, § 1001(a), substituted ''awaiting'' for ''waiting''.

Subsec. (b). Pub. L. 101–647, § 902(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the judicial officer'' for ''The judicial officer'', redesignated former pars. (1) and (2) as subpars. (A) and (B), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (B), and added par. (2).

1988—Subsec. (b). Pub. L. 100–690, § 7091(2), inserted '', except that in the circumstance described in paragraph (b)(2)(D), the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence'' before period at end.

Subsec. (b)(2). Pub. L. 100–690, § 7091(1), added par. (2) and struck out former par. (2) which read as follows: ''that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.''

1986—Subsec. (a). Pub. L. 99–646, § 55(d)(1), (2), (4), substituted ''under'' for ''pursuant to'' and ''such judicial officer'' for ''he'' and struck out ''the provisions of'' after ''in accordance with''.

Subsec. (b). Pub. L. 99–646, § 55(d)(1)–(4), in par. (1) substituted ''under'' for ''pursuant to'' and inserted ''of this title'' after ''(c)'', and in concluding provision, substituted ''such judicial officer'' for ''he'', struck out ''the provisions of'' after ''in accordance with'', and inserted ''of this title'' after ''(c)''.

Subsec. (b)(2). Pub. L. 99–646, § 51(a)(1), substituted ''reversal,'' for ''reversal or'' and inserted '', or a sentence that does not include a term of imprisonment''.

Subsec. (c). Pub. L. 99–646, § 51(a)(2), inserted provision that, except as provided in subsec. (b), the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, if the person has been sentenced to a term of imprisonment, order that person detained, and in any other circumstance, release or detain the person under section 3142.

Pub. L. 99–646, § 55(a), (d)(2), (5), substituted ''under section 3731'' for ''pursuant to the provisions of section 3731'' and ''with section 3142 of this title'' for ''with the provisions of section 3142''.

Pub. L. 99–646, § 51(b), provided that the amendment of subsec. (c) by section 223(f)(2) of Pub. L. 98–473 shall not take effect. See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98–473, § 223(f)(1), inserted provisions relating to applicable guideline under section 994 of title 28.

Subsec. (c). Pub. L. 98–473, § 223(f)(2), which would have added a final sentence requiring a judge to treat a defendant in a case in which an appeal had been taken by the United States pursuant to the provisions of section 3742 in accordance with the provisions of (1) subsection (a) if the person had been sentenced to a term of imprisonment; or (2) section 3142 if the person had not been sentenced to a term of imprisonment did not become effective pursuant to section 51(b) of Pub. L. 99–646. See 1986 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 51(c) of Pub. L. 99–646 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall take effect on the date of the taking of effect of section 3742 of title 18, United States Code [Nov. 1, 1987].''

Amendment by section 55(a), (d) of Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the

taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 3144. Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 99–646, § 55(e), Nov. 10, 1986, 100 Stat. 3609.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 3144, act June 25, 1948, ch. 645, 62 Stat. 821, related to cases removed from State courts, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1986—Pub. L. 99–646 substituted ''subpoena'' for ''subpena'' and inserted ''of this title''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

§ 3145. Review and appeal of a release or detention order

(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) APPEAL FROM A RELEASE OR DETENTION ORDER.—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 101–647, title IX, § 902(c), Nov. 29, 1990, 104 Stat. 4827; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

PRIOR PROVISIONS

A prior section 3145, act June 25, 1948, ch. 645, 62 Stat. 821, provided cross references to the Federal Rules of Criminal Procedure for rules covering parties and witnesses, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–647 inserted at end ''A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.''

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in subsecs. (a) and (b) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3146. Penalty for failure to appear

(a) OFFENSE.—Whoever, having been released under this chapter knowingly—

(1) fails to appear before a court as required by the conditions of release; or

(2) fails to surrender for service of sentence pursuant to a court order;

shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—(1) The punishment for an offense under this section is—

(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for—

(i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;

(ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;

(iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or

(iv) a misdemeanor, a fine under this title or imprisonment for not more than one year, or both; and

(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.

(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(d) DECLARATION OF FORFEITURE.—If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142(c)(1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 99–646, § 55(f), Nov. 10, 1986, 100 Stat. 3609; Pub. L. 103–322, title XXXIII, § 330016(2)(K), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104–294, title VI, § 601(a)(4), Oct. 11, 1996, 110 Stat. 3498.)

PRIOR PROVISIONS

A prior section 3146, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 214; amended Pub. L. 97–291, § 8, Oct. 12, 1982, 96 Stat. 1257, related to release in noncapital cases prior to trial, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

Another prior section 3146, act Aug. 20, 1954, ch. 772, § 1, 68 Stat. 747, which prescribed penalties for jumping bail, was repealed by Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 214, and covered by former sections 3150 and 3151 of this title.

AMENDMENTS

1996—Subsec. (b)(1)(A)(iv). Pub. L. 104–294 substituted ''a fine under this title'' for ''a fined under this title''.

1994—Subsec. (b)(1)(A)(iv). Pub. L. 103–322 substituted ''fined under this title'' for ''fine under this chapter''.

1986—Subsec. (a). Pub. L. 99–646, § 55(f)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A person commits an offense if, after having been released pursuant to this chapter—

''(1) he knowingly fails to appear before a court as required by the conditions of his release; or

''(2) he knowingly fails to surrender for service of sentence pursuant to a court order.''

Subsec. (b). Pub. L. 99–646, § 55(f)(1), added subsec. (b) and struck out former subsec. (b) which was captioned ''Grading'', and which read as follows: ''If the person was released—

''(1) in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction, for—

''(A) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, he shall be fined not more than $25,000 or imprisoned for not more than ten years, or both;

''(B) an offense punishable by imprisonment for a term of five or more years, but less than fifteen years, he shall be fined not more than $10,000 or imprisoned for not more than five years, or both;

''(C) any other felony, he shall be fined not more than $5,000 or imprisoned for not more than two years, or both; or

''(D) a misdemeanor, he shall be fined not more than $2,000 or imprisoned for not more than one year, or both; or

''(2) for appearance as a material witness, he shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

A term of imprisonment imposed pursuant to this section shall be consecutive to the sentence of imprisonment for any other offense.''

Subsec. (c). Pub. L. 99–646, § 55(f)(2), substituted ''requirement to appear'' for ''requirement that he appear'' and ''the person appeared'' for ''he appeared''.

Subsec. (d). Pub. L. 99–646, § 55(f)(3), inserted ''of this title'' after ''3142(b)'' and substituted ''clause (xi) or (xii) of section 3142(c)(1)(B) of this title'' for ''section 3142(c)(2)(K) or (c)(2)(L)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

§ 3147. Penalty for an offense committed while on release

A person convicted of an offense committed while released under this chapter shall be sentenced, in addition to the sentence prescribed for the offense, to—

(1) a term of imprisonment of not more than ten years if the offense is a felony; or

(2) a term of imprisonment of not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1983; amended Pub. L. 98–473, title II, § 223(g), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–646, § 55(g), Nov. 10, 1986, 100 Stat. 3610.)

PRIOR PROVISIONS

A prior section 3147, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 215, related to appeals from conditions of release, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1986—Pub. L. 99–646 substituted ''under'' for ''pursuant to'' in two places and ''for the offense,'' for ''for the offense''.

1984—Pub. L. 98–473, § 223(g), struck out ''not less than two years and'' after ''imprisonment of'' in par. (1), and ''not less than ninety days and'' after ''imprisonment of'' in par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 3148. Sanctions for violation of a release condition

(a) AVAILABLE SANCTIONS.—A person who has been released under section 3142 of this title, and

who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

(b) REVOCATION OF RELEASE.—The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in the district in which such person's arrest was ordered for a proceeding in accordance with this section. To the extent practicable, a person charged with violating the condition of release that such person not commit a Federal, State, or local crime during the period of release, shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer—

(1) finds that there is—

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that—

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, the judicial officer shall treat the person in accordance with the provisions of section 3142 of this title and may amend the conditions of release accordingly.

(c) PROSECUTION FOR CONTEMPT.—The judicial officer may commence a prosecution for contempt, under section 401 of this title, if the person has violated a condition of release.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1983; amended Pub. L. 99–646, § 55(a), (h), Nov. 10, 1986, 100 Stat. 3607, 3610.)

PRIOR PROVISIONS

A prior section 3148, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 215; amended Pub. L. 91–452, title X, § 1002, Oct. 12, 1970, 84 Stat. 952, related to release in capital cases or after conviction, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–646, § 55(a), (h)(1), substituted "under section 3142 of this title" for "pursuant to the provisions of section 3142".

Subsec. (b). Pub. L. 99–646, § 55(h)(2), in introductory provision, substituted "such person's arrest" for "his arrest", "condition of release that such person not commit" for "condition of his release that he not commit", and "period of release," for "period of release", in par. (1)(B) substituted "condition of release" for "condition of his release", in par. (2)(A) inserted "of this title" after "section 3142(g)", and in concluding provision, substituted "the judicial officer shall" for "he shall" and inserted "of this title" after "section 3142".

Subsec. (c). Pub. L. 99–646, § 55(a), (h)(3), substituted "judicial officer" for "judge", "under section 401 of this title" for "pursuant to the provisions of section 401", and "condition of release" for "condition of his release".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

§ 3149. Surrender of an offender by a surety

A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, shall be delivered promptly to a United States marshal and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of section 3148(b) whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond in accordance with the provisions of Rule 46 of the Federal Rules of Criminal Procedure. The person so committed shall be held in official detention until released pursuant to this chapter or another provision of law.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1984.)

PRIOR PROVISIONS

A prior section 3149, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216, related to release of material witnesses, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

§ 3150. Applicability to a case removed from a State court

The provisions of this chapter apply to a criminal case removed to a Federal court from a State court.

(Added Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1984.)

PRIOR PROVISIONS

A prior section 3150, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216, related to penalties for failure to appear, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98–473.

[§ 3150a. Repealed. Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976]

Section, added Pub. L. 97–258, § 2(d)(3)(B), Sept. 13, 1982, 96 Stat. 1059; amended Pub. L. 98–473, title II, § 1410, Oct. 12, 1984, 98 Stat. 2178, related to refund of forfeited bail. Section 1410 of Pub. L. 98–473 was subsequently repealed by Pub. L. 99–646, § 49, Nov. 10, 1986, 100 Stat. 3605.

§ 3151. Refund of forfeited bail

Appropriations available to refund money erroneously received and deposited in the Treasury are available to refund any part of forfeited bail deposited into the Treasury and ordered remitted under the Federal Rules of Criminal Procedure.

(Added Pub. L. 100–690, title VII, § 7084(a), Nov. 18, 1988, 102 Stat. 4408.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 3151, added Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216, related to contempt power of courts, prior to repeal by Pub. L. 98–473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976.

§ 3152. Establishment of pretrial services

(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the ''Director'') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district (other than the District of Columbia). Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title or by a chief pretrial services officer selected under subsection (c) of this section.

(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate judge of the district or their designees. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3654 of this title.

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2086; amended Pub. L. 97–267, § 2, Sept. 27, 1982, 96 Stat. 1136; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

The date of enactment of the Pretrial Services Act of 1982, referred to in subsecs. (a) and (b), is the date of enactment of Pub. L. 97–267, which was approved Sept. 27, 1982.

PRIOR PROVISIONS

A prior section 3152, as added by Pub. L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216, defined the terms ''judicial officer'' and ''offense'', prior to repeal by Pub. L. 93–619, § 201. See section 3156 of this title.

AMENDMENTS

1982—Pub. L. 97–267 struck out ''agencies'' after ''services'' in section catchline, divided previously unlettered text provisions into subsecs. (a), (b), and (c), and substituted revised provisions as so redesignated for provisions which required the Director of the Administrative Office of the United States Courts to establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter such districts to be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

AUTHORIZATION OF APPROPRIATIONS

Section 9 of Pub. L. 97–267 provided that:

''(a) There are authorized to be appropriated, for the fiscal year ending September 30, 1984, and each succeeding fiscal year thereafter, such sums as may be necessary to carry out the functions and powers of pretrial services established under section 3152(b) of title 18, United States Code.

''(b) There are authorized to be appropriated for the fiscal year ending September 30, 1983, and the fiscal year ending September 30, 1984, such sums as may be necessary to carry out the functions and powers of the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act [Sept. 27, 1982].''

STATUS OF PRETRIAL SERVICES AGENCIES IN EFFECT PRIOR TO SEPTEMBER 27, 1982

Section 8 of Pub. L. 97–267 provided that: ''During the period beginning on the date of enactment of this Act [Sept. 27, 1982] and ending eighteen months after the date of the enactment of this Act, the pretrial services agencies established under section 3152 of title 18 of the United States Code in effect before the date of enactment of this Act may continue to operate, employ staff, provide pretrial services, and perform such functions and powers as are authorized under chapter 207 of title 18 of the United States Code [this chapter].''

§ 3153. Organization and administration of pretrial services

(a)(1) With the approval of the district court, the chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title shall appoint such other personnel as may be required. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS–16 of the General Schedule under section 5332 of title 5, United States Code.

(2) The chief pretrial services officer in districts in which pretrial services are established

under section 3152(b) of this title is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff, other than clerical staff, may be drawn from law school students, graduate students, or such other available personnel.

(b) The chief probation officer in all districts in which pretrial services are established under section 3152(a) of this title shall designate personnel appointed under chapter 231 of this title to perform pretrial services under this chapter.

(c)(1) Except as provided in paragraph (2) of this subsection, information obtained in the course of performing pretrial services functions in relation to a particular accused shall be used only for the purposes of a bail determination and shall otherwise be confidential. Each pretrial services report shall be made available to the attorney for the accused and the attorney for the Government.

(2) The Director shall issue regulations establishing the policy for release of information made confidential by paragraph (1) of this subsection. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

(A) by qualified persons for purposes of research related to the administration of criminal justice;

(B) by persons under contract under section 3154(4) of this title;

(C) by probation officers for the purpose of compiling presentence reports;

(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

(3) Information made confidential under paragraph (1) of this subsection is not admissible on the issue of guilt in a criminal judicial proceeding unless such proceeding is a prosecution for a crime committed in the course of obtaining pretrial release or a prosecution for failure to appear for the criminal judicial proceeding with respect to which pretrial services were provided.

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2086; amended Pub. L. 97–287, § 3, Sept. 27, 1982, 96 Stat. 1136.)

AMENDMENTS

1982—Pub. L. 97–267 substantially revised section by substituting provisions relating to the organization and administration of pretrial services for provisions relating to organization and administration of pretrial services agencies which vested the powers of five such agencies in the Division of Probation of the Administrative Office of the United States Courts and the powers of the remaining five agencies in Boards of Trustees, set forth requirements for membership and terms of office with respect to such Boards, and provided for appointment of Federal probation officers in agencies governed by the Division of Probation, and chief pretrial service officers in agencies governed by Boards of Trustees, which designated officers would be responsible for the direction and supervision of their respective agencies.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 3154. Functions and powers relating to pretrial services

Pretrial services functions shall include the following:

(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release; except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title.

(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3145 of this chapter.

(3) Supervise persons released into its custody under this chapter.

(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

(10) To the extent provided for in an agreement between a chief pretrial services officer

in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.

(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.

(14) Perform such other functions as specified under this chapter.

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2087; amended Pub. L. 97–267, § 4, Sept. 27, 1982, 96 Stat. 1137; Pub. L. 98–473, title II, § 203(b), Oct. 12, 1984, 98 Stat. 1984; Pub. L. 101–647, title XXXV, § 3576, Nov. 29, 1990, 104 Stat. 4929; Pub. L. 102–572, title VII, § 701(b), title X, § 1002, Oct. 29, 1992, 106 Stat. 4515, 4521; Pub. L. 104–317, title I, § 101(b), Oct. 19, 1996, 110 Stat. 3848.)

AMENDMENTS

1996—Pars. (13), (14). Pub. L. 104–317 added par. (13) and redesignated former par. (13) as (14).

1992—Par. (1). Pub. L. 102–572, § 1002, inserted before period at end "; except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title".

Pars. (12), (13). Pub. L. 102–572, § 701(b), added par. (12) and redesignated former par. (12) as (13).

1990—Par. (1). Pub. L. 101–647 substituted "community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release." for "community" and all that followed through end of par. (1).

1984—Par. (1). Pub. L. 98–473, § 203(b)(1), which directed the amendment of par. (1), by striking out "and recommend appropriate release conditions for each such person" and inserting in lieu thereof "and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release" could not be executed because such language did not appear. See 1990 Amendment note above.

Par. (2). Pub. L. 98–473, § 203(b)(2), substituted "section 3145" for "section 3146(e) or section 3147".

1982—Pub. L. 97–267 substituted "relating to pretrial services" for "of pretrial services agencies" in section catchline, in par. (1) struck out provisions relating to agency files concerning the pretrial release of persons charged with an offense, the establishment of regulations concerning the release of such files, and the access to and admissibility of these files, in par. (4) struck out provision relating to the cooperation of the Administrative Office of the United States Courts and the approval of the Attorney General and provision not limiting this paragraph to those facilities listed thereunder, in par. (5) inserted provisions that pretrial services may provide the United States Attorney as well as the court with information described under this paragraph and that such information also includes any danger that a person released to the custody of pretrial services may come to pose to any other person or the community, in par. (9) substituted provisions that pretrial services shall develop and implement a system to monitor and evaluate bail activities, provide information on the result of bail decisions, and prepare periodic reports to assist the improvement of the bail process for provisions that pretrial services agencies would perform such other functions as the court might assign, and added pars. (10)–(12).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

DEMONSTRATION PROGRAM FOR DRUG TESTING OF ARRESTED PERSONS AND DEFENDANTS ON PROBATION OR SUPERVISED RELEASE

Pub. L. 100–690, title VII, § 7304, Nov. 18, 1988, 102 Stat. 4464, provided that:

"(a) ESTABLISHMENT.—The Director of the Administrative Office of the United States Courts shall establish a demonstration program of mandatory testing of criminal defendants.

"(b) LENGTH OF PROGRAM.—The demonstration program shall begin not later than January 1, 1989, and shall last two years.

"(c) SELECTION OF DISTRICTS.—The Judicial Conference of the United States shall select 8 Federal judicial districts in which to carry out the demonstration program, so that the group selected represents a mix of districts on the basis of criminal caseload and the types of cases in that caseload.

"(d) INCLUSION IN PRETRIAL SERVICES.—In each of the districts in which the demonstration program takes place, pretrial services under chapter 207 of title 18, United States Code, shall arrange for the drug testing of defendants in criminal cases. To the extent feasible, such testing shall be completed before the defendant makes the defendant's initial appearance in the case before a judicial officer. The results of such testing shall be included in the report to the judicial officer under section 3154 of title 18, United States Code.

"(e) MANDATORY CONDITION OF PROBATION AND SUPERVISED RELEASE.—In each of the judicial districts in which the demonstration program is in effect, it shall be an additional, mandatory condition of probation, and an additional mandatory condition of supervised release for offenses occurring or completed on or after January 1, 1989, for any defendant convicted of a felony, that such defendant refrain from any illegal use of any controlled substance (as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]) and submit to periodic drug tests for use of controlled substances at least once every 60 days. The requirement that drug tests be administered at least once every 60 days may be suspended upon motion of the Director of the Administrative Office, or the Director's designee, if, after at least one year of probation or supervised release, the defendant has passed all drug tests administered pursuant to this section. No action may be taken against a defendant pursuant to a drug test administered in accordance with this subsection unless the drug test confirmation is a urine drug test confirmed using gas chromatography techniques or such test as the Secretary of

Health and Human Services may determine to be of equivalent accuracy.

''(f) REPORT TO CONGRESS.—Not later than 90 days after the first year of the demonstration program and not later than 90 days after the end of the demonstration program, the Director of the Administrative Office of the United States Courts shall report to Congress on the effectiveness of the demonstration program and include in such report recommendations as to whether mandatory drug testing of defendants should be made more general and permanent.''

§ 3155. Annual reports

Each chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, and each chief probation officer in all other districts, shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of pretrial services. The Director shall be required to include in the Director's annual report to the Judicial Conference under section 604 of title 28 a report on the administration and operation of the pretrial services for the previous year.

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2088; amended Pub. L. 97–267, § 5, Sept. 27, 1982, 96 Stat. 1138.)

AMENDMENTS

1982—Pub. L. 97–267 substituted provisions that each pretrial services officer or chief probation officer shall prepare an annual report to the chief judge of the district court and to the Director concerning the administration and operation of pretrial services and that the Director must include in the Director's annual report to the Judicial Conference a report on the administration and operation of the pretrial services for the previous year for provisions relating to the Director's annual report to Congress, the contents of the Director's fourth annual report, and that on or before the expiration of the forty-eighth-month period following July 1, 1975, the Director would file a comprehensive report with Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.

§ 3156. Definitions

(a) As used in sections 3141–3150 of this chapter—

(1) the term ''judicial officer'' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia;

(2) the term ''offense'' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress;

(3) the term ''felony'' means an offense punishable by a maximum term of imprisonment of more than one year;

(4) the term ''crime of violence'' means—

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; or

(C) any felony under chapter 109A, 110, or 117; and

(5) the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) As used in sections 3152–3155 of this chapter—

(1) the term ''judicial officer'' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and

(2) the term ''offense'' means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a Class B or C misdemeanor or an infraction, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub. L. 93–619, title II, § 201, Jan. 3, 1975, 88 Stat. 2088; amended Pub. L. 98–473, title II, §§ 203(c), 223(h), Oct. 12, 1984, 98 Stat. 1985, 2029; Pub. L. 99–646, § 55(i), Nov. 10, 1986, 100 Stat. 3610; Pub. L. 103–322, title IV, § 40501, Sept. 13, 1994, 108 Stat. 1945; Pub. L. 104–294, title VI, § 607(i), Oct. 11, 1996, 110 Stat. 3512; Pub. L. 105–314, title VI, § 601, Oct. 30, 1998, 112 Stat. 2982.)

AMENDMENTS

1998—Subsec. (a)(4)(C). Pub. L. 105–314 added subpar. (C) and struck out former subpar. (C) which read as follows: ''any felony under chapter 109A or chapter 110; and''.

1996—Subsec. (a)(5). Pub. L. 104–294 added par. (5).

1994—Subsec. (a)(4)(C). Pub. L. 103–322 added subpar. (C).

1986—Subsec. (a). Pub. L. 99–646 substituted ''the term'' for ''The term'' in pars. (1) to (4) and struck out ''and'' after ''Congress;'' in par. (2).

1984—Subsec. (a). Pub. L. 98–473, § 203(c)(1), substituted ''3141'' for ''3146'' in provision preceding par. (1).

Subsec. (a)(1). Pub. L. 98–473, § 203(c)(2), substituted ''to detain or release'' for ''to bail or otherwise release'' and struck out ''and'' after ''District of Columbia;''.

Subsec. (a)(3), (4). Pub. L. 98–473, § 203(c)(3), (4), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 98–473, § 203(c)(5), substituted ''to detain or release'' for ''to bail or otherwise release''.

Subsec. (b)(2). Pub. L. 98–473, § 223(h), substituted ''Class B or C misdemeanor or an infraction'' for ''petty offense as defined in section 1(3) of this title''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99–646, set out as a note under section 3141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(h) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 208—SPEEDY TRIAL

Sec.
3161. Time limits and exclusions.
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AMENDMENTS

1979—Pub. L. 96–43, § 11, Aug. 2, 1979, 93 Stat. 332, substituted ''Persons detained or designated as being of high risk'' for ''Interim limits'' in item 3164 and inserted ''and implementation'' in item 3174.

1975—Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2076, added chapter 208 and items 3161 to 3174.

§ 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an

information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902[1] of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902[1] of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902[1] of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel,

[1] See References in Text note below.

would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(9) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly—

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(k)(1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2076; amended Pub. L. 96–43, §§ 2–5, Aug. 2, 1979, 93 Stat. 327, 328; Pub. L. 98–473, title II, § 1219, Oct. 12, 1984, 98 Stat. 2167; Pub. L. 100–690, title VI, § 6476, Nov. 18, 1988, 102 Stat. 4380; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Section 2902 of title 28, referred to in subsec. (h)(1)(B), (C), (5), was repealed by Pub. L. 106–310, div. B, title XXXIV, § 3405(c)(1), Oct. 17, 2000, 114 Stat. 1221.

AMENDMENTS

1988—Subsec. (k). Pub. L. 100–690 added subsec. (k).

1984—Subsec. (h)(8)(C). Pub. L. 98–473, § 1219(1), substituted "subparagraph (A) of this paragraph" for "paragraph (8)(A) of this subsection".

Subsec. (h)(9). Pub. L. 98–473, § 1219(2), added par. (9).

1979—Subsec. (c)(1). Pub. L. 96–43, § 2, merged the ten day indictment-to-arraignment and the sixty day arraignment-to-trial limits into a single seventy day indictment-to-trial period.

Subsec. (c)(2). Pub. L. 96–43, § 2, added par. (2).

Subsec. (d). Pub. L. 96–43, § 3(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 96–43, § 3(b), substituted "seventy days" for "sixty days" in three places and inserted provisions excluding the periods of delay enumerated in subsec. (h) of this section in computing the time limitations specified in this section and applying the sanctions of section 3162 of this title to this subsection.

Subsec. (h)(1). Pub. L. 96–43, § 4, added to the listing of excludable delays, delays resulting from the deferral of prosecution under section 2902 of title 28, delays caused by consideration by the court of proposed plea agreements, and delays resulting from the transportation of a defendant from another district or for the purpose of examination or hospitalization, and expanded provisions relating to exclusions of periods of delay resulting from hearings on pretrial motions, examinations and hearings relating to the mental or physical condition of defendant, or the removal of a defendant from another district under the Federal Rules of Criminal Procedure.

Subsec. (h)(8)(B)(ii). Pub. L. 96–43, § 5(a), expanded provisions authorizing the granting of continuances based on the complexity or unusual nature of a case to include delays in preparation of all phases of a case, including pretrial motion preparation.

Subsec. (h)(8)(B)(iii). Pub. L. 96–43, § 5(b), inserted provision authorizing a continuance where the delay in filing the indictment is caused by the arrest taking place at such time that the return and filing of the indictment can not reasonably be expected within the period specified in section 3161(b) of this title.

Subsec. (h)(8)(B)(iv). Pub. L. 96–43, § 5(c), added cl. (iv).

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" in subsec. (c)(1) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out

as an Effective Date note under section 3505 of this title.

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96–43 provided: ''That this Act [amending this section and sections 3163 to 3168, 3170 and 3174 of this title] may be cited as the 'Speedy Trial Act Amendments Act of 1979'.''

SHORT TITLE

Section 1 of Pub. L. 93–619 provided: ''That this Act [enacting this chapter and sections 3153 to 3156 of this title, and amending section 3152 of this title, and section 604 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Speedy Trial Act of 1974'.''

§ 3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2079.)

§ 3163. Effective dates

(a) The time limitation in section 3161(b) of this chapter—

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

(b) The time limitation in section 3161(c) of this chapter—

(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1980.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2080; amended Pub. L. 96–43, § 6, Aug. 2, 1979, 93 Stat. 328.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–43 substituted provision that section 3162 of this title was to become effective and apply to all cases commenced by arrest or summons, and all informations and indictments filed, on or after July 1, 1980, subject to section 3174(c) of this title, for provision that such section was to become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.

§ 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081; amended Pub. L. 96–43, § 7, Aug. 2, 1979, 93 Stat. 329.)

AMENDMENTS

1979—Pub. L. 96–43, § 7(1), substituted ''Persons detained or designated as being of high risk'' for ''Interim limits'' in section catchline.

Subsec. (a). Pub. L. 96–43, § 7(2), struck out provisions limiting the trial priority to be accorded persons specified in cls. (1) and (2) of this subsection to the interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and (c) of this title become effective.

Subsec. (b). Pub. L. 96–43, § 7(3), struck out provisions making trial priority provisions of this subsection applicable during an interim period only and requiring the trial of any person detained or designated by the government as being of high risk on or before the first day of such interim period to commence no later than ninety days following the first day of the period and inserted provision excluding the periods of delay specified in section 3161(h) of this title in computing the time limitation of this section.

§ 3165. District plans—generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrate judges of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e)(1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and fifth twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(3) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3174(c) shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.

(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2081; amended Pub. L. 96–43, § 8, Aug. 2, 1979, 93 Stat. 329; Pub. L. 101–647, title XXXV, § 3577, Nov. 29, 1990, 104 Stat. 4929; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

For the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph, referred to in subsec. (e), see section 3163(a) and (b) of this title. The date of enactment of par. (3) of subsec. (e) of this section is the date of enactment of Pub. L. 96–43, which was approved Aug. 2, 1979. Subsecs. (a) and (b) of section 3163 of this title were not amended by Pub. L. 96–43.

AMENDMENTS

1990—Subsec. (e)(2). Pub. L. 101–647 substituted ''twelve-calendar-month'' for ''twelve-calendar month''.

1979—Subsec. (e)(2). Pub. L. 96–43, § 8(1), substituted ''fifth twelve-calendar'' for ''subsequent twelve-calendar''.

Subsec. (e)(3). Pub. L. 96–43, § 8(2), added par. (3).

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3166. District plans—contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications;

(8) the incidence of, and reasons for each thirty-day extension under section 3161(b) with respect to an indictment in that district; and

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition;

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition; and

(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2082; amended Pub. L. 96–43, § 9(a)–(c), Aug. 2, 1979, 93 Stat. 329; Pub. L. 101–647, title XXXV, § 3578, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsec. (b)(8). Pub. L. 101–647 substituted ''extension'' for ''extention''.

1979—Subsec. (b)(9). Pub. L. 96–43, § 9(a), added par. (9).
Subsec. (c)(7). Pub. L. 96–43, § 9(b), added par. (7).
Subsec. (f). Pub. L. 96–43, § 9(c), added subsec. (f).

§ 3167. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The reports shall be submitted within three months following the final dates for the submission of plans under section 3165(e) of this title.

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts. Such reports shall also include the following:

(1) The reasons why, in those cases not in compliance with the time limits of subsections (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3174 has not been made, the reason why such application has not been made.

(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.

(c) Not later than December 31, 1979, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083; amended Pub. L. 96–43, § 9(e), Aug. 2, 1979, 93 Stat. 330.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–43, § 9(e)(1), inserted last sentence containing pars. (1) to (6).
Subsec. (c). Pub. L. 96–43, § 9(e)(2), added subsec. (c).

§ 3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate judge, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

(b) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of Federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

(c) Members of the planning group with the exception of the reporter shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence and other

necessary expenses incurred by them in carrying out the duties of the advisory group in accordance with the provisions of title 5, United States Code, chapter 57. The reporter shall be compensated in accordance with section 3109 of title 5, United States Code, and notwithstanding other provisions of law he may be employed for any period of time during which his services are needed.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2083; amended Pub. L. 96–43, § 9(d), Aug. 2, 1979, 93 Stat. 330; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–43 substituted ''two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district'' for ''a private attorney experienced in the defense of criminal cases in the district''.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3169. Federal Judicial Center

The Federal Judicial Center shall advise and consult with the planning groups and the district courts in connection with their duties under this chapter.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§ 3170. Speedy trial data

(a) To facilitate the planning process, the implementation of the time limits, and continuous and permanent compliance with the objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics described in sections 3166(b) and 3166(c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

(b) The clerk of each district court is authorized to obtain the information required by sections 3166(b) and 3166(c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

(c) The information and statistics compiled by the clerk pursuant to this section shall be made available to the district court, the planning group, the circuit council, and the Administrative Office of the United States Courts.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084; amended Pub. L. 96–43, § 9(f), Aug. 2, 1979, 93 Stat. 331; Pub. L. 101–647, title XXXV, § 3579, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsecs. (a), (b). Pub. L. 101–647 substituted ''sections 3166(b) and 3166(c)'' for ''sections 3166(b) and (c)''.

1979—Subsec. (a). Pub. L. 96–43 inserted ''continuous and permanent compliance with the'' and substituted ''described in'' for ''required by''.

§ 3171. Planning appropriations

(a) There is authorized to be appropriated for the fiscal year ending June 30, 1975, to the Federal judiciary the sum of $2,500,000 to be allocated by the Administrative Office of the United States Courts to Federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans under this chapter. The funds so appropriated shall remain available until expended.

(b) No funds appropriated under this section may be expended in any district except by two-thirds vote of the planning group. Funds to the extent available may be expended for personnel, facilities, and any other purpose permitted by law.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§ 3172. Definitions

As used in this chapter—

(1) the terms ''judge'' or ''judicial officer'' mean, unless otherwise indicated, any United States magistrate judge, Federal district judge, and

(2) the term ''offense'' means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a Class B or C misdemeanor or an infraction, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085; amended Pub. L. 98–473, title II, § 223(i), Oct. 12, 1984, 98 Stat. 2029; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1984—Par. (2). Pub. L. 98–473 substituted ''Class B or C misdemeanor or an infraction'' for ''petty offense as defined in section 1(3) of this title''.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in par. (1) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 3173. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§ 3174. Judicial emergency and implementation

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b). The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from indictment to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c)(1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d)(1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

(Added Pub. L. 93–619, title I, § 101, Jan. 3, 1975, 88 Stat. 2085; amended Pub. L. 96–43, § 10, Aug. 2, 1979, 93 Stat. 331.)

REFERENCES IN TEXT

The date of enactment of the Speedy Trial Act Amendments Act of 1979, referred to in subsec. (d)(2), means the date of enactment of Pub. L. 96–43, which was approved Aug. 2, 1979.

AMENDMENTS

1979—Pub. L. 96–43, § 10(6), inserted ''and implementation'' in section catchline.

Subsec. (a). Pub. L. 96–43, § 10(1), inserted ''as provided by subsection (b)''.

Subsec. (b). Pub. L. 96–43, § 10(2), (3), substituted provisions authorizing the circuit judicial council, upon application of the chief judge of a district, to grant a suspension of the time limits prescribed by section 3161(c) of this title for provisions requiring such circuit council to apply to the Judicial Council of the United States for a suspension of such time limits and substituted provision placing a one hundred and eighty day limit on any time increase from indictment to trial for provision placing such limit for any increase from arraignment to trial.

Subsec. (c). Pub. L. 96–43, § 10(4), substituted provisions authorizing the chief judge of any district, with the approval of the planning group convened in such district, to apply to the circuit council to implement the provisions of section 3162 of this title at any time prior to the date the sanctions prescribed therein were to become effective, so long as there was concurrence that the district was prepared to fully implement the provisions of such section for provisions specifying the reporting requirements of this chapter, assuring involvement of the Congress in the suspension process, and guaranteeing that there be an interval of at least six months between consecutive suspension periods. See subsec. (d) of this section.

Subsecs. (d), (e). Pub. L. 96–43, § 10(5), added subsecs. (d) and (e).

CHAPTER 209—EXTRADITION

Sec.
3181. Scope and limitation of chapter.
3182. Fugitives from State or Territory to State, District, or Territory.
3183. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States.

Sec.
3184. Fugitives from foreign country to United States.
3185. Fugitives from country under control of United States into the United States.
3186. Secretary of State to surrender fugitive.
3187. Provisional arrest and detention within extraterritorial jurisdiction.
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3189. Place and character of hearing.
3190. Evidence on hearing.
3191. Witnesses for indigent fugitives.
3192. Protection of accused.
3193. Receiving agent's authority over offenders.
3194. Transportation of fugitive by receiving agent.
3195. Payment of fees and costs.
3196. Extradition of United States citizens.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 601(f)(9), (10), Oct. 11, 1996, 110 Stat. 3500, inserted comma after "District" in item 3182 and after "Territory" in item 3183.

1990—Pub. L. 101–623, § 11(b), Nov. 21, 1990, 104 Stat. 3356, added item 3196.

§ 3181. Scope and limitation of chapter

(a) The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.

(b) The provisions of this chapter shall be construed to permit, in the exercise of comity, the surrender of persons, other than citizens, nationals, or permanent residents of the United States, who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies, in writing, that—

(1) evidence has been presented by the foreign government that indicates that had the offenses been committed in the United States, they would constitute crimes of violence as defined under section 16 of this title; and

(2) the offenses charged are not of a political nature.

(c) As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(June 25, 1948, ch. 645, 62 Stat. 822; Pub. L. 104–132, title IV, § 443(a), Apr. 24, 1996, 110 Stat. 1280.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 658 (R.S. § 5274).
Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–132 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EXTRADITION TREATIES INTERPRETATION

Pub. L. 105–323, title II, Oct. 30, 1998, 112 Stat. 3033, provided that:

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Extradition Treaties Interpretation Act of 1998'.

"SEC. 202. FINDINGS.

"Congress finds that—

"(1) each year, several hundred children are kidnapped by a parent in violation of law, court order, or legally binding agreement and brought to, or taken from, the United States;

"(2) until the mid-1970's, parental abduction generally was not considered a criminal offense in the United States;

"(3) since the mid-1970's, United States criminal law has evolved such that parental abduction is now a criminal offense in each of the 50 States and the District of Columbia;

"(4) in enacting the International Parental Kidnapping Crime Act of 1993 (Public Law 103–173; 107 Stat. 1998; 18 U.S.C. 1204), Congress recognized the need to combat parental abduction by making the act of international parental kidnapping a Federal criminal offense;

"(5) many of the extradition treaties to which the United States is a party specifically list the offenses that are extraditable and use the word 'kidnapping', but it has been the practice of the United States not to consider the term to include parental abduction because these treaties were negotiated by the United States prior to the development in United States criminal law described in paragraphs (3) and (4);

"(6) the more modern extradition treaties to which the United States is a party contain dual criminality provisions, which provide for extradition where both parties make the offense a felony, and therefore it is the practice of the United States to consider such treaties to include parental abduction if the other foreign state party also considers the act of parental abduction to be a criminal offense; and

"(7) this circumstance has resulted in a disparity in United States extradition law which should be rectified to better protect the interests of children and their parents.

"SEC. 203. INTERPRETATION OF EXTRADITION TREATIES.

"For purposes of any extradition treaty to which the United States is a party, Congress authorizes the interpretation of the terms 'kidnaping' and 'kidnapping' to include parental kidnapping."

JUDICIAL ASSISTANCE TO INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA AND INTERNATIONAL TRIBUNAL FOR RWANDA

Pub. L. 104–106, div. A, title XIII, § 1342, Feb. 10, 1996, 110 Stat. 486, provided that:

"(a) SURRENDER OF PERSONS.—

"(1) APPLICATION OF UNITED STATES EXTRADITION LAWS.—Except as provided in paragraphs (2) and (3), the provisions of chapter 209 of title 18, United States Code, relating to the extradition of persons to a foreign country pursuant to a treaty or convention for extradition between the United States and a foreign government, shall apply in the same manner and extent to the surrender of persons, including United States citizens, to—

"(A) the International Tribunal for Yugoslavia, pursuant to the Agreement Between the United States and the International Tribunal for Yugoslavia; and

"(B) the International Tribunal for Rwanda, pursuant to the Agreement Between the United States and the International Tribunal for Rwanda.

"(2) EVIDENCE ON HEARINGS.—For purposes of applying section 3190 of title 18, United States Code, in accordance with paragraph (1), the certification referred to in that section may be made by the principal diplomatic or consular officer of the United States resident in such foreign countries where the International Tribunal for Yugoslavia or the International Tribunal for Rwanda may be permanently or temporarily situated.

"(3) PAYMENT OF FEES AND COSTS.—(A) The provisions of the Agreement Between the United States and the International Tribunal for Yugoslavia and of the Agreement Between the United States and the

International Tribunal for Rwanda shall apply in lieu of the provisions of section 3195 of title 18, United States Code, with respect to the payment of expenses arising from the surrender by the United States of a person to the International Tribunal for Yugoslavia or the International Tribunal for Rwanda, respectively, or from any proceedings in the United States relating to such surrender.

''(B) The authority of subparagraph (A) may be exercised only to the extent and in the amounts provided in advance in appropriations Acts.

''(4) NONAPPLICABILITY OF THE FEDERAL RULES.—The Federal Rules of Evidence [set out in the Appendix to Title 28, Judiciary and Judicial Procedure] and the Federal Rules of Criminal Procedure [set out in the Appendix to this title] do not apply to proceedings for the surrender of persons to the International Tribunal for Yugoslavia or the International Tribunal for Rwanda.

''(b) ASSISTANCE TO FOREIGN AND INTERNATIONAL TRIBUNALS AND TO LITIGANTS BEFORE SUCH TRIBUNALS.—[Amended section 1782 of Title 28, Judiciary and Judicial Procedure.]

''(c) DEFINITIONS.—For purposes of this section:

''(1) INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA.—The term 'International Tribunal for Yugoslavia' means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia, as established by United Nations Security Council Resolution 827 of May 25, 1993.

''(2) INTERNATIONAL TRIBUNAL FOR RWANDA.—The term 'International Tribunal for Rwanda' means the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, as established by United Nations Security Council Resolution 955 of November 8, 1994.

''(3) AGREEMENT BETWEEN THE UNITED STATES AND THE INTERNATIONAL TRIBUNAL FOR YUGOSLAVIA.—The term 'Agreement Between the United States and the International Tribunal for Yugoslavia' means the Agreement on Surrender of Persons Between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law in the Territory of the Former Yugoslavia, signed at The Hague, October 5, 1994.

''(4) AGREEMENT BETWEEN THE UNITED STATES AND THE INTERNATIONAL TRIBUNAL FOR RWANDA.—The term 'Agreement between the United States and the International Tribunal for Rwanda' means the Agreement on Surrender of Persons Between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, signed at The Hague, January 24, 1995.''

EXTRADITION AND MUTUAL LEGAL ASSISTANCE TREATIES AND MODEL COMPREHENSIVE ANTIDRUG LAWS

Pub. L. 100–690, title IV, § 4605, Nov. 18, 1988, 102 Stat. 4290, which directed greater emphasis on updating of extradition treaties and on negotiating mutual legal assistance treaties with major drug producing and drug-transit countries, and called for development of model treaties and anti-narcotics legislation, was repealed by Pub. L. 102–583, § 6(e)(1), Nov. 2, 1992, 106 Stat. 4933.

Pub. L. 100–204, title VIII, § 803, Dec. 22, 1987, 101 Stat. 1397, provided that: ''The Secretary of State shall ensure that the Country Plan for the United States diplomatic mission in each major illicit drug producing country and in each major drug-transit country (as those terms are defined in section 481(i) of the Foreign Assistance Act of 1961 [22 U.S.C. 2291(i)]) includes, as an objective to be pursued by the mission—

''(1) negotiating an updated extradition treaty which ensures that drug traffickers can be extradited to the United States, or

''(2) if an existing treaty provides for such extradition, taking such steps as may be necessary to ensure that the treaty is effectively implemented.''

Pub. L. 99–93, title I, § 133, Aug. 16, 1985, 99 Stat. 420, provided that: ''The Secretary of State, with the assistance of the National Drug Enforcement Policy Board, shall increase United States efforts to negotiate updated extradition treaties relating to narcotics offenses with each major drug-producing country, particularly those in Latin America.''

TREATIES OF EXTRADITION

The United States currently has bilateral extradition treaties with the following countries:

Country	Date signed	Entered into force	Citation
Albania	Mar. 1, 1933	Nov. 14, 1935	49 Stat. 3313.
Antigua and Barbuda.	June 3, 1996	July 1, 1999	
Argentina	June 10, 1997	June 15, 2000	
Australia	May 14, 1974	May 8, 1976	27 UST 957.
	Sept. 4, 1990	Dec. 21, 1992	
Austria	Jan. 8, 1998	Jan. 1, 2000	
	May 19, 1934	Sept. 5, 1934	49 Stat. 2710.
Bahamas	Mar. 9, 1990	Sept. 22, 1994	TIAS.
Barbados	Feb. 28, 1996	Mar. 3, 2000	
Belgium	Apr. 27, 1987	Sept. 1, 1997	
Belize	Mar. 30, 2000	Mar. 27, 2001	
Bolivia	June 27, 1995	Nov. 21, 1996	
Brazil	Jan. 13, 1961	Dec. 17, 1964	15 UST 2093.
	June 18, 1962	Dec. 17, 1964	15 UST 2112.
Bulgaria	Mar. 19, 1924	June 24, 1924	43 Stat. 1886.
	June 8, 1934	Aug. 15, 1935	49 Stat. 3250.
Burma	Dec. 22, 1931	Nov. 1, 1941	47 Stat. 2122.
Canada	Dec. 3, 1971	Mar. 22, 1976	27 UST 983.
	June 28, July 9, 1974.	Mar. 22, 1976	27 UST 1017.
	Jan. 11, 1988	Nov. 26, 1991	TIAS.
	Jan. 12, 2001	Apr. 30, 2003	
Chile	Apr. 17, 1900	June 26, 1902	32 Stat. 1850.
Colombia	Sept. 14, 1979	Mar. 4, 1982	TIAS.
Congo	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929	May 19, 1929	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936	50 Stat. 1117.
		Aug. 5, 1961	13 UST 2065.
Costa Rica	Dec. 4, 1982	Oct. 11, 1991	TIAS.
Cuba	Apr. 6, 1904	Mar. 2, 1905	33 Stat. 2265.
	Dec. 6, 1904	Mar. 2, 1905	33 Stat. 2273.
	Jan. 14, 1926	June 18, 1926	44 Stat. 2392.
Cyprus	June 17, 1996	Sept. 14, 1999	
Czech Republic.	July 2, 1925	Mar. 29, 1926	44 Stat. 2367.
	Apr. 29, 1935	Aug. 28, 1935	49 Stat. 3253.
Denmark	June 22, 1972	July 31, 1974	25 UST 1293.
Dominica	Oct. 10, 1996	May 25, 2000	
Dominican Republic.	June 19, 1909	Aug. 2, 1910	36 Stat. 2468.
Ecuador	June 28, 1872	Nov. 12, 1873	18 Stat. 199.
	Sept. 22, 1939	May 29, 1941	55 Stat. 1196.
Egypt	Aug. 11, 1874	Apr. 22, 1875	19 Stat. 572.
El Salvador	Apr. 18, 1911	July 10, 1911	37 Stat. 1516.
Estonia	Nov. 8, 1923	Nov. 15, 1924	43 Stat. 1849.
	Oct. 10, 1934	May 7, 1935	49 Stat. 3190.
Fiji	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Aug. 17, 1973	24 UST 1965.
Finland	June 11, 1976	May 11, 1980	31 UST 944.
France	Apr. 23, 1996	Feb. 1, 2002	
Gambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Germany	June 20, 1978	Aug. 29, 1980	32 UST 1485.
	Oct. 21, 1986	Mar. 11, 1993	
Ghana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Greece	May 6, 1931	Nov. 1, 1932	47 Stat. 2185.
	Sept. 2, 1937	Sept. 2, 1937	51 Stat. 357.
Grenada	May 30, 1996	Sept. 14, 1999	
Guatemala	Feb. 27, 1903	Aug. 15, 1903	33 Stat. 2147.
	Feb. 20, 1940	Mar. 13, 1941	55 Stat. 1097.
Guyana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Haiti	Aug. 9, 1904	June 28, 1905	34 Stat. 2858.
Honduras	Jan. 15, 1909	July 10, 1912	37 Stat. 1616.
	Feb. 21, 1927	June 5, 1928	45 Stat. 2489.
Hong Kong	Dec. 20, 1996	Jan. 21, 1998	
Hungary	Dec. 1, 1994	Mar. 18, 1997	
Iceland	Jan. 6, 1902		32 Stat. 1096.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	June 25, 1997	July 21, 1999	
Iraq	June 7, 1934	Apr. 23, 1936	49 Stat. 3380.
Ireland	July 13, 1983	Dec. 15, 1984	TIAS 10813.
Israel	Dec. 10, 1962	Dec. 5, 1963	14 UST 1707.
		Apr. 11, 1967	18 UST 382.
Italy	Oct. 13, 1983	Sept. 24, 1984	TIAS 10837.
Jamaica	June 14, 1983	July 7, 1991	
Japan	Mar. 3, 1978	Mar. 26, 1980	31 UST 892.

Country	Date signed	Entered into force	Citation
Jordan	Mar. 28, 1995	July 29, 1995.	
Kenya	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	.....	Aug. 19, 1965	16 UST 1866.
Kiribati	June 8, 1972	Jan. 21, 1977	28 UST 227.
Korea	June 9, 1998	Dec. 20, 1999	
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935	49 Stat. 3131.
Lesotho	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939	54 Stat. 1733.
Liechtenstein.	May 20, 1936	June 28, 1937	50 Stat. 1337.
Lithuania	Oct. 23, 2001	Mar. 31, 2003	
Luxembourg	Oct. 1, 1996	Feb. 1, 2002	
Malawi	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	.....	Apr. 4, 1967	18 UST 1822.
Malaysia	Aug. 3, 1995	June 2, 1997	
Malta	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mauritius	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mexico	May 4, 1978	Jan. 25, 1980	31 UST 5059.
	Nov. 13, 1997	May 21, 2001	
Monaco	Feb. 15, 1939	Mar. 28, 1940	54 Stat. 1780.
Nauru	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
Netherlands	June 24, 1980	Sept. 15, 1983	TIAS 10733.
New Zealand	Jan. 12, 1970.	Dec. 8, 1970	22 UST 1.
Nicaragua	Mar. 1, 1905	July 14, 1907	35 Stat. 1869.
Nigeria	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Norway	June 9, 1977	Mar. 7, 1980	31 UST 5619.
Pakistan	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Panama	May 25, 1904	May 8, 1905	34 Stat. 2851.
Papua New Guinea.	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
Paraguay	Nov. 9, 1998	Mar. 9, 2001	
Peru	July 26, 2001	Aug. 25, 2003	
Philippines	Nov. 13, 1994	Nov. 22, 1996	
Poland	July 10, 1996	Sept. 17, 1999	
	Apr. 5, 1935	June 5, 1936	49 Stat. 3394.
Portugal	May 7, 1908	Nov. 14, 1908	35 Stat. 2071.
Romania	July 23, 1924	Apr. 7, 1925	44 Stat. 2020.
	Nov. 10, 1936	July 27, 1937	50 Stat. 1349.
Saint Christopher and Nevis.	Sept. 18, 1996	Feb. 23, 2000	
Saint Lucia	Apr. 18, 1996	Feb. 2, 2000	
Saint Vincent and the Grenadines.	Aug. 15, 1996	Sept. 8, 1999	
San Marino	Jan. 10, 1906	July 8, 1908	35 Stat. 1971.
	Oct. 10, 1934	June 28, 1935	49 Stat. 3198.
Seychelles	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Sierra Leone	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Singapore	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	.....	June 10, 1969	20 UST 2764.
Slovac Republic.	July 2, 1925	Mar. 29, 1926	44 Stat. 2367
	Apr. 29, 1935	Aug. 28, 1935	49 Stat. 3253.
Solomon Islands.	June 8, 1972	Jan. 21, 1977	28 UST 277.
South Africa	Sept. 16, 1999	June 25, 2001	
Spain	May 29, 1970	June 16, 1971	22 UST 737.
	Jan. 25, 1975	June 2, 1978	29 UST 2283.
	Feb. 9, 1988	July 2, 1993	
	Mar. 12, 1996	July 25, 1999	
Sri Lanka	Sept. 30, 1999	Jan. 12, 2001	
Suriname	June 2, 1887	July 11, 1889	26 Stat. 1481.
	Jan. 18, 1904	Aug. 28, 1904	33 Stat. 2257.
Swaziland	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	.....	July 28, 1970	21 UST 1930.
Sweden	Oct. 24, 1961	Dec. 3, 1963	14 UST 1845.
	Mar. 14, 1983	Sept. 24, 1984	TIAS 10812.
Switzerland	Nov. 14, 1990	Sept. 10, 1997	
Tanzania	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	.....	Dec. 6, 1965	16 UST 2066.
Thailand	Dec. 30, 1922	Mar. 24, 1924	43 Stat. 1749.
Tonga	Dec. 22, 1931	Aug. 1, 1966	47 Stat. 2122.
	.....	Apr. 13, 1977	28 UST 5290.
Trinidad and Tobago.	Mar. 4, 1996	Nov. 29, 1999	
Turkey	June 7, 1979	Jan. 1, 1981	32 UST 3111.
Tuvalu	June 8, 1972	Jan. 21, 1977	28 UST 227.
	.....	Apr. 25, 1980	32 UST 1310.
United Kingdom.	June 8, 1972	Jan. 21, 1977	28 UST 227.
	June 25, 1985	Dec. 23, 1986	TIAS.
Uruguay	Apr. 6, 1973	Apr. 11, 1984	TIAS 10850.
Venezuela	Jan. 19, 21, 1922	Apr. 14, 1923	43 Stat. 1698.
Yugoslavia[1]	Oct. 25, 1901	June 12, 1902	32 Stat. 1890.
Zambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Zimbabwe	July 25, 1997	Apr. 26, 2000	

[1] For the successor States of Yugoslavia, inquire of the Treaty Office of the United States Department of State.

CONVENTION ON EXTRADITION

The United States is a party to the Multilateral Convention on Extradition signed at Montevideo on Dec. 26, 1933, entered into force for the United States on Jan. 25, 1935. 49 Stat. 3111.

Other states which have become parties: Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama.

§ 3182. Fugitives from State or Territory to State, District, or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District, or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

(June 25, 1948, ch. 645, 62 Stat. 822; Pub. L. 104–294, title VI, § 601(f)(9), Oct. 11, 1996, 110 Stat. 3500.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662 (R.S. § 5278).

Last sentence as to costs and expenses to be paid by the demanding authority was incorporated in section 3195 of this title.

Word ''District'' was inserted twice to make section equally applicable to fugitives found in the District of Columbia.

''Thirty days'' was substituted for ''six months'' since, in view of modern conditions, the smaller time is ample for the demanding authority to act.

Minor changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 inserted comma after ''District'' in section catchline and in two places in text.

§ 3183. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

(June 25, 1948, ch. 645, 62 Stat. 822; Pub. L. 107–273, div. B, title IV, § 4004(d), Nov. 2, 2002, 116 Stat. 1812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662c (Mar. 22, 1934, ch. 73, § 2, 48 Stat. 455).

Said section 662c was incorporated in this section and sections 752 and 3195 of this title.

Provision as to costs or expenses to be paid by the demanding authority were incorporated in section 3196 of this title.

Reference to the Philippine Islands was deleted as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

The attention of Congress is directed to the probability that this section may be of little, if any, possible use in view of present world conditions.

Minor changes were made in phraseology.

AMENDMENTS

2002—Pub. L. 107–273 struck out ''or the Panama Canal Zone,'' after ''possession of the United States'' in first par.

§ 3184. Fugitives from foreign country to United States

Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate judge authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate judge, to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate judge of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

(June 25, 1948, ch. 645, 62 Stat. 822; Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 100–690, title VII, § 7087, Nov. 18, 1988, 102 Stat. 4409; Pub. L. 101–647, title XVI, § 1605, Nov. 29, 1990, 104 Stat. 4843; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–132, title IV, § 443(b), Apr. 24, 1996, 110 Stat. 1281.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 651 (R.S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656).

Minor changes of phraseology were made.

AMENDMENTS

1996—Pub. L. 104–132, in first sentence, inserted ''or in cases arising under section 3181(b),'' after ''United States and any foreign government,'' and ''or provided for under section 3181(b),'' after ''treaty or convention,'' and in third sentence, inserted ''or under section 3181(b),'' after ''treaty or convention,''.

1990—Pub. L. 101–647 inserted ''or, if there is reason to believe the person will shortly enter the United States'' after ''are not known'' in second sentence.

1988—Pub. L. 100–690 inserted after first sentence ''Such complaint may be filed before and such warrant may be issued by a judge or magistrate of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known.''

1968—Pub. L. 90–578 substituted ''magistrate'' for ''commissioner'' in two places.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3185. Fugitives from country under control of United States into the United States

Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

(1) Murder and assault with intent to commit murder;

(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

(4) Forgery or altering and uttering what is forged or altered;

(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

(6) Larceny or embezzlement of an amount not less than $100 in value;

(7) Robbery;

(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

(11) Perjury or the subornation of perjury;

(12) A felony under chapter 109A of this title;

(13) Arson;

(14) Piracy by the law of nations;

(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

This chapter, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

(June 25, 1948, ch. 645, 62 Stat. 823; May 24, 1949, ch. 139, § 49, 63 Stat. 96; Pub. L. 99–646, § 87(c)(6), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, § 3(a)(6), Nov. 14, 1986, 100 Stat. 3663.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 652 (R.S. § 5270; June 6, 1900, ch. 793, 31 Stat. 656).

Reference to territory of the United States and the District of Columbia was omitted as covered by definitive section 5 of this title.

Changes were made in phraseology and arrangement.

1949 ACT

This section [section 49] corrects typographical errors in section 3185 of title 18, U.S.C., by transferring to subdivision (3) the words, ''indebtedness, bank notes, or other instruments of public'', from subdivision (2) of such section where they had been erroneously included.

AMENDMENTS

1986—Par. (12). Pub. L. 99–646 and Pub. L. 99–654 amended par. (12) identically, substituting ''A felony under chapter 109A of this title'' for ''Rape''.

1949—Pars. (2), (3). Act May 24, 1949, transferred ''indebtedness, bank notes, or other instruments of public'' from par. (2) to par. (3).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective, respectively, 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

§ 3186. Secretary of State to surrender fugitive

The Secretary of State may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 653 (R.S. § 5272).

Changes were made in phraseology and surplusage was deleted.

§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

The provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662d (Mar. 22, 1934, ch. 73, § 3, 48 Stat. 455).

Provision for expense to be borne by the demanding authority is incorporated in section 3195 of this title.

Changes were made in phraseology and arrangement.

§ 3188. Time of commitment pending extradition

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such

application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 654 (R.S. § 5273).
Changes in phraseology only were made.

§ 3189. Place and character of hearing

Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 657 (Aug. 3, 1882, ch. 378, § 1, 22 Stat. 215).
First word ''All'' was omitted as unnecessary.

§ 3190. Evidence on hearing

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

(June 25, 1948, ch. 645, 62 Stat. 824.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 655 (R.S. § 5271; Aug. 3, 1882, ch. 378, § 5, 22 Stat. 216).
Unnecessary words were deleted.

§ 3191. Witnesses for indigent fugitives

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate judge hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

(June 25, 1948, ch. 645, 62 Stat. 825; Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 656 (Aug. 3, 1882, ch. 378, § 3, 22 Stat. 215).
Words ''that similar'' after ''manner'' were omitted as unnecessary.

AMENDMENTS

1968—Pub. L. 90–578 substituted ''magistrate'' for ''commissioner''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3192. Protection of accused

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 659 (R.S. § 5275).
Words ''crimes or'' before ''offenses'' were omitted as unnecessary.

§ 3193. Receiving agent's authority over offenders

A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 660 (R.S. § 5276).
Words ''jurisdiction of the'' were omitted in view of the definition of United States in section 5 of this title.
Minor changes only were made in phraseology.

EX. ORD. NO. 11517. ISSUANCE AND SIGNATURE BY SECRETARY OF STATE OF WARRANTS APPOINTING AGENTS TO RETURN FUGITIVES FROM JUSTICE EXTRADITED TO UNITED STATES

Ex. Ord. No. 11517, Mar. 19, 1970, 35 F.R. 4937, provided:
WHEREAS the President of the United States, under section 3192 of Title 18, United States Code, has been

granted the power to take all necessary measures for the transportation, safekeeping and security against lawless violence of any person delivered by any foreign government to an agent of the United States for return to the United States for trial for any offense of which he is duly accused; and

WHEREAS fugitives from justice in the United States whose extradition from abroad has been requested by the Government of the United States and granted by a foreign government are to be returned in the custody of duly appointed agents in accordance with the provisions of section 3193 of Title 18, United States Code; and

WHEREAS such duly appointed agents under the provisions of the law mentioned above, being authorized to receive delivery of the fugitive in behalf of the United States and to convey him to the place of his trial, are given the powers of a marshal of the United States in the several districts of the United States through which it may be necessary for them to pass with such prisoner, so far as such power is requisite for the prisoner's safekeeping; and

WHEREAS such warrants serve as a certification to the foreign government delivering the fugitives to any other foreign country through which such agents may pass, and to authorities in the United States of the powers therein conferred upon the agents; and

WHEREAS it is desirable by delegation of functions heretofore performed by the President to simplify and thereby expedite the issuance of such warrants to agents in the interests of the prompt return of fugitives to the United States:

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of State is hereby designated and empowered to issue and sign all warrants appointing agents to receive, in behalf of the United States, the delivery in extradition by a foreign government of any person accused of a crime committed within the United States, and to convey such person to the place of his trial.

SEC. 2. Agents appointed in accordance with section 1 of this order shall have all the powers conferred in respect of such agents by applicable treaties of the United States and by section 3193 of Title 18, United States Code, or by any other provisions of United States law.

SEC. 3. Executive Order No. 10347, April 18, 1952, as amended by Executive Order No. 11354, May 23, 1967, is further amended by deleting numbered paragraph 4 and renumbering paragraphs 5 and 6 as paragraphs 4 and 5, respectively.

RICHARD NIXON.

§ 3194. Transportation of fugitive by receiving agent

Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.

(June 25, 1948, ch. 645, 62 Stat. 825.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 663 (R.S. § 5279).

Last sentence of said section 663, relating to rescue of such fugitive, was omitted as covered by section 752 of this title, the punishment provision of which is based on later statutes. (See reviser's note under that section.)

Minor changes were made in phraseology.

§ 3195. Payment of fees and costs

All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate judge, shall be certified by the judge or magistrate judge before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.

(June 25, 1948, ch. 645, 62 Stat. 825; Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 662, 662c, 662d, 668 (R.S. § 5278; Aug. 3, 1882, ch. 378, § 4, 22 Stat. 216; June 28, 1902, ch. 1301, § 1, 32 Stat. 475; Mar. 22, 1934, ch. 73, §§ 2, 3, 48 Stat. 455).

First paragraph of this section consolidates provisions as to costs and expenses from said sections 662, 662c, and 662d.

Minor changes were made in phraseology and surplusage was omitted.

Remaining provisions of said sections 662, 662c, and 662d of title 18, U.S.C., 1940 ed., are incorporated in sections 752, 3182, 3183, and 3187 of this title.

The words "or the Department of Justice as the case may be" were added at the end of the second paragraph in conformity with the appropriation acts of recent years. See for example act July 5, 1946, ch. 541, title II, 60 Stat. 460.

AMENDMENTS

1968—Pub. L. 90–578 substituted "magistrate" for "commissioner" in two places.

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of a date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3196. Extradition of United States citizens

If the applicable treaty or convention does not obligate the United States to extradite its citizens to a foreign country, the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen whose extradition has been requested by that country if the other requirements of that treaty or convention are met.

(Added Pub. L. 101–623, § 11(a), Nov. 21, 1990, 104 Stat. 3356.)

CHAPTER 211—JURISDICTION AND VENUE

Sec.
3231. District courts.
3232. District of offense—Rule.
3233. Transfer within district—Rule.
3234. Change of venue to another district—Rule.
3235. Venue in capital cases.
3236. Murder or manslaughter.
3237. Offenses begun in one district and completed in another.
3238. Offenses not committed in any district.
3239. Optional venue for espionage and related offenses.
3240. Creation of new district or division.
3241. Jurisdiction of offenses under certain sections.
3242. Indians committing certain offenses; acts on reservations.
3243. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations.
3244. Jurisdiction of proceedings relating to transferred offenders.

AMENDMENTS

1994—Pub. L. 103–322, title XXXII, § 320909(b), Sept. 13, 1994, 108 Stat. 2127, added item 3239.

1984—Pub. L. 98–473, title II, § 1204(b), Oct. 12, 1984, 98 Stat. 2152, struck out item 3239 ''Threatening communications''.

1978—Pub. L. 95–598, title III, § 314(j)(2), Nov. 6, 1978, 92 Stat. 2678, added item 3244.

§ 3231. District courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on section 588d of title 12, U.S.C., 1940 ed., Banks and Banking; title 18, U.S.C., 1940 ed., §§ 546, 547 (Mar. 4, 1909, ch. 321, §§ 326, 340, 35 Stat. 1151, 1153; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; May 18, 1934, ch. 304, § 4, 48 Stat. 783).

This section was formed by combining sections 546 and 547 of title 18, U.S.C., 1940 ed., with section 588d of title 12, U.S.C., Banks and Banking, with no change of substance.

The language of said section 588d of title 12, U.S.C., 1940 ed., which related to bank robbery, or killing or kidnapping as an incident thereto (see section 2113, of this title), and which read ''Jurisdiction over any offense defined by sections 588b and 588c of this title shall not be reserved exclusively to courts of the United States'' was omitted as adequately covered by this section.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment. See Senate Report No. 1620, amendment No. 10, 80th Cong.

§ 3232. District of offense—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Proceedings to be in district and division in which offense committed, Rule 18.

(June 25, 1948, ch. 645, 62 Stat. 826.)

§ 3233. Transfer within district—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Arraignment, plea, trial, sentence in district of more than one division, Rule 19.

(June 25, 1948, ch. 645, 62 Stat. 826.)

REFERENCES IN TEXT

Rule 19 of the Federal Rules of Criminal Procedure, referred to in text, was rescinded Feb. 28, 1966, eff. July 1, 1966.

§ 3234. Change of venue to another district—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Plea or disposal of case in district other than that in which defendant was arrested, Rule 20.

(June 25, 1948, ch. 645, 62 Stat. 826.)

§ 3235. Venue in capital cases

The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on section 101 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 40, 36 Stat. 1100).

§ 3236. Murder or manslaughter

In all cases of murder or manslaughter, the offense shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered or other means employed which caused the death, without regard to the place where the death occurs.

(June 25, 1948, ch. 645, 62 Stat. 826.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 553 (Mar. 4, 1909, ch. 321, § 336, 35 Stat. 1152).

§ 3237. Offenses begun in one district and completed in another

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1986, or where venue for prosecution of an offense described in section 7201 or 7206(1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law) is based solely on a mailing to the Internal Revenue Service, and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the

district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

(June 25, 1948, ch. 645, 62 Stat. 826; Pub. L. 85–595, Aug. 6, 1958, 72 Stat. 512; Pub. L. 89–713, § 2, Nov. 2, 1966, 80 Stat. 1108; Pub. L. 98–369, div. A, title I, § 162, July 18, 1984, 98 Stat. 697; Pub. L. 98–473, title II, § 1204(a), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Based on section 103 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 42, 36 Stat. 1100).

Section was completely rewritten to clarify legislative intent and in order to omit special venue provisions from many sections.

The phrase ''committed in more than one district'' may be comprehensive enough to include ''begun in one district and completed in another'', but the use of both expressions precludes any doubt as to legislative intent.

Rules 18–22 of the Federal Rules of Criminal Procedure are in accord with this section.

The last paragraph of the revised section was added to meet the situation created by the decision of the Supreme Court of the United States in *United States v. Johnson*, 1944, 65 S. Ct. 249, 89 L. Ed. 236, which turned on the absence of a special venue provision in the Dentures Act, section 1821 of this revision. The revised section removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the prosecution of offenses to particular districts as in section 1073 of this revision.

REFERENCES IN TEXT

Section 7203 of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 7203 of Title 26, Internal Revenue Code.

Section 7201 or 7206(1), (2), or (5) of such Code, referred to in subsec. (b), are classified respectively to sections 7201 and 7206(1), (2), (5) of Title 26.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–473 inserted ''or the importation of an object or person into the United States'' and '', or imported object or person'' in second par.

Subsec. (b). Pub. L. 98–369 substituted ''venue for prosecution of an offense'' for ''an offense involves use of the mails and is an offense'' and inserted ''is based solely on a mailing to the Internal Revenue Service''.

1966—Subsec. (b). Pub. L. 89–713 inserted reference to offenses described in section 7203 of the Internal Revenue Code of 1954.

1958—Pub. L. 85–595 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of Title 26, Internal Revenue Code.

§ 3238. Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

(June 25, 1948, ch. 645, 62 Stat. 826; Pub. L. 88–27, May 23, 1963, 77 Stat. 48.)

HISTORICAL AND REVISION NOTES

Based on section 102 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 41, 36 Stat. 1100).

Words ''begun or'' were inserted to clarify scope of this section and section 3237 of this title.

This section is similar to section 219 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse, providing in part that unlawful issuance of passports may be prosecuted in the district where the offender may be arrested or in custody. Said provision is therefore omitted as covered by this section. The remaining provisions of said section 219 are incorporated in section 1541 of this title.

AMENDMENTS

1963—Pub. L. 88–27 authorized the trial of offenses not committed in any district in the district in which the offender, or any one of two or more joint offenders, is arrested; an indictment or information to be filed in the district of the last known residence of the offender or of any one of two or more joint offenders where the offender or offenders are not arrested or brought into any district; and an indictment or information to be filed in the District of Columbia where there is no knowledge of the residence of the offender or of any one of two or more joint offenders.

§ 3239. Optional venue for espionage and related offenses

The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of—

(1) section 793, 794, 798, or section 1030(a)(1) of this title;

(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b) or (c));

may be in the District of Columbia or in any other district authorized by law.

(Added Pub. L. 103–322, title XXXII, § 320909(a), Sept. 13, 1994, 108 Stat. 2127.)

PRIOR PROVISIONS

A prior section 3239, act June 25, 1948, ch. 645, 62 Stat. 827, related to threatening communications, prior to repeal by Pub. L. 98–473, title II, § 1204(b), Oct. 12, 1984, 98 Stat. 2152.

§ 3240. Creation of new district or division

Whenever any new district or division is established, or any county or territory is transferred from one district or division to another district or division, prosecutions for offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred,

unless the court, upon the application of the defendant, shall order the case to be removed to the new district or division for trial.

(June 25, 1948, ch. 645, 62 Stat. 827; May 24, 1949, ch. 139, § 50, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 121 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 59, 36 Stat. 1103).

Section 121 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, was divided into two sections. Only the portion relating to venue in civil cases was left in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary.

Minor changes of phraseology were made.

1949 ACT

This section [section 50] strikes the second sentence of section 3240 of title 18, U.S.C., as unnecessary. Section ''119'' of title 28, U.S.C., referred to in such sentence, became section 1404 of title 28 upon its revision and enactment into positive law in 1948, but reference to the latter, in said section 3240 of title 18, U.S.C., is surplusage in view of rule 19 et seq. of the Federal Rules of Criminal Procedure and the remainder of such section 3240.

AMENDMENTS

1949—Act May 24, 1949, struck out ''The transfer of such prosecutions shall be made in the manner provided in section 119 of Title 28''.

§ 3241. Jurisdiction of offenses under certain sections

The District Court of the Virgin Islands shall have jurisdiction of offenses under the laws of the United States, not locally inapplicable, committed within the territorial jurisdiction of such courts, and jurisdiction, concurrently with the district courts of the United States, of offenses against the laws of the United States committed upon the high seas.

(June 25, 1948, ch. 645, 62 Stat. 827; Pub. L. 85–508, § 12(i), July 7, 1958, 72 Stat. 348; Pub. L. 107–273, div. B, title IV, § 4004(e), Nov. 2, 2002, 116 Stat. 1812.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 39, 574; sections 23, 101, 1406 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions; section 39 of title 50, U.S.C., 1940 ed., War and National Defense (June 6, 1900, ch. 786, § 4, 31 Stat. 322; Aug. 24, 1912, ch. 387, § 3, 37 Stat. 512; June 15, 1917, ch. 30, title XIII, § 2, 40 Stat. 231; Mar. 2, 1921, ch. 110, 41 Stat. 1203; June 22, 1936, ch. 699, § 28, 49 Stat. 1814).

Section consolidates portions of sections 39 and 574 of title 18, U.S.C., 1940 ed., with jurisdictional provisions of sections 23, 101, and 1406 of title 48, U.S.C., 1940 ed., and section 39 of title 50 U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation.

The revised section simplifies and clarifies the Federal jurisdiction of the district courts of the Territories and Possessions. The enumeration of sections in section 574 of title 18, U.S.C., 1940 ed., was omitted as incomplete and misleading and the general language of the revised section was made applicable to the Canal Zone.

The phrase ''the several courts of the first instance in the Philippine Islands'' in section 574 of title 18, U.S.C., 1940 ed., was omitted as obsolete in view of the independence of the Commonwealth of the Philippines effective July 4, 1946.

The last sentence of section 574 of title 18, U.S.C., 1940 ed., with reference to the powers of district attorneys was omitted as unnecessary and otherwise covered by sections 403 and 404 of title 22, U.S.C., 1940 ed., Foreign Relations and Intercourse.

Definition of United States in section 39 of title 18, U.S.C., 1940 ed., is incorporated in section 5 of this title.

AMENDMENTS

2002—Pub. L. 107–273 struck out ''United States District Court for the Canal Zone and the'' after ''The''.

1958—Pub. L. 85–508 struck out provisions which related to the District Court for the Territory of Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding former section 21 of Title 48, Territories and Insular Possessions.

§ 3242. Indians committing certain offenses; acts on reservations

All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.

(June 25, 1948, ch. 645, 62 Stat. 827; May 24, 1949, ch. 139, § 51, 63 Stat. 96; Pub. L. 89–707, § 2, Nov. 2, 1966, 80 Stat. 1101; Pub. L. 94–297, § 4, May 29, 1976, 90 Stat. 586.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 548 (Mar. 4, 1909, ch. 321, § 328, 35 Stat. 1151; June 1932, ch. 284, 47 Stat. 337).

The provisions defining rape in accordance with the law of the State and prescribing imprisonment at the discretion of the court for rape by an Indian upon an Indian are now included in section 1153 of this title. (See also section 6 of this title.)

Section 549 of said title 18, relating to crimes in Indian reservations in South Dakota, was omitted as covered by section 1153 of this title. Accordingly the last sentence of said section 548, extending this section to prosecutions of Indians in South Dakota, was also omitted as unnecessary because this section is sufficient and applicable. Other provisions of said section 548 are incorporated in sections 1151 and 1153 of this title.

Minor changes were made in phraseology.

1949 ACT

This section [section 51] conforms section 3242 of title 18, U.S.C., with sections 1151 and 1153 of such title, thus eliminating inconsistency and ambiguity with respect to the definition of Indian country.

AMENDMENTS

1976—Pub. L. 94–297 substituted provision setting out reference to offenses listed in first paragraph of and punishable under section 1153 of this title, for provision specifically enumerating the covered offenses.

1966—Pub. L. 89–707 added carnal knowledge and assault with intent to commit rape as offenses cognizable within the exclusive jurisdiction of the United States when committed on and within the Indian country.

1949—Act May 24, 1949, substituted ''within the Indian country'' for ''within any Indian reservation, including rights-of-way running through the reservation,''.

§ 3243. Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

(June 25, 1948, ch. 645, 62 Stat. 827.)

HISTORICAL AND REVISION NOTES

Based on section 217a of title 25, U.S.C., 1940 ed., Indians (June 8, 1940, ch. 276, 54 Stat. 249).

The attention of Congress is directed to consideration of the question whether this section should be broadened and made applicable to all states rather than only to Kansas. Such change was not regarded as within the scope of this revision.

Changes were made in phraseology.

§ 3244. Jurisdiction of proceedings relating to transferred offenders

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders—

(1) the country in which the offender was convicted shall have exclusive jurisdiction and competence over proceedings seeking to challenge, modify, or set aside convictions or sentences handed down by a court of such country;

(2) all proceedings instituted by or on behalf of an offender transferred from the United States to a foreign country seeking to challenge, modify, or set aside the conviction or sentence upon which the transfer was based shall be brought in the court which would have jurisdiction and competence if the offender had not been transferred;

(3) all proceedings instituted by or on behalf of an offender transferred to the United States pertaining to the manner of execution in the United States of the sentence imposed by a foreign court shall be brought in the United States district court for the district in which the offender is confined or in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings;

(4) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer from the United States shall be brought in the United States district court of the district in which the proceedings to determine the validity of the offender's consent were held and shall name the Attorney General as respondent; and

(5) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer to the United States shall be brought in the United States district court of the district in which the offender is confined or of the district in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings.

(Added Pub. L. 95–144, § 3, Oct. 28, 1977, 91 Stat. 1220, title 28, § 2256; renumbered Pub. L. 95–598, title III, § 314(j)(1), Nov. 6, 1978, 92 Stat. 2677.)

CODIFICATION

Section was formerly classified to section 2256 of Title 28, Judiciary and Judicial Procedure.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 212—MILITARY EXTRATERRITORIAL JURISDICTION

Sec.
3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States.
3262. Arrest and commitment.
3263. Delivery to authorities of foreign countries.
3264. Limitation on removal.
3265. Initial proceedings.
3266. Regulations.
3267. Definitions.

§ 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

(1) while employed by or accompanying the Armed Forces outside the United States; or

(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c) Nothing in this chapter may be construed to deprive a court-martial, military commis-

sion, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless—

(1) such member ceases to be subject to such chapter; or

(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2488.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–523, § 1, Nov. 22, 2000, 114 Stat. 2488, provided that: ''This Act [enacting this chapter] may be cited as the 'Military Extraterritorial Jurisdiction Act of 2000'.''

§ 3262. Arrest and commitment

(a) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

(b) Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2489.)

§ 3263. Delivery to authorities of foreign countries

(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if—

(1) appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2489.)

§ 3264. Limitation on removal

(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed—

(1) to the United States; or

(2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

(b) The limitation in subsection (a) does not apply if—

(1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

(2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

(3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

(4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or

(5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265(a).

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2489.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

§ 3265. Initial proceedings

(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure—

(A) shall be conducted by a Federal magistrate judge; and

(B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person's detention before trial, the Federal magistrate judge shall also determine at the initial appearance the

conditions of the person's release before trial under chapter 207 of this title.

(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)—

(1) shall be conducted by a Federal magistrate judge; and

(2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

(2) For purposes of this subsection, the term ''qualified military counsel'' means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who—

(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

(B) is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2490.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(1), are set out in the Appendix to this title.

§ 3266. Regulations

(a) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations governing the apprehension, detention, delivery, and removal of persons under this chapter and the facilitation of proceedings under section 3265. Such regulations shall be uniform throughout the Department of Defense.

(b)(1) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations requiring that, to the maximum extent practicable, notice shall be provided to any person employed by or accompanying the Armed Forces outside the United States who is not a national of the United States that such person is potentially subject to the criminal jurisdiction of the United States under this chapter.

(2) A failure to provide notice in accordance with the regulations prescribed under paragraph (1) shall not defeat the jurisdiction of a court of the United States or provide a defense in any judicial proceeding arising under this chapter.

(c) The regulations prescribed under this section, and any amendments to those regulations, shall not take effect before the date that is 90 days after the date on which the Secretary of Defense submits a report containing those regulations or amendments (as the case may be) to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2491.)

§ 3267. Definitions

As used in this chapter:

(1) The term ''employed by the Armed Forces outside the United States'' means—

(A) employed as—

(i) a civilian employee of—

(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

(ii) a contractor (including a subcontractor at any tier) of—

(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

(iii) an employee of a contractor (or subcontractor at any tier) of—

(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

(B) present or residing outside the United States in connection with such employment; and

(C) not a national of or ordinarily resident in the host nation.

(2) The term ''accompanying the Armed Forces outside the United States'' means—

(A) a dependent of—

(i) a member of the Armed Forces;

(ii) a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(iii) a Department of Defense contractor (including a subcontractor at any tier) or an employee of a Department of Defense contractor (including a subcontractor at any tier);

(B) residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(C) not a national of or ordinarily resident in the host nation.

(3) The term ''Armed Forces'' has the meaning given the term ''armed forces'' in section 101(a)(4) of title 10.

(4) The terms ''Judge Advocate General'' and ''judge advocate'' have the meanings given such terms in section 801 of title 10.

(Added Pub. L. 106–523, § 2(a), Nov. 22, 2000, 114 Stat. 2491; amended Pub. L. 108–375, div. A, title X, § 1088, Oct. 28, 2004, 118 Stat. 2066.)

AMENDMENTS

2004—Par. (1)(A). Pub. L. 108–375 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''employed as a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department), as a Department of Defense contractor (including a subcontractor at any tier), or as an employee of a Department of Defense contractor (including a subcontractor at any tier);''.

CHAPTER 212A—EXTRATERRITORIAL JURISDICTION OVER CERTAIN TRAFFICKING IN PERSONS OFFENSES

Sec.
3271. Trafficking in persons offenses committed by persons employed by or accompanying the Federal Government outside the United States.
3272. Definitions.

§ 3271. Trafficking in persons offenses committed by persons employed by or accompanying the Federal Government outside the United States

(a) Whoever, while employed by or accompanying the Federal Government outside the United States, engages in conduct outside the United States that would constitute an offense under chapter 77 or 117 of this title if the conduct had been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(Added Pub. L. 109–164, title I, § 103(a)(1), Jan. 10, 2006, 119 Stat. 3562.)

§ 3272. Definitions

As used in this chapter:

(1) The term ''employed by the Federal Government outside the United States'' means—

(A) employed as a civilian employee of the Federal Government, as a Federal contractor (including a subcontractor at any tier), or as an employee of a Federal contractor (including a subcontractor at any tier);

(B) present or residing outside the United States in connection with such employment; and

(C) not a national of or ordinarily resident in the host nation.

(2) The term ''accompanying the Federal Government outside the United States'' means—

(A) a dependant of—

(i) a civilian employee of the Federal Government; or

(ii) a Federal contractor (including a subcontractor at any tier) or an employee of a Federal contractor (including a subcontractor at any tier);

(B) residing with such civilian employee, contractor, or contractor employee outside the United States; and

(C) not a national of or ordinarily resident in the host nation.

(Added Pub. L. 109–164, title I, § 103(a)(1), Jan. 10, 2006, 119 Stat. 3562.)

CHAPTER 213—LIMITATIONS

Sec.
3281. Capital offenses.
3282. Offenses not capital.
3283. Child abuse offenses.[1]
3284. Concealment of bankrupt's assets.
3285. Criminal contempt.
3286. Extension of statute of limitation for certain terrorism offenses.
3287. Wartime suspension of limitations.
3288. Indictments and information dismissed after period of limitations.
3289. Indictments and information dismissed before period of limitations.
3290. Fugitives from justice.
3291. Nationality, citizenship and passports.
3292. Suspension of limitations to permit United States to obtain foreign evidence.
3293. Financial institution offenses.
3294. Theft of major artwork.
3295. Arson offenses.
3296. Counts dismissed pursuant to a plea agreement.
3297. Cases involving DNA evidence.
3298. Trafficking-related offenses[2]
3299. Child abduction and sex offenses[2]

AMENDMENTS

2006—Pub. L. 109–248, title II, § 211(2), July 27, 2006, 120 Stat. 616, added item 3299.

Pub. L. 109–162, title XI, § 1182(b), Jan. 5, 2006, 119 Stat. 3126, added item 3298.

2004—Pub. L. 108–405, title II, § 204(b), Oct. 30, 2004, 118 Stat. 2271, added item 3297.

2002—Pub. L. 107–273, div. B, title III, § 3003(b), Nov. 2, 2002, 116 Stat. 1805, added item 3296.

1996—Pub. L. 104–132, title VII, § 708(c)(2), Apr. 24, 1996, 110 Stat. 1297, added item 3295.

1994—Pub. L. 103–322, title XII, § 120001(c), title XXXII, § 320902(d)(2), title XXXIII, § 330018(c), Sept. 13, 1994, 108 Stat. 2021, 2124, 2149, substituted ''Child abuse offenses'' for ''Customs and slave trade violations'' in item 3283 and added items 3286 and 3294.

1990—Pub. L. 101–647, title XII, § 1207(b), Nov. 29, 1990, 104 Stat. 4832, struck out item 3286 ''Seduction on vessel of United States''.

1989—Pub. L. 101–73, title IX, § 961(*l*)(2), Aug. 9, 1989, 103 Stat. 501, added item 3293.

1988—Pub. L. 100–690, title VII, § 7081(c), Nov. 18, 1988, 102 Stat. 4407, substituted ''Indictments and information dismissed after period of limitations'' for ''Reindictment where defect found after period of limitations'' in item 3288 and ''Indictments and information dismissed before period of limitations'' for ''Reindictment where defect found before period of limitations'' in item 3289.

1984—Pub. L. 98–473, title II, § 1218(b), Oct. 12, 1984, 98 Stat. 2167, added item 3292.

1951—Act June 30, 1951, ch. 194, § 2, 65 Stat. 107, added item 3291.

§ 3281. Capital offenses

An indictment for any offense punishable by death may be found at any time without limitation.

[1] Section catchline amended by Pub. L. 108–21 without corresponding amendment of chapter analysis.

[2] So in original. Probably should be followed by a period.

(June 25, 1948, ch. 645, 62 Stat. 827; Pub. L. 103–322, title XXXIII, § 330004(16), Sept. 13, 1994, 108 Stat. 2142.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 581a, 581b (Aug. 4, 1939, ch. 419, §§ 1, 2, 53 Stat. 1198).

Sections 581a and 581b of title 18, U.S.C., 1940 ed., were consolidated into this section without change of substance.

AMENDMENTS

1994—Pub. L. 103–322 struck out before period at end ''except for offenses barred by the provisions of law existing on August 4, 1939''.

§ 3282. Offenses not capital

(a) IN GENERAL.—Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

(b) DNA PROFILE INDICTMENT.—

(1) IN GENERAL.—In any indictment for an offense under chapter 109A for which the identity of the accused is unknown, it shall be sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile.

(2) EXCEPTION.—Any indictment described under paragraph (1), which is found not later than 5 years after the offense under chapter 109A is committed, shall not be subject to—

(A) the limitations period described under subsection (a); and

(B) the provisions of chapter 208 until the individual is arrested or served with a summons in connection with the charges contained in the indictment.

(3) DEFINED TERM.—For purposes of this subsection, the term ''DNA profile'' means a set of DNA identification characteristics.

(June 25, 1948, ch. 645, 62 Stat. 828; Sept. 1, 1954, ch. 1214, § 12(a), formerly § 10(a), 68 Stat. 1145; renumbered Pub. L. 87–299, § 1, Sept. 26, 1961, 75 Stat. 648; Pub. L. 108–21, title VI, § 610(a), Apr. 30, 2003, 117 Stat. 692.)

HISTORICAL AND REVISION NOTES

Based on section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, and on title 18, U.S.C., 1940 ed., § 582 (R.S. § 1044; Apr. 13, 1876, ch. 56, 19 Stat. 32; Nov. 17, 1921, ch. 124, § 1, 42 Stat. 220; Dec. 27, 1927, ch. 6, 45 Stat. 51; Oct. 14, 1940, ch. 876, title I, subchap. III, § 346(g), 54 Stat. 1167).

Section 582 of title 18, U.S.C., 1940 ed., and section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, were consolidated. ''Except as otherwise expressly provided by law'' was inserted to avoid enumeration of exceptive provisions.

The proviso contained in the act of 1927 ''That nothing herein contained shall apply to any offense for which an indictment has been heretofore found or an information instituted, or to any proceedings under any such indictment or information,'' was omitted as no longer necessary.

In the consolidation of these sections the 5-year period of limitation for violations of the Nationality Code, provided for in said section 746(g) of title 8, U.S.C., 1940 ed., Aliens and Nationality, is reduced to 3 years. There seemed no sound basis for considering 3 years adequate in the case of heinous felonies and gross frauds against the United States but inadequate for misuse of a passport or false statement to a naturalization examiner.

AMENDMENTS

2003—Pub. L. 108–21 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1954—Act Sept. 1, 1954, changed the limitation period from three years to five years.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 12(b) of act Sept. 1, 1954, formerly section 10(b), as renumbered by Pub. L. 87–299, § 1, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to offenses (1) committed on or after September 1, 1954, or (2) committed prior to such date, if on such date prosecution therefor is not barred by provisions of law in effect prior to such date.''

FUGITIVES FROM JUSTICE

Statutes of limitations as not extending to persons fleeing from justice, see section 3290 of this title.

OFFENSES AGAINST INTERNAL SECURITY

Limitation period in connection with offenses against internal security, see section 783 of Title 50, War and National Defense.

SECTIONS 792, 793, AND 794 OF THIS TITLE; LIMITATION PERIOD

Limitation period in connection with sections 792, 793, and 794 of this title, see note set out under section 792.

§ 3283. Offenses against children

No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer.

(June 25, 1948, ch. 645, 62 Stat. 828; Pub. L. 103–322, title XXXIII, § 330018(a), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 108–21, title II, § 202, Apr. 30, 2003, 117 Stat. 660; Pub. L. 109–162, title XI, § 1182(c), Jan. 5, 2006, 119 Stat. 3126.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 584 (R.S. § 1046; July 5, 1884, ch. 225, § 2, 23 Stat. 122).

Words ''customs laws'' were substituted for ''revenue laws,'' since different limitations are provided for internal revenue violations by section 3748 of title 26, U.S.C., 1940 ed., Internal Revenue Code.

This section was held to apply to offenses under the customs laws. Those offenses are within the term ''revenue laws'' but not within the term ''internal revenue laws''. *United States v. Hirsch* (1879, 100 U.S. 33, 25 L. Ed. 539), *United States v. Shorey* (1869, Fed. Cas. No. 16,282), and *United States v. Platt* (1840, Fed. Cas. No. 16,054a) applied this section in customs cases. Hence it appears that there was no proper basis for the complete elimination from section 584 of title 18, U.S.C., 1940 ed., of the reference to revenue laws.

Meaning of ''revenue laws''. *United States v. Norton* (1876, 91 U.S. 566, 23 L.Ed. 454), quoting Webster that ''revenue'' refers to ''The income of a nation, derived from its taxes, duties, or other sources, for the payment of the national expenses.'' Quoting *United States v. Mayo* (1813, Fed. Cas. No. 15,755) that ''revenue laws'' meant such laws ''as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government.''

Definition of revenue. ''Revenue'' is the income of a State, and the revenue of the Post Office Department,

being raised by a tax on mailable matter conveyed in the mail, and which is disbursed in the public service, is as much a part of the income of the government as moneys collected for duties on imports (*United States v. Bromley*, 53 U.S. 88, 99, 13 L. Ed. 905).

''Revenue'' is the product or fruit of taxation. It matters not in what form the power of taxation may be exercised or to what subjects it may be applied, its exercise is intended to provide means for the support of the Government, and the means provided are necessarily to be regarded as the internal revenue. Duties upon imports are imposed for the same general object and, because they are so imposed, the money thus produced is considered revenue, not because it is derived from any particular source (*United States v. Wright*, 1870, Fed. Cas. No. 16,770).

''Revenue law'' is defined as a law for direct object of imposing and collecting taxes, dues, imports, and excises for government and its purposes (*In re Mendenhall*, D.C. Mont. 1935, 10 F. Supp. 122).

Act Cong. March 2, 1799, ch. 22, 1 Stat. 627, regulating the collection of duties on imports, is a revenue law, within the meaning of act Cong. April 18, 1818, ch. 70, 3 Stat. 433, providing for the mode of suing for and recovering penalties and forfeitures for violations of the revenue laws of the United States (*The Abigail*, 1824, Fed. Cas. No. 18).

Changes were made in phraseology.

AMENDMENTS

2006—Pub. L. 109–162 inserted '', or for ten years after the offense, whichever is longer'' after ''of the child''.

2003—Pub. L. 108–21 substituted ''Offenses against children'' for ''Child abuse offenses'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years.''

1994—Pub. L. 103–322 substituted ''Child abuse offenses'' for ''Customs and slave trade violations'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''No person shall be prosecuted, tried or punished for any violation of the customs laws or the slave trade laws of the United States unless the indictment is found or the information is instituted within five years next after the commission of the offense.''

§ 3284. Concealment of bankrupt's assets

The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

(June 25, 1948, ch. 645, 62 Stat. 828; Pub. L. 95–598, title III, § 314(k), Nov. 6, 1978, 92 Stat. 2678.)

HISTORICAL AND REVISION NOTES

Based on section 52(d) of title 11, U.S.C., 1940 ed., Bankruptcy (May 27, 1926, ch. 406, § 11d, 44 Stat. 665; June 22, 1938, ch. 575, § 1, 52 Stat. 856).

The 3-year-limitation provision was omitted as unnecessary in view of the general statute, section 3282 of this title.

The words ''or a discharge denied'' and ''or denial of discharge'' were added on the recommendation of the Department of Justice to supply an omission in existing law.

Other subsections of said section 52 of title 11, U.S.C., 1940 ed., are incorporated in sections 151–154 and 3057 of this title.

Other minor changes of phraseology were made.

AMENDMENTS

1978—Pub. L. 95–598 substituted ''debtor in a case under title 11'' for ''bankrupt or other debtor''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 3285. Criminal contempt

No proceeding for criminal contempt within section 402 of this title shall be instituted against any person, corporation or association unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on section 390 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, § 25, 38 Stat. 740).

Word ''criminal'' was inserted before ''contempt'' in first line. Words ''within section 402 of this title'' were inserted after ''contempt''.

The correct meaning and narrow application of title 28, U.S.C., 1940 ed., § 390, are preserved, as section 389 of that title is incorporated in sections 402 and 3691 of this title.

Words ''corporation or association'' were inserted after ''person'', thus embodying applicable definition of section 390a of title 28, U.S.C., 1940 ed. (See reviser's note under section 402 of this title.)

§ 3286. Extension of statute of limitation for certain terrorism offenses

(a) EIGHT-YEAR LIMITATION.—Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any noncapital offense involving a violation of any provision listed in section 2332b(g)(5)(B), or a violation of section 112, 351(e), 1361, or 1751(e) of this title, or section 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed. Notwithstanding the preceding sentence, offenses listed in section 3295 are subject to the statute of limitations set forth in that section.

(b) NO LIMITATION.—Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332b(g)(5)(B), if the commission of such offense resulted in, or created a forseeable[1] risk of, death or serious bodily injury to another person.

(Added Pub. L. 103–322, title XII, § 120001(a), Sept. 13, 1994, 108 Stat. 2021; amended Pub. L. 104–132, title VII, § 702(c), Apr. 24, 1996, 110 Stat. 1294; Pub. L. 104–294, title VI, § 601(b)(1), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107–56, title VIII, § 809(a), Oct. 26, 2001, 115 Stat. 379; Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808.)

[1] So in original. Probably should be ''foreseeable''.

PRIOR PROVISIONS

A prior section 3286, act June 25, 1948, ch. 645, 62 Stat. 828, related to seduction on vessel of United States, prior to repeal by Pub. L. 101–647, title XII, § 1207(b), Nov. 29, 1990, 104 Stat. 4832.

AMENDMENTS

2002—Pub. L. 107–273 repealed Pub. L. 104–294, § 601(b)(1). See 1996 Amendment note below.

2001—Pub. L. 107–56 reenacted section catchline without change and amended text generally. Text read as follows: ''Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any non-capital offense involving a violation of section 32 (aircraft destruction), section 37 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2332a (use of weapons of mass destruction), 2332b (acts of terrorism transcending national boundaries), or section 2340A (torture) of this title or section 46502, 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed.''

1996—Pub. L. 104–132, § 702(c)(2)–(4), substituted ''2332'' for ''2331'', ''2332a'' for ''2339'', and ''37'' for ''36''. Pub. L. 104–294, § 601(b)(1), which amended section identically, was repealed by Pub. L. 107–273.

Pub. L. 104–132, § 702(c)(1), (5), inserted ''2332b (acts of terrorism transcending national boundaries),'' after ''(use of weapons of mass destruction),'', and substituted ''any non-capital offense'' for ''any offense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title VIII, § 809(b), Oct. 26, 2001, 115 Stat. 380, provided that: ''The amendments made by this section [amending this section] shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section [Oct. 26, 2001].''

EFFECTIVE DATE

Section 120001(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [enacting this section] shall not apply to any offense committed more than 5 years prior to the date of enactment of this Act [Sept. 13, 1994].''

§ 3287. Wartime suspension of limitations

When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

Definitions of terms in section 103 of title 41 shall apply to similar terms used in this section.

(June 25, 1948, ch. 645, 62 Stat. 828.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 590a (Aug. 24, 1942, ch. 555, § 1, 56 Stat. 747; July 1, 1944, ch. 358, § 19(b), 58 Stat. 667; Oct. 3, 1944, ch. 479, § 28, 58 Stat. 781).

The phrase ''when the United States is at war'' was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future. This permitted the elimination of references to dates and to the provision limiting the application of the section to transactions not yet fully barred. When the provisions of the War Contract Settlements Act of 1944, upon which this section is based, are considered in connection with said section 590a which it amends, it is obvious that no purpose can be served now by the provisions omitted.

Phrase (2), reading ''or committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States'' was derived from section 28 of the Surplus Property Act of 1944 which amended said section 590a of title 18, U.S.C., 1940 ed. This act is temporary by its terms and relates only to offenses committed in the disposition of surplus property thereunder.

The revised section extends its provisions to all offenses involving the disposition of any property, real or personal, of the United States. This extension is more apparent than real since phrase (2), added as the result of said Act, was merely a more specific statement of offenses embraced in phrase (1) of this section.

The revised section is written in general terms as permanent legislation applicable whenever the United States is at war. (See, also, reviser's note under section 284 of this title.)

The last paragraph was added to obviate any possibility of doubt as to meaning of terms defined in section 103 of title 41, U.S.C., 1940 ed., Public Contracts.

Changes were made in phraseology.

§ 3288. Indictments and information dismissed after period of limitations

Whenever an indictment or information charging a felony is dismissed for any reason after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final, or, if no regular grand jury is in session in the appropriate jurisdiction when the indictment or information is dismissed, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations. This section does not permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution.

(June 25, 1948, ch. 645, 62 Stat. 828; Pub. L. 88–139, § 2, Oct. 16, 1963, 77 Stat. 248; Pub. L. 88–520, § 1, Aug. 30, 1964, 78 Stat. 699; Pub. L. 100–690, title VII, § 7081(a), Nov. 18, 1988, 102 Stat. 4407.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§556a, 587, 589 (Apr. 30, 1934, ch. 170, §1, 48 Stat. 648; May 10, 1934, ch. 278, §§1, 3, 48 Stat. 772; July 10, 1940, ch. 567, 54 Stat. 747).

This section is a consolidation of sections 556a, 587, and 589 of title 18, U.S.C., 1940 ed., without change of substance. (See reviser's note under section 3289 of this title.)

AMENDMENTS

1988—Pub. L. 100–690, in section catchline, substituted ''Indictments and information dismissed after period of limitations'' for ''Indictment where defect found after period of limitations'', and in text, substituted ''Whenever an indictment or information charging a felony is dismissed for any reason'' for ''Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause,'', inserted '', or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final'' after ''dismissal of the indictment or information'', and inserted provisions which prohibited filing of new indictment or information where reason for dismissal was failure to file within period prescribed or some other reason that would bar a new prosecution.

1964—Pub. L. 88–520 substituted ''Indictment'' for ''Reindictment'' in section catchline, included indictments or informations filed after the defendant waives in open court prosecution by indictment which are dismissed for any error, defect, or irregularity, or are otherwise found defective or insufficient, and substituted provisions authorizing the return of a new indictment in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or, if no regular grand jury is in session when the indictment or information is dismissed, within six calendar months of the date when the next grand jury is convened, for provisions which authorized the return of a new indictment not later than the end of the next succeeding regular session of the court, following the session at which the indictment was found defective or insufficient, during which a grand jury shall be in session.

1963—Pub. L. 88–139 substituted ''session'' for ''term'' wherever appearing.

§ 3289. Indictments and information dismissed before period of limitations

Whenever an indictment or information charging a felony is dismissed for any reason before the period prescribed by the applicable statute of limitations has expired, and such period will expire within six calendar months of the date of the dismissal of the indictment or information, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the expiration of the applicable statute of limitations, or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final, or, if no regular grand jury is in session in the appropriate jurisdiction at the expiration of the applicable statute of limitations, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations. This section does not permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution.

(June 25, 1948, ch. 645, 62 Stat. 829; Pub. L. 88–139, §2, Oct. 16, 1963, 77 Stat. 248; Pub. L. 88–520, §2, Aug. 30, 1964, 78 Stat. 699; Pub. L. 100–690, title VII, §7081(b), Nov. 18, 1988, 102 Stat. 4407; Pub. L. 101–647, title XII, §1213, title XXV, §2595(b), title XXXV, §3580, Nov. 29, 1990, 104 Stat. 4833, 4907, 4929; Pub. L. 103–322, title XXXIII, §330011(q)(2), Sept. 13, 1994, 108 Stat. 2145.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§556a, 588, 589 (Apr. 30, 1934, ch. 170, §1, 48 Stat. 648; May 10, 1934, ch. 278, §§2, 3, 48 Stat. 772).

Consolidation of sections 556a, 588, and 589 of title 18, U.S.C., 1940 ed., without change of substance. The provisions of said section 556a, with reference to time of filing motion, were omitted and numerous changes of phraseology were necessary to effect consolidation, particularly in view of rules 6(b) and 12(b)(2), (3), (5) of the Federal Rules of Criminal Procedure.

Words ''regular or special'' were omitted and ''regular'' inserted after ''succeeding'' to harmonize with section 3288 of this title.

AMENDMENTS

1994—Pub. L. 103–322, §330011(q)(2), repealed amendment by Pub. L. 101–647, §1213. See 1990 Amendment note below.

1990—Pub. L. 101–647, §3580, inserted a comma after ''information'' the second place it appeared.

Pub. L. 101–647, §2595(b), struck out ''or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final,'' after ''the date of the dismissal of the indictment or information'' and inserted such language after ''within six calendar months of the expiration of the applicable statute of limitations,''.

Pub. L. 101–647, §1213, which directed the striking of ''or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final,'' and the insertion of such language after ''within six months of the expiration of the statute of limitations,'', was repealed by Pub. L. 103–322, §330011(q)(2). See above.

1988—Pub. L. 100–690 in section catchline substituted ''Indictments and information dismissed after period of limitations'' for ''Indictment where defect found before period of limitations'', and in text, substituted ''Whenever an indictment or information charging a felony is dismissed for any reason'' for ''Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause,'', inserted ''or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final'' after ''dismissal of the indictment or information'', and inserted provisions which prohibited filing of new indictment or information where reason for dismissal was failure to file within period prescribed or some other reason that would bar a new prosecution.

1964—Pub. L. 88–520 substituted ''Indictment'' for ''Reindictment'' in section catchline, included indictments or informations filed after the defendant waives in open court prosecution by indictment which are dismissed for any error, defect, or irregularity, or are otherwise found defective or insufficient, and substituted provisions authorizing, where the period of the statute of limitations will expire within six calendar months of the date of the dismissal, the return of a new indictment within six calendar months of the expiration of the applicable statute of limitations, or, if no regular grand jury is in session at the expiration of the applicable statute of limitations, within six calendar months of the date when the next regular grand jury is convened, for provisions which authorized, where the period of the statute of limitations will expire before

the end of the next regular session of the court to which such indictment was returned, the return of a new indictment not later than the end of the next succeeding regular session of the court following the session at which the indictment was found defective or insufficient, during which a grand jury shall be in session.

1963—Pub. L. 88–139 substituted ''session'' for ''term'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(q)(2) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 1213 of Pub. L. 101–647 took effect.

§ 3290. Fugitives from justice

No statute of limitations shall extend to any person fleeing from justice.

(June 25, 1948, ch. 645, 62 Stat. 829.)

HISTORICAL AND REVISION NOTES

Based on Title 18, U.S.C., 1940 ed., § 583 (R.S. § 1045).

Said section 583 was rephrased and made applicable to all statutes of limitation and is merely declaratory of the generally accepted rule of law.

§ 3291. Nationality, citizenship and passports

No person shall be prosecuted, tried, or punished for violation of any provision of sections 1423 to 1428, inclusive, of chapter 69 and sections 1541 to 1544, inclusive, of chapter 75 of title 18 of the United States Code, or for conspiracy to violate any of such sections, unless the indictment is found or the information is instituted within ten years after the commission of the offense.

(Added June 30, 1951, ch. 194, § 1, 65 Stat. 107; amended Pub. L. 103–322, title XXXIII, § 330008(9), Sept. 13, 1994, 108 Stat. 2143.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''violate any of such sections'' for ''violate any of the afore-mentioned sections''.

§ 3292. Suspension of limitations to permit United States to obtain foreign evidence

(a)(1) Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(2) The court shall rule upon such application not later than thirty days after the filing of the application.

(b) Except as provided in subsection (c) of this section, a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which the foreign court or authority takes final action on the request.

(c) The total of all periods of suspension under this section with respect to an offense—

(1) shall not exceed three years; and

(2) shall not extend a period within which a criminal case must be initiated for more than six months if all foreign authorities take final action before such period would expire without regard to this section.

(d) As used in this section, the term ''official request'' means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

(Added Pub. L. 98–473, title II, § 1218(a), Oct. 12, 1984, 98 Stat. 2167.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out as a note under section 3505 of this title.

§ 3293. Financial institution offenses

No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate—

(1) section 215, 656, 657, 1005, 1006, 1007, 1014, 1033, or 1344;

(2) section 1341 or 1343, if the offense affects a financial institution; or

(3) section 1963, to the extent that the racketeering activity involves a violation of section 1344;

unless the indictment is returned or the information is filed within 10 years after the commission of the offense.

(Added Pub. L. 101–73, title IX, § 961(*l*)(1), Aug. 9, 1989, 103 Stat. 501; amended Pub. L. 101–647, title XXV, § 2505(a), Nov. 29, 1990, 104 Stat. 4862; Pub. L. 103–322, title XXXII, § 320604(b), title XXXIII, § 330002(e), Sept. 13, 1994, 108 Stat. 2119, 2140.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–322 struck out ''1008,'' after ''1007,'' and inserted ''1033,'' after ''1014,''.

1990—Par. (3). Pub. L. 101–647 added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2505(b) of Pub. L. 101–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any offense committed before the date of the enactment of this section [Nov. 29, 1990], if the statute of limitations applicable to that offense had not run as of such date.''

EFFECT OF THIS SECTION ON OFFENSES FOR WHICH PRIOR PERIOD OF LIMITATIONS HAD NOT RUN

Section 961(*l*)(3) of Pub. L. 101–73 provided that: ''The amendments made by this subsection [enacting this section] shall apply to an offense committed before the effective date of this section [Aug. 9, 1989], if the statute of limitations applicable to that offense under this chapter had not run as of such date.''

§ 3294. Theft of major artwork

No person shall be prosecuted, tried, or punished for a violation of or conspiracy to violate section 668 unless the indictment is returned or the information is filed within 20 years after the commission of the offense.

(Added Pub. L. 103–322, title XXXII, § 320902(b), Sept. 13, 1994, 108 Stat. 2124.)

§ 3295. Arson offenses

No person shall be prosecuted, tried, or punished for any non-capital offense under section 81 or subsection (f), (h), or (i) of section 844 unless the indictment is found or the information is instituted not later than 10 years after the date on which the offense was committed.

(Added Pub. L. 104–132, title VII, § 708(c)(1), Apr. 24, 1996, 110 Stat. 1297.)

§ 3296. Counts dismissed pursuant to a plea agreement

(a) IN GENERAL.—Notwithstanding any other provision of this chapter, any counts of an indictment or information that are dismissed pursuant to a plea agreement shall be reinstated by the District Court if—

(1) the counts sought to be reinstated were originally filed within the applicable limitations period;

(2) the counts were dismissed pursuant to a plea agreement approved by the District Court under which the defendant pled guilty to other charges;

(3) the guilty plea was subsequently vacated on the motion of the defendant; and

(4) the United States moves to reinstate the dismissed counts within 60 days of the date on which the order vacating the plea becomes final.

(b) DEFENSES; OBJECTIONS.—Nothing in this section shall preclude the District Court from considering any defense or objection, other than statute of limitations, to the prosecution of the counts reinstated under subsection (a).

(Added Pub. L. 107–273, div. B, title III, § 3003(a), Nov. 2, 2002, 116 Stat. 1805.)

§ 3297. Cases involving DNA evidence

In a case in which DNA testing implicates an identified person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

(Added Pub. L. 108–405, title II, § 204(a), Oct. 30, 2004, 118 Stat. 2271; amended Pub. L. 109–162, title X, § 1005, Jan. 5, 2006, 119 Stat. 3086.)

AMENDMENTS

2006—Pub. L. 109–162 struck out ''except for a felony offense under chapter 109A,'' before ''no statute of limitations''.

EFFECTIVE DATE

Pub. L. 108–405, title II, § 204(c), Oct. 30, 2004, 118 Stat. 2271, provided that: ''The amendments made by this section [enacting this section] shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section [Oct. 30, 2004] if the applicable limitation period has not yet expired.''

§ 3298. Trafficking-related offenses

No person shall be prosecuted, tried, or punished for any non-capital offense or conspiracy to commit a non-capital offense under section 1581 (Peonage; Obstructing Enforcement), 1583 (Enticement into Slavery), 1584 (Sale into Involuntary Servitude), 1589 (Forced Labor), 1590 (Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor), or 1592 (Unlawful Conduct with Respect to Documents in furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor) of this title or under section 274(a) of the Immigration and Nationality Act unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.

(Added Pub. L. 109–162, title XI, § 1182(a), Jan. 5, 2006, 119 Stat. 3126.)

REFERENCES IN TEXT

Section 274(a) of the Immigration and Nationality Act, referred to in text, is classified to section 1324(a) of Title 8, Aliens and Nationality.

§ 3299. Child abduction and sex offenses

Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110 (except for section[1] 2257 and 2257A), or 117, or section 1591.

(Added Pub. L. 109–248, title II, § 211(1), July 27, 2006, 120 Stat. 616.)

CHAPTER 215—GRAND JURY

Sec.
3321. Number of grand jurors; summoning additional jurors.
3322. Disclosure of certain matters occurring before grand jury.
[3323 to 3328. Repealed.]

AMENDMENTS

1989—Pub. L. 101–73, title IX, § 964(b), Aug. 9, 1989, 103 Stat. 506, added item 3322 ''Disclosure of certain matters occurring before grand jury'' and struck out former items 3322 ''Number; summoning—Rule'', 3323 ''Objections and motions—Rule'', 3324 ''Foreman and deputy; powers and duties; records—Rule'', 3325 ''Persons present at proceedings—Rule'', 3326 ''Secrecy of proceedings and disclosure—Rule'', 3327 ''Indictment; finding and return—Rule'', and 3328 ''Discharging jury and excusing juror—Rule''.

§ 3321. Number of grand jurors; summoning additional jurors

Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If less than sixteen of the persons summoned attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. Whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

(June 25, 1948, ch. 645, 62 Stat. 829.)

[1] So in original. Probably should be ''sections''.

HISTORICAL AND REVISION NOTES

Based on section 419 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, § 282, 36 Stat. 1165).

The provisions of the first sentence are embodied in rule 6(a) of the Federal Rules of Criminal Procedure, but it has been retained because of its relation to the remainder of the text which is not covered by said rule.

§ 3322. Disclosure of certain matters occurring before grand jury

(a) A person who is privy to grand jury information—

(1) received in the course of duty as an attorney for the government; or

(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the government for use in enforcing section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or for use in connection with any civil forfeiture provision of Federal law.

(b)(1) Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of a banking law violation to identified personnel of a Federal or State financial institution regulatory agency—

(A) for use in relation to any matter within the jurisdiction of such regulatory agency; or

(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).

(2) A court may issue an order under paragraph (1) at any time during or after the completion of the investigation of the grand jury, upon a finding of a substantial need.

(c) A person to whom matter has been disclosed under this section shall not use such matter other than for the purpose for which such disclosure was authorized.

(d) As used in this section—

(1) the term ''banking law violation'' means a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1344, 1956, or 1957;

(B) section 1341 or 1343 affecting a financial institution; or

(C) any provision of subchapter II of chapter 53 of title 31, United States Code;

(2) the term ''attorney for the government'' has the meaning given such term in the Federal Rules of Criminal Procedure; and

(3) the term ''grand jury information'' means matters occurring before a grand jury other than the deliberations of the grand jury or the vote of any grand juror.

(Added Pub. L. 101–73, title IX, § 964(a), Aug. 9, 1989, 103 Stat. 505; amended Pub. L. 106–102, title VII, § 740, Nov. 12, 1999, 113 Stat. 1480; Pub. L. 106–185, § 10, Apr. 25, 2000, 114 Stat. 217; Pub. L. 107–273, div. C, title I, § 11002, Nov. 2, 2002, 116 Stat. 1816.)

REFERENCES IN TEXT

Section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, referred to in subsec. (a), is classified to section 1833a of Title 12, Banks and Banking.

The Federal Rules of Criminal Procedure, referred to in subsecs. (a)(2) and (d)(2), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 3322, act June 25, 1948, ch. 645, 62 Stat. 829, related to the summoning of and number of grand jurors, prior to repeal by Pub. L. 101–73, § 964(a). See Rule 6(a) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

AMENDMENTS

2002—Subsec. (d)(1)(A). Pub. L. 107–273, § 11002(1), substituted ''1344, 1956, or 1957;'' for ''or 1344; or''.

Subsec. (d)(1)(C). Pub. L. 107–273, § 11002(2), (3), added subpar. (C).

2000—Subsec. (a). Pub. L. 106–185 struck out ''concerning a banking law violation'' after ''grand jury information'' in introductory provisions and substituted ''any civil forfeiture provision of Federal law'' for ''civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title'' in concluding provisions.

1999—Subsec. (b)(1). Pub. L. 106–102, § 740(1), inserted ''Federal or State'' before ''financial institution'' in introductory provisions.

Subsec. (b)(2). Pub. L. 106–102, § 740(2), inserted ''at any time during or after the completion of the investigation of the grand jury,'' after ''paragraph (1)''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

[§§ 3323 to 3328. Repealed. Pub. L. 101–73, title IX, § 964(a), Aug. 9, 1989, 103 Stat. 505]

Section 3323, act June 25, 1948, ch. 645, 62 Stat. 829, related to challenging the array of grand jurors or individual grand jurors and motions to dismiss. See Rule 6(b) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

Section 3324, act June 25, 1948, ch. 645, 62 Stat. 829, related to the appointment of the grand jury foreman and deputy foreman, oaths, affirmations and indictments, and records of jurors concurring. See Rule 6(c) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

Section 3325, act June 25, 1948, ch. 645, 62 Stat. 829, related to persons who may be present while the grand jury is in session, and exclusion while the jury is deliberating or voting. See Rule 6(d) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

Section 3326, act June 25, 1948, ch. 645, 62 Stat. 829, related to disclosure of proceedings to government attorneys, disclosure by direction of the court or permission of the defendant, and secrecy of the indictment. See Rule 6(e) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

Section 3327, act June 25, 1948, ch. 645, 62 Stat. 830, related to concurrence of 12 or more jurors in the indictment and return of the indictment to the judge in open court. See Rule 6(f) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

Section 3328, act June 25, 1948, ch. 645, 62 Stat. 830, related to discharge of grand jury by court, limitation of service, and excusing jurors for cause. See Rule 6(g) of the Federal Rules of Criminal Procedure, set out in the Appendix to this title.

CHAPTER 216—SPECIAL GRAND JURY

Sec.
3331. Summoning and term.
3332. Powers and duties.

Sec.
3333. Reports.
3334. General provisions.

AMENDMENTS

1970—Pub. L. 91–452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 923, added chapter 216 and items 3331 to 3334.

NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

Pub. L. 91–452, title XII, §§ 1201–1211, Oct. 15, 1970, 84 Stat. 960, 961, established the National Commission on Individual Rights to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries authorized under chapter 216 of this title, dangerous special offender sentencing under section 3575 of this title, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action, and other practices which in its opinion might infringe upon the individual rights of the people of the United States. The Commission was required to make interim reports at least every two years and a final report to the President and Congress six years after Jan. 1, 1972, and was to cease to exist 60 days after submission of the final report.

§ 3331. Summoning and term

(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

(b) If a district court within any judicial circuit fails to extend the term of a special grand jury or enters an order for the discharge of such grand jury before such grand jury determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

(Added Pub. L. 91–452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 923; amended Pub. L. 100–690, title VII, § 7020(d), Nov. 18, 1988, 102 Stat. 4396.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 inserted ‘‘, the Associate Attorney General’’ after ‘‘Deputy Attorney General’’.

§ 3332. Powers and duties

(a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

(Added Pub. L. 91–452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 924.)

REFERENCES IN TEXT

The criminal laws of the United States, referred to in subsec. (a), are classified generally to this title.

§ 3333. Reports

(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or

(2) regarding organized crime conditions in the district.

(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record or be subject to subpena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report. Unauthorized publication may be punished as contempt of the court.

(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, it shall order such report sealed and such report shall not be subject to subpena or public inspection during the pendency of such criminal matter, except upon order of the court.

(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

(f) As used in this section, ''public officer or employee'' means any officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

(Added Pub. L. 91–452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 924.)

§ 3334. General provisions

The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal Procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter.

(Added Pub. L. 91–452, title I, § 101(a), Oct. 15, 1970, 84 Stat. 926.)

CHAPTER 217—INDICTMENT AND INFORMATION

Sec.
3361. Form and contents—Rule.
3362. Waiver of indictment and prosecution on information—Rule.
3363. Joinder of offenses—Rule.
3364. Joinder of defendants—Rule.
3365. Amendment of information—Rule.
3366. Bill of particulars—Rule.
3367. Dismissal—Rule.

§ 3361. Form and contents—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Contents and form; striking surplusage, Rule 7(a), (c), (d).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3362. Waiver of indictment and prosecution on information—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Waiver of indictment for offenses not punishable by death, Rule 7(b).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3363. Joinder of offenses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more offenses in same indictment, Rule 8(a).

Trial together of indictments or informations, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3364. Joinder of defendants—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more defendants charged in same indictment, Rule 8(b).

Relief from prejudicial joinder, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3365. Amendment of information—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Amendment of information, time and conditions, Rule 7(e).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3366. Bill of particulars—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bill of particulars for cause; motion after arraignment; time; amendment, Rule 7(f).

(June 25, 1948, ch. 645, 62 Stat. 830.)

§ 3367. Dismissal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Dismissal filed by Attorney General or United States Attorney, Rule 48.

Dismissal on objection to array of grand jury or lack of legal qualification of individual grand juror, Rule 6(b)(2).

(June 25, 1948, ch. 645, 62 Stat. 830.)

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATE JUDGES

Sec.
3401. Misdemeanors; application of probation laws.
3402. Rules of procedure, practice and appeal.

AMENDMENTS

1979—Pub. L. 96–82, § 7(c), Oct. 10, 1979, 93 Stat. 646, substituted ''Misdemeanors'' for ''Minor offenses'' in item 3401.

1968—Pub. L. 90–578, title III, §§ 301(c), 302(c), Oct. 17, 1968, 82 Stat. 1115, 1116, substituted ''TRIAL BY UNITED STATES MAGISTRATES'' for ''TRIAL BY COMMISSIONERS'' in chapter heading, and substituted ''Minor offenses'' for ''Petty offenses'' and struck out ''fees'' after ''probation laws'' in item 3401.

CHANGE OF NAME

''UNITED STATES MAGISTRATE JUDGES'' substituted for ''UNITED STATES MAGISTRATES'' in chapter heading pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3401. Misdemeanors; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.

(b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.

(c) A magistrate judge who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate judge prior to the imposition of sentence.

(d) The probation laws shall be applicable to persons tried by a magistrate judge under this section, and such officer shall have power to grant probation and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.

(e) Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate judge upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.

(g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment.

(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.

(June 25, 1948, ch. 645, 62 Stat. 830; Pub. L. 85–508, § 12(j), July 7, 1958, 72 Stat. 348; Pub. L. 90–578, title III, § 302(a), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 96–82, § 7(a), (b), Oct. 10, 1979, 93 Stat. 645, 646; Pub. L. 98–473, title II, § 223(j), Oct. 12, 1984, 98 Stat. 2029; Pub. L. 100–690, title VII, § 7072(a), Nov. 18, 1988, 102 Stat. 4405; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title I, § 103, Oct. 29, 1992, 106 Stat. 4507; Pub. L. 104–317, title II, § 202(a), Oct. 19, 1996, 110 Stat. 3848; Pub. L. 106–518, title II, § 203(a), Nov. 13, 2000, 114 Stat. 2414.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 576, 576b, 576c, 576d (Oct. 9, 1940, ch. 785, §§ 1, 3–5, 54 Stat. 1058, 1059).

The phrase ''the commissioner shall have power to grant probation'' was inserted in paragraph (c) in order to make clear the authority of the commissioner to grant probation without application to the District judge.

Four sections were consolidated herein with minor rearrangements and deletion of unnecessary words.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–518, §203(a)(1), struck out ''that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction,'' after ''petty offense''.

Subsec. (g). Pub. L. 106–518, §203(a)(2), substituted first sentence for former first sentence which read: ''The magistrate judge may, in a petty offense case involving a juvenile, that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction, exercise all powers granted to the district court under chapter 403 of this title.'', substituted ''the case of any misdemeanor, other than a petty offense,'' for ''any other class B or C misdemeanor case'' in second sentence, and struck out at end ''No term of imprisonment shall be imposed by the magistrate in any such case.''

1996—Subsec. (b). Pub. L. 104–317, §202(a)(1), inserted '', other than a petty offense that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction,'' after ''misdemeanor'', substituted ''tried before a district judge'' for ''tried before a judge of the district court'' and ''by a district judge'' for ''by a judge of the district court'', substituted ''magistrate judge'' for ''magistrate'' in two places, and substituted ''The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.'' for ''The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court.''

Subsec. (g). Pub. L. 104–317, §202(a)(2), substituted ''The magistrate judge may, in a petty offense case involving a juvenile, that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in any other class B or C misdemeanor case involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title.'' for ''The magistrate may, in a Class B or C misdemeanor case, or infraction case, involving a juvenile in which consent to trial before a magistrate has been filed under subsection (b) of this section, exercise all powers granted to the district court under chapter 403 of this title.''

1992—Subsec. (d). Pub. L. 102–572, §103(1), substituted ''and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge'' for ''and to revoke or reinstate the probation of any person granted probation by him''.

Subsecs. (h), (i). Pub. L. 102–572, §103(2), added subsecs. (h) and (i).

1988—Subsec. (g). Amendment by Pub. L. 100–690 directing that ''and section 4216'' be struck out after ''under chapter 402'' in subsec. (g), was executed to subsec. (g) applicable to offenses committed prior to Nov. 1, 1987, as the probable intent of Congress, in view of the amendment by section 223(j) of Pub. L. 98–473. See 1984 Amendment notes below.

1984—Subsecs. (g), (h). Pub. L. 98–473, §223(j)(1), redesignated subsec. (h) as (g) and struck out former subsec. (g) which related to powers of magistrate in case involving youthful offender. Former subsec. (g), as amended by Pub. L. 100–690, read as follows: ''The magistrate may, in a case involving a youth offender in which consent to trial before a magistrate has been filed under subsection (b) of this section, impose sentence and exercise the other powers granted to the district court under chapter 402 of this title, except that—

''(1) the magistrate may not sentence the youth offender to the custody of the Attorney General pursuant to such chapter for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense;

''(2) such youth offender shall be released conditionally under supervision no later than 3 months before the expiration of the term imposed by the magistrate, and shall be discharged unconditionally on or before the expiration of the maximum sentence imposed; and

''(3) the magistrate may not suspend the imposition of sentence and place the youth offender on probation for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense.''

Pub. L. 98–473, §223(j)(2), which directed amendment of subsec. (h) by substituting reference to Class B or C misdemeanor case or an infraction case, for reference to petty offense case, was executed to subsec. (g) as the probable intent of Congress in view of redesignation of subsec. (h) as (g) by section 223(j)(1) of Pub. L. 98–473, see above.

1979—Pub. L. 96–82, §7(b), substituted ''Misdemeanors'' for ''Minor offenses'' in section catchline.

Subsec. (a). Pub. L. 96–82, §7(a)(1), substituted ''any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed'' for ''and under such conditions as may be imposed by the terms of the special designation, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, minor offenses committed''.

Subsec. (b). Pub. L. 96–82, §7(a)(2), substituted reference to persons charged with misdemeanors for reference to persons charged with minor offenses, substituted reference to right to trial, judgment, and sentencing for reference to right to trial, and struck out provisions relating to the waiver of the right to a trial by jury.

Subsec. (f). Pub. L. 96–82, §7(a)(3), substituted provisions authorizing the district court to order misdemeanor proceedings to be conducted before a district court judge for provisions defining term ''minor offenses''.

Subsecs. (g), (h). Pub. L. 96–82, §7(a)(4), added subsecs. (g) and (h).

1968—Pub. L. 90–578 substituted ''Minor offenses'' for ''Petty offenses'' and struck out provision for ''fees'' in section catchline.

Subsec. (a). Pub. L. 90–578 provided for trial by a magistrate rather than a commissioner of minor offenses instead of petty offenses, under such conditions as may be imposed by the terms of the special designation, required imposition of sentence after conviction instead of sentencing of person committing the offense, and omitted provision for trial of offense committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction.

Subsec. (b). Pub. L. 90–578 provided that the person be charged with a minor offense rather than a petty offense, prescribed trial in district court for the district in which the offense was committed, and required an explanation to be given of right to trial before a district court judge with right to jury trial before such judge and that the written consent to trial before the magistrate specifically waive trial before the district court judge and any right to a jury trial.

Subsec. (c). Pub. L. 90–578 substituted authorization for magistrate to conduct presentence investigation for prior provisions making probation laws applicable to persons tried by commissioners having power to grant probation, now incorporated in subsec. (d) of this section.

Subsec. (d). Pub. L. 90–578 incorporated existing provisions of former subsec. (c) of this section in provi-

sions designated as subsec. (d), substituted ''magistrate'' for ''commissioner'', authorized revocation or reinstatement of probation by the officer granting the probation, and struck out former provision for receipt of fees provided by law for services as a commissioner.

Subsec. (e). Pub. L. 90–578 substituted requirement that proceedings before magistrates be taken down by a court reporter or recorded by sound recording equipment and provision for availability of a copy of the record of such proceedings for appeal purposes to be paid by the Director at Federal expense when a person is unable to pay or give security therefor for prior provisions making the section inapplicable to the District of Columbia and interpreting it as not repealing or limiting existing jurisdiction, power or authority of commissioners appointed in the several national parks.

Subsec. (f). Pub. L. 90–578 added subsec. (f).

1958—Subsec. (e). Pub. L. 85–508 struck out provisions which related to commissioners appointed for Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

CHANGE OF NAME

''United States magistrate judge'', ''magistrate judge'', and ''magistrate judges'' substituted for ''United States magistrate'', ''magistrate'', and ''magistrates'', respectively, in subsecs. (a), (c), (e), and (f), and ''magistrate judge under'' substituted for ''magistrate under'' in subsec. (d), pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding former section 21 of Title 48, Territories and Insular Possessions.

§ 3402. Rules of procedure, practice and appeal[1]

In all cases of conviction by a United States magistrate judge an appeal of right shall lie from the judgment of the magistrate judge to a judge of the district court of the district in which the offense was committed.

(June 25, 1948, ch. 645, 62 Stat. 831; Pub. L. 90–578, title III, § 302(b), Oct. 17, 1968, 82 Stat. 1116; Pub. L. 100–702, title IV, § 404(b)(2), Nov. 19, 1988, 102 Stat. 4651; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

[1] Section catchline was not amended to conform to change made in text by Pub. L. 100–702.

HISTORICAL AND REVISION NOTES

Based on title 18 U.S.C., 1940 ed., § 576a (Oct. 9, 1940, ch. 685, § 2, 54 Stat. 1059).

AMENDMENTS

1988—Pub. L. 100–702 struck out second par. which read as follows: ''The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before magistrates and for taking and hearing of appeals to the judges of the district courts of the United States.''

1968—Pub. L. 90–578 provided that the appeal shall be of right, substituted ''a United States magistrate'', ''magistrate'', and ''magistrates'' for ''United States commissioners'', ''commissioner'', and ''commissioners'', respectively, and provided that the appeals be to the judge of the district court and not to the district court and that the rules of the Supreme Court relate to appeals to the judges of the district courts rather than to the district courts.

CHANGE OF NAME

''United States magistrate judge'' and ''magistrate judge'' substituted for ''United States magistrate'' and ''magistrate'', respectively, in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of title 28, Judiciary and Judicial Procedure.

CHAPTER 221—ARRAIGNMENT, PLEAS AND TRIAL

Sec.
3431. Term of court; power of court unaffected by expiration—Rule.
3432. Indictment and list of jurors and witnesses for prisoner in capital cases.
3433. Arraignment—Rule.
3434. Presence of defendant—Rule.
3435. Receiver of stolen property triable before or after principal.
3436. Consolidation of indictments or informations—Rule.
3437. Severance—Rule.
3438. Pleas—Rule.
3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—Rule.
3440. Defenses and objections determined on motion—Rule.
3441. Jury; number of jurors; waiver—Rule.
3442. Jurors, examination, peremptory challenges; alternates—Rule.
3443. Instructions to jury—Rule.
3444. Disability of judge—Rule.
3445. Motion for judgment of acquittal—Rule.
3446. New trial—Rule.

§ 3431. Term of court; power of court unaffected by expiration—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Expiration of term without significance in criminal cases, Rule 45(c).

(June 25, 1948, ch. 645, 62 Stat. 831.)

REFERENCES IN TEXT

Rule 45(c) of the Federal Rules of Criminal Procedure, referred to in text, was rescinded Feb. 28, 1966, eff. July 1, 1966.

§ 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness, except that such list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.

(June 25, 1948, ch. 645, 62 Stat. 831; Pub. L. 103–322, title VI, § 60025, Sept. 13, 1994, 108 Stat. 1982.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 562 (R.S. § 1033).

Words ''or other capital offense'' inserted after ''treason'' and ''jurors'' substituted for ''jury''. The concluding sentence ''When any person is indicted for any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial'' was omitted. The change made by the revisers, permitting an additional day's preparation for trial in homicide, kidnapping, rape, and other capital cases seemed not unreasonable.

Words ''shall be delivered to him'', at end of section, were omitted as unnecessary.

Rule 10 of the Federal Rules of Criminal Procedure requires that the defendant in every case be given a copy of the indictment or information before he is called upon to plead. Thus there is no conflict between the rule and the revised section.

Minor changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 inserted before period at end '', except that such list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person''.

§ 3433. Arraignment—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Reading and furnishing copy of indictment to accused, Rule 10.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3434. Presence of defendant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Right of defendant to be present generally; corporation; waiver, Rule 43.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3435. Receiver of stolen property triable before or after principal

A person charged with receiving or concealing stolen property may be tried either before or after the trial of the principal offender.

(June 25, 1948, ch. 645, 62 Stat. 831.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 101, 467 (Mar. 4, 1909, ch. 321, §§ 48, 288, 35 Stat. 1098, 1145).

Other provisions of sections 101 and 467 of title 18, U.S.C., 1940 ed., were incorporated in sections 641 and 662 of this title.

Necessary changes were made in phraseology.

§ 3436. Consolidation of indictments or informations—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Two or more indictments or informations triable together, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3437. Severance—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Relief from prejudicial joinder of defendants or offenses, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3438. Pleas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Plea of guilty, not guilty, or nolo contendere; acceptance by court; refusal to plead; corporation failing to appear, Rule 11.

Withdrawal of plea of guilty, Rule 32.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motion to dismiss or for appropriate relief substituted for demurrer or dilatory plea or motion to quash, Rule 12.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3440. Defenses and objections determined on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Defenses or objections which may or must be raised before trial; time; hearing; effect of determination; limitations by law unaffected, Rule 12(b).

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3441. Jury; number of jurors; waiver—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Jury trial, waiver, twelve jurors or less by written stipulation, trial by court on general or special findings, Rule 23.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3442. Jurors, examination, peremptory challenges; alternates—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Examination and peremptory challenges of trial jurors; alternate jurors, Rule 24.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3443. Instructions to jury—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Court's instructions to jury, written requests and copies, objections, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3444. Disability of judge—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disability of judge after verdict or finding of guilt, Rule 25.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3445. Motion for judgment of acquittal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motions for directed verdict abolished.

Motions for judgment of acquittal adopted; court may reserve decision; renewal, Rule 29.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3446. New trial—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Granting of new trial, grounds, and motion, Rule 33.

(June 25, 1948, ch. 645, 62 Stat. 832.)

CHAPTER 223—WITNESSES AND EVIDENCE

Sec.
3481. Competency of accused.
3482. Evidence and witnesses—Rule.
3483. Indigent defendants, process to produce evidence—Rule.
3484. Subpoenas—Rule.
3485. Expert witnesses—Rule.
3486. Administrative subpoenas.
[3486A. Repealed.]
3487. Refusal to pay as evidence of embezzlement.
3488. Intoxicating liquor in Indian country as evidence of unlawful introduction.
3489. Discovery and inspection—Rule.
3490. Official record or entry—Rule.
3491. Foreign documents.
3492. Commission to consular officers to authenticate foreign documents.
3493. Deposition to authenticate foreign documents.
3494. Certification of genuineness of foreign document.
3495. Fees and expenses of consuls, counsel, interpreters and witnesses.
3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters.
3497. Account as evidence of embezzlement.
3498. Depositions—Rule.
3499. Contempt of court by witness—Rule.
3500. Demands for production of statements and reports of witnesses.
3501. Admissibility of confessions.
3502. Admissibility in evidence of eye witness testimony.
[3503. Repealed.]
3504. Litigation concerning sources of evidence.
3505. Foreign records of regularly conducted activity.
3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence.
3507. Special master at foreign deposition.
3508. Custody and return of foreign witnesses.
3509. Child victims' and child witnesses' rights.
3510. Rights of victims to attend and observe trial.
Sec.
3511. Judicial review of requests for information.

AMENDMENTS

2006—Pub. L. 109–177, title I, § 115(1), Mar. 9, 2006, 120 Stat. 211, added item 3511.

2002—Pub. L. 107–273, div. B, title IV, § 4002(c)(3)(B), Nov. 2, 2002, 116 Stat. 1809, struck out item 3503 ''Depositions to preserve testimony''.

2000—Pub. L. 106–544, § 5(b)(2), (3), Dec. 19, 2000, 114 Stat. 2718, struck out ''in Federal health care investigations'' after ''subpoenas'' in item 3486 and struck out item 3486A ''Administrative subpoenas in cases involving child abuse and child sexual exploitation''.

1998—Pub. L. 105–314, title VI, § 606(b), Oct. 30, 1998, 112 Stat. 2985, added items 3486 and 3486A and struck out former item 3486 ''Authorized investigative demand procedures''.

1997—Pub. L. 105–6, § 2(b), Mar. 19, 1997, 111 Stat. 12, added item 3510.

1996—Pub. L. 104–294, title VI, § 604(a)(4), Oct. 11, 1996, 110 Stat. 3506, substituted ''victims'' '' for ''Victims'' '' in item 3509.

Pub. L. 104–191, title II, § 248(b), Aug. 21, 1996, 110 Stat. 2019, added item 3486.

1994—Pub. L. 103–322, title XXXIII, § 330002(j), Sept. 13, 1994, 108 Stat. 2140, added item 3509.

1988—Pub. L. 100–690, title VI, § 6484(b), Nov. 18, 1988, 102 Stat. 4384, added item 3508.

1984—Pub. L. 98–473, title II, § 1217(b), Oct. 12, 1984, 98 Stat. 2166, added items 3505, 3506, and 3507.

1970—Pub. L. 91–452, title II, § 228(b), title VI, § 601(b), title VII, § 702(b), Oct. 15, 1970, 84 Stat. 930, 935, 936, added items 3503 and 3504, and struck out item 3486 ''Compelled testimony tending to incriminate witnesses; immunity''.

1968—Pub. L. 90–351, title II, § 701(b), June 19, 1968, 82 Stat. 211, added items 3501 and 3502.

1957—Pub. L. 85–269, Sept. 2, 1957, 71 Stat. 596, added item 3500.

1954—Act Aug. 20, 1954, ch. 769, § 2, 68 Stat. 746, rephrased item 3486.

PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Pub. L. 91–452, title V, §§ 501–504, Oct. 15, 1970, 84 Stat. 933, which authorized the Attorney General to provide for the security of Government witnesses and the families of Government witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity, was repealed by Pub. L. 98–473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163, effective Oct. 1, 1984.

§ 3481. Competency of accused

In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him.

(June 25, 1948, ch. 645, 62 Stat. 833.)

HISTORICAL AND REVISION NOTES

Based on section 632 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, and section 1200, Art. 42(a), of Title 34, Navy. (Mar. 16, 1878, ch. 37, 20 Stat. 30).

Section was rewritten without change of substance.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–6, § 1, Mar. 19, 1997, 111 Stat. 12, provided that: ''This Act [enacting section 3510 of this title, amending section 3593 of this title, and enacting provisions set out as a note under section 3510 of this title] may be cited as the 'Victim Rights Clarification Act of 1997'.''

§ 3482. Evidence and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Competency and privileges of witnesses and admissibility of evidence governed by principles of common law, Rule 26.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 26 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter is covered by the Federal Rules of Evidence, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3483. Indigent defendants, process to produce evidence—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for indigent defendants, motion, affidavit, costs, Rule 17(b).

(June 25, 1948, ch. 645, 62 Stat. 833.)

§ 3484. Subpoenas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Form, contents and issuance of subpoena, Rule 17(a).
Service in United States, Rule 17(d), (e,1).
Service in foreign country, Rule 17(d), (e,2).
Indigent defendants, Rule 17(b).
On taking depositions, Rule 17(f).
Papers and documents, Rule 17(c).
Disobedience of subpoena as contempt of court, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 833.)

§ 3485. Expert witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Selection and appointment of expert witnesses by court or parties; compensation, Rule 28.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 28 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter of this reference is covered by Federal Rules of Evidence, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3486. Administrative subpoenas

(a) AUTHORIZATION.—(1)(A) In any investigation of—

(i)(I) a Federal health care offense; or (II) a Federal offense involving the sexual exploitation or abuse of children, the Attorney General; or

(ii) an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056,[1] if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury,

may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

(B) Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

(i) the production of any records or other things relevant to the investigation; and

(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

(C) A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a Federal offense involving the sexual exploitation or abuse of children shall not extend beyond—

(i) requiring that provider to disclose the information specified in section 2703(c)(2), which may be relevant to an authorized law enforcement inquiry; or

(ii) requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.

(D) As used in this paragraph, the term ''Federal offense involving the sexual exploitation or abuse of children'' means an offense under section 1201, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years.

(2) A subpoena under this subsection shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(3) The production of records relating to a Federal health care offense shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of such records is served. The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.

(4) Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(5) At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).

(6)(A) A United State[2] district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.

(B) Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—

(i) endangerment to the life or physical safety of any person;

(ii) flight to avoid prosecution;

(iii) destruction of or tampering with evidence; or

[1] So in original. Probably should be section ''3056(a),''.

[2] So in original.

(iv) intimidation of potential witnesses.

(C) An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.

(7) A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.

(8) If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.

(9) A subpoena issued under paragraph (1)(A)(i)(II) or (1)(A)(ii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

(10) As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(ii), the Secretary of the Treasury shall notify the Attorney General of its issuance.

(b) SERVICE.—A subpoena issued under this section may be served by any person who is at least 18 years of age and is designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) ENFORCEMENT.—In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of such records. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(d) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

(e) LIMITATION ON USE.—(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(Added Pub. L. 104–191, title II, § 248(a), Aug. 21, 1996, 110 Stat. 2018; amended Pub. L. 105–277, div. A, § 101(b) [title I, § 122], Oct. 21, 1998, 112 Stat. 2681–50, 2681–72; Pub. L. 105–314, title VI, § 606(a)(1), Oct. 30, 1998, 112 Stat. 2984; Pub. L. 106–544, § 5(a), (b)(1), (c), Dec. 19, 2000, 114 Stat. 2716, 2718; Pub. L. 108–21, title V, § 509, Apr. 30, 2003, 117 Stat. 684.)

PRIOR PROVISIONS

A prior section 3486, acts June 25, 1948, ch. 645, 62 Stat. 833; Aug. 20, 1954, ch. 769, § 1, 68 Stat. 745; Aug. 28, 1965, Pub. L. 89–141, § 2, 79 Stat. 581, set forth procedure for granting of immunity to witnesses compelled to testify or produce evidence in course of any Congressional investigation, or case or proceeding before any grand jury or court of the United States, involving interference with or endangering of national security or defense of the United States, prior to repeal by Pub. L. 91–452, title II, § 228(a), Oct. 15, 1970, 84 Stat. 930, effective on sixtieth day following Oct. 15, 1970. See section 6001 et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(1)(C)(i). Pub. L. 108–21 substituted ''the information specified in section 2703(c)(2)'' for ''the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized''.

2000—Pub. L. 106–544, § 5(b)(1), struck out ''in Federal health care investigations'' after ''subpoenas'' in section catchline.

Subsec. (a)(1). Pub. L. 106–544, § 5(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In any investigation relating to any act or activity involving a Federal health care offense, or any act or activity involving a Federal offense relating to the sexual exploitation or other abuse of children, the Attorney General or the Attorney General's designee may issue in writing and cause to be served a subpoena—

''(A) requiring the production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control; or

''(B) requiring a custodian of records to give testimony concerning the production and authentication of such records.''

Subsec. (a)(3). Pub. L. 106–544, § 5(a)(2), inserted ''relating to a Federal health care offense'' after ''production of records'' and inserted at end ''The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.''

Subsec. (a)(4). Pub. L. 106–544, § 5(c)(1), substituted ''subpoenaed'' for ''summoned''.

Subsec. (a)(5) to (10). Pub. L. 106–544, § 5(a)(3), added pars. (5) to (10).

Subsec. (d). Pub. L. 106–544, § 5(c)(2), substituted ''subpoena'' for ''summons'' in two places.

1998—Pub. L. 105–314 substituted ''Administrative subpoenas in Federal health care investigations'' for ''Authorized investigative demand procedures'' in section catchline.

Subsec. (a)(1). Pub. L. 105–277 inserted ''or any act or activity involving a Federal offense relating to the sexual exploitation or other abuse of children,'' after ''health care offense,'' in introductory provisions.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[§ 3486A. Repealed. Pub. L. 106–544, § 5(b)(3), Dec. 19, 2000, 114 Stat. 2718]

Section, added Pub. L. 105–314, title VI, § 606(a)(2), Oct. 30, 1998, 112 Stat. 2984, related to administrative subpoenas in cases involving child abuse and child sexual exploitation.

§ 3487. Refusal to pay as evidence of embezzlement

The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the Government Accountability Office, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement.

(June 25, 1948, ch. 645, 62 Stat. 833; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 180 (Mar. 4, 1909, ch. 321, § 94, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

''General Accounting Office'' was substituted for ''proper accounting officer of the Treasury''.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 3488. Intoxicating liquor in Indian country as evidence of unlawful introduction

The possession by a person of intoxicating liquors in Indian country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction.

(June 25, 1948, ch. 645, 62 Stat. 834.)

HISTORICAL AND REVISION NOTES

Based on section 245 of title 25, U.S.C., 1940 ed., Indians (May 18, 1916, ch. 125, § 1, 39 Stat. 124).

The only change made was the insertion of the word ''Indian'' before ''country'', to substitute specificity for generality. (See definition of ''Indian country'' in section 1151 of this title.)

§ 3489. Discovery and inspection—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Inspection of documents and papers taken from defendant, Rule 16.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3490. Official record or entry—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record or entry as in civil actions, Rule 27.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3491. Foreign documents

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States shall, when duly certified as provided in section 3494 of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 3492 of this title, that such document (or the original thereof in case such document is a copy) satisfies the authentication requirements of the Federal Rules of Evidence, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. Nothing contained herein shall be deemed to require authentication under the provisions of section 3494 of this title of any such foreign documents which may otherwise be properly authenticated by law.

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 52, 63 Stat. 96; Pub. L. 88–619, § 2, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94–149, § 3, Dec. 12, 1975, 89 Stat. 806.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 2, 49 Stat. 1562.)

1949 ACT

This section [section 52] corrects section 3491 of title 18, U.S.C., so that the references therein will be to the correct section numbers in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Pub. L. 94–149 substituted ''the authentication requirements of the Federal Rules of Evidence'' for ''the requirements of section 1732 of Title 28''.

1964—Pub. L. 88–619 struck out ''and section 1741 of Title 28'' after ''section 3494 of this title'' in two places.

1949—Act May 24, 1949, substituted ''section 1741'' for ''section 695e'' and ''section 1732'' for ''section 695'' wherever appearing.

§ 3492. Commission to consular officers to authenticate foreign documents

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories, or on interrogatories partly oral and partly written, pursuant to a commission issued, as hereinafter provided, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the authentication requirements of the Federal Rules of Evidence are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or his attorney, to the opposite party, or his attorney of record, which notice shall state the names and addresses of witnesses whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provisions in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If after notice and hearing, the court grants the motion, it shall instruct the consular officer thus disqualified to send the commission to any other consular officer of the United States named by the court, and such other officer shall execute the commission according to its terms and shall for all purposes be deemed the officer to whom the commission is addressed.

(c) The provisions of this section and sections 3493–3496 of this title applicable to consular officers shall be applicable to diplomatic officers pursuant to such regulations as may be prescribed by the President. For purposes of this section and sections 3493 through 3496 of this title, the term ''consular officers'' includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 53, 63 Stat. 96; Pub. L. 94–149, § 4, Dec. 12, 1975, 89 Stat. 806; Pub. L. 105–277, div. G, subdiv. B, title XXII, § 2222(c)(2), Oct. 21, 1998, 112 Stat. 2681–818.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695b of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 3, 49 Stat. 1562).

1949 ACT

This section [section 53] corrects section 3492(a) of title 18, U.S.C., so that the reference in the first sentence thereof will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–277 inserted at end ''For purposes of this section and sections 3493 through 3496 of this title, the term 'consular officers' includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).''

1975—Subsec. (a). Pub. L. 94–149 substituted ''the authentication requirements of the Federal Rules of Evidence'' for ''the requirements of section 1732 of Title 28''.

1949—Subsec. (a). Act May 24, 1949, substituted ''section 1732'' for ''section 695''.

§ 3493. Deposition to authenticate foreign documents

The consular officer to whom any commission authorized under section 3492 of this title is addressed shall take testimony in accordance with its terms. Every person whose testimony is taken shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing or typewriting by the consular officer taking the testimony, or by some person under his personal supervision, or by the witness himself, in the presence of the consular officer and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the witness.

Every foreign document, with respect to which testimony is taken, shall be annexed to such testimony and subscribed by each witness who appears for the purpose of establishing the genuineness of such document. When counsel for all the parties attend the examination of any witness whose testimony is to be taken on written interrogatories, they may consent that oral interrogatories in addition to those accompanying the commission may be put to the witness. The consular officer taking any testimony shall require an interpreter to be present when his services are needed or are requested by any party or his attorney.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695c of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 4, 49 Stat. 1563).

§ 3494. Certification of genuineness of foreign document

If the consular officer executing any commission authorized under section 3492 of this title shall be satisfied, upon all the testimony taken, that a foreign document is genuine, he shall certify such document to be genuine under the seal of his office. Such certification shall include a statement that he is not subject to disqualification under the provisions of section 3492 of this title. He shall thereupon transmit, by mail, such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the clerk of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the Government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695d of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 5, 49 Stat. 1563).

§ 3495. Fees and expenses of consuls, counsel, interpreters and witnesses

(a) The consular fees prescribed under section 1201 of Title 22, for official services in connection with the taking of testimony under sections 3492–3494 of this title, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under section 3493 of this title shall be entitled to receive, for each day's attendance, fees prescribed under section 3496 of this title. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under section 3493 of this title, shall be paid by the United States, such compensation, together with such personal and incidental expense upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

(b) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this section, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.

(c) Any appropriation available for the payment of fees and costs in the case of witnesses subpenaed in behalf of the United States in criminal cases shall be available for any fees or costs which the United States is required to pay under this section.

(June 25, 1948, ch. 645, 62 Stat. 836; May 24, 1949, ch. 139, § 54, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695f of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 7, 49 Stat. 1564).

1949 ACT

This section [section 54] corrects the reference in the first sentence of section 3495(a) of title 18, U.S.C., because the provisions which were formerly set out as section 127 of title 22, U.S.C., are now set out as section 1201 of such title.

REFERENCES IN TEXT

Section 1201 of Title 22, referred to in subsec. (a), was transferred to section 4219 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, substituted ''section 1201'' for ''section 127''.

§ 3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters

The President is authorized to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492–3494 of this title and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of this title.

(June 25, 1948, ch. 645, 62 Stat. 836.)

HISTORICAL AND REVISION NOTES

Based on section 695g of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 8, 49 Stat. 1564).

EX. ORD. NO. 10307. DELEGATION OF AUTHORITY

Ex. Ord. No. 10307, Nov. 23, 1951, 16 F.R. 11907, provided:

By virtue of the authority vested in me by the act of August 8, 1950, 64 Stat. 419 (3 U.S.C. Supp. 301–303), I hereby delegate to the Secretary of State (1) the authority vested in the President by section 3496 of title

18 of the United States Code (62 Stat. 836) to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492–3494 of the said title, and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of the said title, and (2) the authority vested in the President by section 3492(c) of title 18 of the United States Code (62 Stat. 835) to prescribe regulations making the provisions of sections 3492–3496 of the said title applicable to diplomatic officers.

Executive Order No. 8298 of December 4, 1939, entitled ''Regulations Governing the Manner of Executing and Returning Commissions by Officers of the Foreign Service in Criminal Cases, and Schedule of Fees and Compensation in Such Cases'', is hereby revoked.

§ 3497. Account as evidence of embezzlement

Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Government Accountability Office.

(June 25, 1948, ch. 645, 62 Stat. 836; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 179, 355; section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (R.S. § 887; Mar. 4, 1909, ch. 321, §§ 93, 225, 35 Stat. 1105, 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section is a consolidation of section 179 of title 18, U.S.C., 1940 ed., with similar provisions of section 355 of title 18, U.S.C., 1940 ed., and section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, with changes of phraseology only except that ''General Accounting Office'' was substituted for ''Treasury Department''.

Other provisions of said section 355 of title 18, U.S.C., 1940 ed., are incorporated in section 1711 of this title.

Words in second sentence of said section 355 of title 18, U.S.C., 1940 ed., which preceded the semicolon therein and which read ''Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement'' were omitted as surplusage, because such failure to produce or to pay over such money or property constitutes embezzlement. (See sections 653 and 1711 of this title.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 3498. Depositions—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Time, manner and conditions of taking depositions; costs; notice; use; objections; written interrogatories, Rule 15.

Subpoenas on taking depositions, Rule 17(f).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3499. Contempt of court by witness—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disobedience of subpoena without excuse as contempt, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3500. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term ''statement'', as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

(Added Pub. L. 85–269, Sept. 2, 1957, 71 Stat. 595; amended Pub. L. 91–452, title I, § 102, Oct. 15, 1970, 84 Stat. 926.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–452, § 102(a), struck out ''to an agent of the Government'' after ''(other than the defendant)''.

Subsec. (d). Pub. L. 91–452, § 102(b), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 91–452, § 102(c), (d), struck out ''or'' after ''by him;'' in par. (1), struck out ''to an agent of the Government'' after ''said witness'' in par. (2), and added par. (3).

§ 3501. Admissibility of confessions

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the abovementioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term ''confession'' means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

(Added Pub. L. 90–351, title II, § 701(a), June 19, 1968, 82 Stat. 210; amended Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–578 substituted ''magistrate'' for ''commissioner'' wherever appearing.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3502. Admissibility in evidence of eye witness testimony

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

(Added Pub. L. 90–351, title II, § 701(a), June 19, 1968, 82 Stat. 211.)

[§ 3503. Repealed. Pub. L. 107–273, div. B, title IV, § 4002(c)(3)(A), Nov. 2, 2002, 116 Stat. 1809]

Section, added Pub. L. 91–452, title VI, § 601(a), Oct. 15, 1970, 84 Stat. 934, related to depositions to preserve testimony.

§ 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may

be relevant to a pending claim of such inadmissibility; and

(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

(b) As used in this section ''unlawful act'' means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

(Added Pub. L. 91–452, title VII, § 702(a), Oct. 15, 1970, 84 Stat. 935.)

CONGRESSIONAL STATEMENT OF FINDINGS

Section 701 of title VII of Pub. L. 91–452 provided that: ''The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.''

APPLICABILITY TO PROCEEDINGS

Section 703 of title VII of Pub. L. 91–452 provided that: ''This title [enacting this section and provisions set as notes under this section] shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment [Oct. 15, 1970]. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.''

§ 3505. Foreign records of regularly conducted activity

(a)(1) In a criminal proceeding in a court of the United States, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such record was kept in the course of a regularly conducted business activity;

(C) the business activity made such a record as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(2) A foreign certification under this section shall authenticate such record or duplicate.

(b) At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

(c) As used in this section, the term—

(1) ''foreign record of regularly conducted activity'' means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

(2) ''foreign certification'' means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted activity or another qualified person that, if falsely made, would subject the maker to criminal penalty under the laws of that country; and

(3) ''business'' includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2165.)

EFFECTIVE DATE

Section 1220 of part K (§§ 1217–1220) of chapter XII of title II of Pub. L. 98–473 provided that: ''This part and the amendments made by this part [enacting this section and sections 3292, 3506, and 3507 of this title and amending section 3161 of this title] shall take effect thirty days after the date of the enactment of this Act [Oct. 12, 1984].''

§ 3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence

(a) Except as provided in subsection (b) of this section, any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General at the time such pleading or other document is submitted.

(b) Any person who is a party to a criminal proceeding in a court of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense that is a subject of such proceeding shall serve such pleading or other document on the appropriate attorney for the Government, pursuant to the Federal Rules of Criminal Procedure, at the time such pleading or other document is submitted.

(c) As used in this section, the term ''official request'' means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out as a note under section 3505 of this title.

§ 3507. Special master at foreign deposition

Upon application of a party to a criminal case, a United States district court before which the case is pending may, to the extent permitted by a foreign country, appoint a special master to carry out at a deposition taken in that country such duties as the court may direct, including presiding at the deposition or serving as an advisor on questions of United States law. Notwithstanding any other provision of law, a special master appointed under this section shall not decide questions of privilege under foreign law. The refusal of a court to appoint a special master under this section, or of the foreign country to permit a special master appointed under this section to carry out a duty at a deposition in that country, shall not affect the admissibility in evidence of a deposition taken under the provisions of the Federal Rules of Criminal Procedure.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out as a note under section 3505 of this title.

§ 3508. Custody and return of foreign witnesses

(a) When the testimony of a person who is serving a sentence, is in pretrial detention, or is otherwise being held in custody, in a foreign country, is needed in a State or Federal criminal proceeding, the Attorney General shall, when he deems it appropriate in the exercise of his discretion, have the authority to request the temporary transfer of that person to the United States for the purposes of giving such testimony, to transport such person to the United States in custody, to maintain the custody of such person while he is in the United States, and to return such person to the foreign country.

(b) Where the transfer to the United States of a person in custody for the purposes of giving testimony is provided for by treaty or convention, by this section, or both, that person shall be returned to the foreign country from which he is transferred. In no event shall the return of such person require any request for extradition or extradition proceedings, or proceedings under the immigration laws.

(c) Where there is a treaty or convention between the United States and the foreign country in which the witness is being held in custody which provides for the transfer, custody and return of such witnesses, the terms and conditions of that treaty shall apply. Where there is no such treaty or convention, the Attorney General may exercise the authority described in paragraph (a) if both the foreign country and the witness give their consent.

(Added Pub. L. 100–690, title VI, § 6484(a), Nov. 18, 1988, 102 Stat. 4384.)

REFERENCES IN TEXT

The immigration laws, referred to in subsec. (b), are classified generally to Title 8, Aliens and Nationality. See also section 1101(a)(17) of Title 8.

§ 3509. Child victims' and child witnesses' rights

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''adult attendant'' means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term ''child'' means a person who is under the age of 18, who is or is alleged to be—

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term ''child abuse'' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term ''physical injury'' includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term ''mental injury'' means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term ''exploitation'' means child pornography or child prostitution;

(7) the term ''multidisciplinary child abuse team'' means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term ''sexual abuse'' includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term ''sexually explicit conduct'' means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(10) the term ''sex crime'' means an act of sexual abuse that is a criminal act;

(11) the term ''negligent treatment'' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(12) the term ''child abuse'' does not include discipline administered by a parent or legal

guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(b) ALTERNATIVES TO LIVE IN-COURT TESTIMONY.—

(1) CHILD'S LIVE TESTIMONY BY 2-WAY CLOSED CIRCUIT TELEVISION.—

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(i) The child is unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(iii) The child suffers a mental or other infirmity.

(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are—

(i) the child's attorney or guardian ad litem appointed under subsection (h);

(ii) persons necessary to operate the closed-circuit television equipment;

(iii) a judicial officer, appointed by the court; and

(iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) VIDEOTAPED DEPOSITION OF CHILD.—(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are—

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in

which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) HANDLING OF VIDEOTAPE.—The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) COMPETENCY EXAMINATIONS.—

(1) EFFECT OF FEDERAL RULES OF EVIDENCE.—Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) PRESUMPTION.—A child is presumed to be competent.

(3) REQUIREMENT OF WRITTEN MOTION.—A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) REQUIREMENT OF COMPELLING REASONS.—A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) PERSONS PERMITTED TO BE PRESENT.—The only persons who may be permitted to be present at a competency examination are—

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) NOT BEFORE JURY.—A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) DIRECT EXAMINATION OF CHILD.—Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) APPROPRIATE QUESTIONS.—The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) PSYCHOLOGICAL AND PSYCHIATRIC EXAMINATIONS.—Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) PRIVACY PROTECTION.—

(1) CONFIDENTIALITY OF INFORMATION.—(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall—

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to—

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) FILING UNDER SEAL.—All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a

court order. The person who makes the filing shall submit to the clerk of the court—

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) PROTECTIVE ORDERS.—(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may—

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) DISCLOSURE OF INFORMATION.—This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) CLOSING THE COURTROOM.—When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(f) VICTIM IMPACT STATEMENT.—In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) USE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—

(1) IN GENERAL.—A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) ROLE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including—

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) GUARDIAN AD LITEM.—

(1) IN GENERAL.—The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) DUTIES OF GUARDIAN AD LITEM.—A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) IMMUNITIES.—A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) ADULT ATTENDANT.—A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) SPEEDY TRIAL.—In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) STAY OF CIVIL ACTION.—If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(*l*) TESTIMONIAL AIDS.—The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) PROHIBITION ON REPRODUCTION OF CHILD PORNOGRAPHY.—

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

(2)(A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

(Added Pub. L. 101–647, title II, § 225(a), Nov. 29, 1990, 104 Stat. 4798; amended Pub. L. 103–322, title XXXIII, §§ 330010(6), (7), 330011(e), 330018(b), Sept. 13, 1994, 108 Stat. 2143, 2145, 2149; Pub. L. 104–294, title VI, § 605(h), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 109–248, title V, §§ 504, 507, July 27, 2006, 120 Stat. 629, 631.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsecs. (f) and (m)(2)(A), are set out in the Appendix to this title.

AMENDMENTS

2006—Subsec. (h)(1). Pub. L. 109–248, § 507, inserted ", and provide reasonable compensation and payment of expenses for," after "The court may appoint".

Subsec. (m). Pub. L. 109–248, § 504, added subsec. (m).

1996—Subsec. (e). Pub. L. 104–294, § 605(h)(1), substituted "serve the Government's" for "serve the government's".

Subsec. (h)(3). Pub. L. 104–294, § 605(h)(2), substituted "in paragraph (2)" for "in subpart (2)".

1994—Pub. L. 103–322, § 330011(e), made technical amendment to directory language of Pub. L. 101–647, § 225(a), which enacted this section.

Pub. L. 103–322, § 330010(7)(B), substituted "Government" for "government" in subsecs. (b)(1)(A), (D), (2)(A), and (c)(5)(B), in subsec. (d)(1)(B)(i) after "hired by the", and in subsec. (g)(1).

Pub. L. 103–322, § 330010(7)(A), substituted "subsection" for "subdivision" in subsecs. (b)(1)(A), (D)(i), (2)(A), (B)(iii)(III), (c)(1), (d)(4), and (f).

Subsec. (a)(11) to (13). Pub. L. 103–322, § 330010(6), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: "the term 'exploitation' means child pornography or child prostitution;".

Subsec. (k). Pub. L. 103–322, § 330018(b), substituted heading for one which read "Extension of Child Statute of Limitations" and struck out first sentence which read as follows: "No statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years."

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(e) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 225(a) of Pub. L. 101–647 took effect.

§ 3510. Rights of victims to attend and observe trial

(a) NON-CAPITAL CASES.—Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defend-

ant accused of that offense because such victim may, during the sentencing hearing, make a statement or present any information in relation to the sentence.

(b) CAPITAL CASES.—Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim's family or as to any other factor for which notice is required under section 3593(a).

(c) DEFINITION.—As used in this section, the term ''victim'' includes all persons defined as victims in section 503(e)(2) of the Victims' Rights and Restitution Act of 1990.

(Added Pub. L. 105–6, § 2(a), Mar. 19, 1997, 111 Stat. 12.)

REFERENCES IN TEXT

Section 503(e)(2) of the Victims' Rights and Restitution Act of 1990, referred to in subsec. (c), is classified to section 10607(e)(2) of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 2(d) of Pub. L. 105–6 provided that: ''The amendments made by this section [enacting this section and amending section 3593 of this title] shall apply in cases pending on the date of the enactment of this Act [Mar. 19, 1997].''

§ 3511. Judicial review of requests for information

(a) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the request. The court may modify or set aside the request if compliance would be unreasonable, oppressive, or otherwise unlawful.

(b)(1) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.

(2) If the petition is filed within one year of the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If, at the time of the petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Department of Justice, the head or deputy head of such department, agency, or instrumentality, certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive unless the court finds that the certification was made in bad faith.

(3) If the petition is filed one year or more after the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Federal Bureau of Investigation, the head or deputy head of such department, agency, or instrumentality, within ninety days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that disclosure may result in a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person. In the event of re-certification, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If the recertification that disclosure may endanger the national security of the United States or interfere with diplomatic relations is made by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, such certification shall be treated as conclusive unless the court finds that the recertification was made in bad faith. If the court denies a petition for an order modifying or setting aside a nondisclosure requirement under this paragraph, the recipient shall be precluded for a period of one year from filing another petition to modify or set aside such nondisclosure requirement.

(c) In the case of a failure to comply with a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security

Act of 1947, the Attorney General may invoke the aid of any district court of the United States within the jurisdiction in which the investigation is carried on or the person or entity resides, carries on business, or may be found, to compel compliance with the request. The court may issue an order requiring the person or entity to comply with the request. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.

(d) In all proceedings under this section, subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent an unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947. Petitions, filings, records, orders, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947.

(e) In all proceedings under this section, the court shall, upon request of the government, review ex parte and in camera any government submission or portions thereof, which may include classified information.

(Added Pub. L. 109–177, title I, § 115(2), Mar. 9, 2006, 120 Stat. 211.)

REFERENCES IN TEXT

Sections 626(a), (b) and 627(a) of the Fair Credit Reporting Act, referred to in subsecs. (a) to (d), are classified to sections 1681u(a), (b) and 1681v(a), respectively, of Title 15, Commerce and Trade.

Section 1114(a)(5)(A) of the Right to Financial Privacy Act, referred to in subsecs. (a) to (d), probably means section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978, which is classified to section 3414(a)(5)(A) of Title 12, Banks and Banking.

Section 802(a) of the National Security Act of 1947, referred to in subsecs. (a) to (d), is classified to section 436(a) of Title 50, War and National Defense.

REPORTS ON NATIONAL SECURITY LETTERS

Pub. L. 109–177, title I, § 118, Mar. 9, 2006, 120 Stat. 217, provided that:

''(a) EXISTING REPORTS.—Any report made to a committee of Congress regarding national security letters under section 2709(c)(1) of title 18, United States Code, section 626(d) or 627(c) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) shall also be made to the Committees on the Judiciary of the House of Representatives and the Senate.

''(b) ENHANCED OVERSIGHT OF FAIR CREDIT REPORTING ACT COUNTERTERRORISM NATIONAL SECURITY LETTER.—[Amended section 1681v of Title 15, Commerce and Trade.]

''(c) REPORT ON REQUESTS FOR NATIONAL SECURITY LETTERS.—

''(1) IN GENERAL.—In April of each year, the Attorney General shall submit to Congress an aggregate report setting forth with respect to the preceding year the total number of requests made by the Department of Justice for information concerning different United States persons under—

''(A) section 2709 of title 18, United States Code (to access certain communication service provider records), excluding the number of requests for subscriber information;

''(B) section 1114 of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414) (to obtain financial institution customer records);

''(C) section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports);

''(D) section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports); and

''(E) section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).

''(2) UNCLASSIFIED FORM.—The report under this section shall be submitted in unclassified form.

''(d) NATIONAL SECURITY LETTER DEFINED.—In this section, the term 'national security letter' means a request for information under one of the following provisions of law:

''(1) Section 2709(a) of title 18, United States Code (to access certain communication service provider records).

''(2) Section 1114(a)(5)(A) of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414(a)(5)(A)) (to obtain financial institution customer records).

''(3) Section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports).

''(4) Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports).

''(5) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).''

CHAPTER 224—PROTECTION OF WITNESSES

Sec.
3521. Witness relocation and protection.
3522. Probationers and parolees.
3523. Civil judgments.
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3525. Victims Compensation Fund.
3526. Cooperation of other Federal agencies and State governments; reimbursement of expenses.
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AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3581, Nov. 29, 1990, 104 Stat. 4929, substituted ''State governments; reimbursement of expenses'' for ''State governments'' in item 3526.

§ 3521. Witness relocation and protection

(a)(1) The Attorney General may provide for the relocation and other protection of a witness or a potential witness for the Federal Government or for a State government in an official proceeding concerning an organized criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding, an offense set forth in chapter 73 of this title directed at the witness, or a State offense that is similar in nature to either such offense, is likely to be committed. The Attorney General may also provide for the

relocation and other protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(2) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General contained in paragraph (1) would be appropriate.

(3) The United States and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide protection under this chapter.

(b)(1) In connection with the protection under this chapter of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may, by regulation—

(A) provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(B) provide housing for the person;

(C) provide for the transportation of household furniture and other personal property to a new residence of the person;

(D) provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such times as the Attorney General determines to be warranted;

(E) assist the person in obtaining employment;

(F) provide other services necessary to assist the person in becoming self-sustaining;

(G) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of State or local law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

(H) protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and

(I) exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the Witness Security Program.

The Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in subparagraph (G).

(2) Deductions shall be made from any payment made to a person pursuant to paragraph (1)(D) to satisfy obligations of that person for family support payments pursuant to a State court order.

(3) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under paragraph (1)(G) shall be fined $5,000 or imprisoned five years, or both.

(c) Before providing protection to any person under this chapter, the Attorney General shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property in the community where the person is to be relocated and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether a person should be provided protection under this chapter, the Attorney General shall consider the person's criminal record, alternatives to providing protection under this chapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, results of psychological examinations, whether providing such protection will substantially infringe upon the relationship between a child who would be relocated in connection with such protection and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide protection to any person under this chapter if the risk of danger to the public, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

(d)(1) Before providing protection to any person under this chapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including—

(A) the agreement of the person, if a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings;

(B) the agreement of the person not to commit any crime;

(C) the agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this chapter;

(D) the agreement of the person to comply with legal obligations and civil judgments against that person;

(E) the agreement of the person to cooperate with all reasonable requests of officers and employees of the Government who are providing protection under this chapter;

(F) the agreement of the person to designate another person to act as agent for the service of process;

(G) the agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(H) the agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under State law, to consent to Federal supervision in accordance with section 3522 of this title; and

(I) the agreement of the person to regularly inform the appropriate program official of the activities and current address of such person.

Each such memorandum of understanding shall also set forth the protection which the Attorney General has determined will be provided to the person under this chapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided protection under this chapter regarding the administration of the program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(2) The Attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person protected under this chapter who is eighteen years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person protected.

(3) The Attorney General may delegate the responsibility initially to authorize protection under this chapter only to the Deputy Attorney General, to the Associate Attorney General, to any Assistant Attorney General in charge of the Criminal Division or National Security Division of the Department of Justice, to the Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice (insofar as the delegation relates to a criminal civil rights case), and to one other officer or employee of the Department of Justice.

(e) If the Attorney General determines that harm to a person for whom protection may be provided under section 3521 of this title is imminent or that failure to provide immediate protection would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary protection to such person under this chapter before making the written assessment and determination required by subsection (c) of this section or entering into the memorandum of understanding required by subsection (d) of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the protection is initiated.

(f) The Attorney General may terminate the protection provided under this chapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (d), or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided protection under this chapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such protection, the Attorney General shall send notice to the person involved of the termination of the protection provided under this chapter and the reasons for the termination. The decision of the Attorney General to terminate such protection shall not be subject to judicial review.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2153; amended Pub. L. 101–647, title XXXV, § 3582, Nov. 29, 1990, 104 Stat. 4929; Pub. L. 105–119, title I, § 115(a)(9), Nov. 26, 1997, 111 Stat. 2467; Pub. L. 109–177, title V, § 506(a)(7), Mar. 9, 2006, 120 Stat. 248.)

AMENDMENTS

2006—Subsec. (d)(3). Pub. L. 109–177 substituted ''to any Assistant Attorney General in charge of the Criminal Division or National Security Division of the Department of Justice'' for ''to the Assistant Attorney General in charge of the Criminal Division of the Department of Justice''.

1997—Subsec. (b)(1)(H), (I). Pub. L. 105–119 added subpar. (H) and redesignated former subpar. (H) as (I).

1990—Subsec. (b)(1). Pub. L. 101–647, § 3582(1), inserted ''(G)'' after ''subparagraph'' in last sentence.

Subsec. (d)(3). Pub. L. 101–647, § 3582(2), inserted ''the'' before ''Civil Rights Division''.

EFFECTIVE DATE

Section 1210 of subpart A (§§ 1207–1210) of part F of chapter XII of title II of Pub. L. 98–473 provided that: ''This subpart and the amendments made by this subpart [see Short Title note below] shall take effect on October 1, 1984.''

SHORT TITLE

Section 1207 of subpart A (§§ 1207–1210) of part F of chapter XII of title II of Pub. L. 98–473 provided that: ''This subpart [enacting this chapter, repealing provisions set out as a note preceding section 3481 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Witness Security Reform Act of 1984'.''

§ 3522. Probationers and parolees

(a) A probation officer may, upon the request of the Attorney General, supervise any person provided protection under this chapter who is on probation or parole under State law, if the State involved consents to such supervision. Any person so supervised shall be under Federal jurisdiction during the period of supervision and shall, during that period be subject to all laws of the United States which pertain to probationers or parolees, as the case may be.

(b) The failure by any person provided protection under this chapter who is supervised under

subsection (a) to comply with the memorandum of understanding entered into by that person pursuant to section 3521(d) of this title shall be grounds for the revocation of probation or parole, as the case may be.

(c) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with respect to a probationer or parolee transferred from State supervision pursuant to this section as they have with respect to an offender convicted in a court of the United States and paroled under chapter 311[1] of this title. The provisions of sections 4201 through 4204, 4205(a), (e), and (h), 4206 through 4215, and 4218[1] of this title shall apply following a revocation of probation or parole under this section.

(d) If a person provided protection under this chapter who is on probation or parole and is supervised under subsection (a) of this section has been ordered by the State court which imposed sentence on the person to pay a sum of money to the victim of the offense involved for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be distributed to the victim.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2157; amended Pub. L. 99–646, § 75, Nov. 10, 1986, 100 Stat. 3618; Pub. L. 100–690, title VII, § 7072(b), Nov. 18, 1988, 102 Stat. 4405.)

REFERENCES IN TEXT

Chapter 311 of this title, referred to in subsec. (c), which consisted of sections 4201 to 4218 of this title, was repealed effective Nov. 1, 1987, by Pub. L. 98–473, title II, §§ 218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, subject to remaining effective for five years after Nov. 1, 1987, in certain circumstances.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 substituted ''4215'' for ''4216''.

1986—Subsec. (a). Pub. L. 99–646 substituted ''probationers or parolees, as the case may be'' for ''parolees''.

§ 3523. Civil judgments

(a) If a person provided protection under this chapter is named as a defendant in a civil cause of action arising prior to or during the period in which the protection is provided, process in the civil proceeding may be served upon that person or an agent designated by that person for that purpose. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served. If a judgment in such action is entered against that person the Attorney General shall determine whether the person has made reasonable efforts to comply with the judgment. The Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the Attorney General determines that the person has not made reasonable efforts to comply with the judgment, the Attorney General may, after considering the danger to the person and upon the request of the person holding the judgment disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure of the identity and location of the person shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery. Any such disclosure or nondisclosure by the Attorney General shall not subject the United States and its officers or employees to any civil liability.

(b)(1) Any person who holds a judgment entered by a Federal or State court in his or her favor against a person provided protection under this chapter may, upon a decision by the Attorney General to deny disclosure of the current identity and location of such protected person, bring an action against the protected person in the United States district court in the district where the person holding the judgment (hereinafter in this subsection referred to as the ''petitioner'') resides. Such action shall be brought within one hundred and twenty days after the petitioner requested the Attorney General to disclose the identity and location of the protected person. The complaint in such action shall contain statements that the petitioner holds a valid judgment of a Federal or State court against a person provided protection under this chapter and that the petitioner sought to enforce the judgment by requesting the Attorney General to disclose the identity and location of the protected person.

(2) The petitioner in an action described in paragraph (1) shall notify the Attorney General of the action at the same time the action is brought. The Attorney General shall appear in the action and shall affirm or deny the statements in the complaint that the person against whom the judgment is allegedly held is provided protection under this chapter and that the petitioner requested the Attorney General to disclose the identity and location of the protected person for the purpose of enforcing the judgment.

(3) Upon a determination (A) that the petitioner holds a judgment entered by a Federal or State court and (B) that the Attorney General has declined to disclose to the petitioner the current identity and location of the protected person against whom the judgment was entered, the court shall appoint a guardian to act on behalf of the petitioner to enforce the judgment. The clerk of the court shall forthwith furnish the guardian with a copy of the order of appointment. The Attorney General shall disclose to the guardian the current identity and location of the protected person and any other information necessary to enable the guardian to carry out his or her duties under this subsection.

(4) It is the duty of the guardian to proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner under the judgment. The guardian shall, however, endeavor to

[1] See References in Text note below.

carry out such enforcement duties in a manner that maximizes, to the extent practicable, the safety and security of the protected person. In no event shall the guardian disclose the new identity or location of the protected person without the permission of the Attorney General, except that such disclosure may be made to a Federal or State court in order to enforce the judgment. Any good faith disclosure made by the guardian in the performance of his or her duties under this subsection shall not create any civil liability against the United States or any of its officers or employees.

(5) Upon appointment, the guardian shall have the power to perform any act with respect to the judgment which the petitioner could perform, including the initiation of judicial enforcement actions in any Federal or State court or the assignment of such enforcement actions to a third party under applicable Federal or State law. The Federal Rules of Civil Procedure shall apply in any action brought under this subsection to enforce a Federal or State court judgment.

(6) The costs of any action brought under this subsection with respect to a judgment, including any enforcement action described in paragraph (5), and the compensation to be allowed to a guardian appointed in any such action shall be fixed by the court and shall be apportioned among the parties as follows: the petitioner shall be assessed in the amount the petitioner would have paid to collect on the judgment in an action not arising under the provisions of this subsection; the protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought under this subsection. In the event that the costs and compensation to the guardian are not met by the petitioner or by the protected person, the court may, in its discretion, enter judgment against the United States for costs and fees reasonably incurred as a result of the action brought under this subsection.

(7) No officer or employee of the Department of Justice shall in any way impede the efforts of a guardian appointed under this subsection to enforce the judgment with respect to which the guardian was appointed.

(c) The provisions of this section shall not apply to a court order to which section 3524 of this title applies.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2157.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3524. Child custody arrangements

(a) The Attorney General may not relocate any child in connection with protection provided to a person under this chapter if it appears that a person other than that protected person has legal custody of that child.

(b) Before protection is provided under this chapter to any person (1) who is a parent of a child of whom that person has custody, and (2) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, the Attorney General shall obtain and examine a copy of such order for the purpose of assuring that compliance with the order can be achieved. If compliance with a visitation order cannot be achieved, the Attorney General may provide protection under this chapter to the person only if the parent being relocated initiates legal action to modify the existing court order under subsection (e)(1) of this section. The parent being relocated must agree in writing before being provided protection to abide by any ensuing court orders issued as a result of an action to modify.

(c) With respect to any person provided protection under this chapter (1) who is the parent of a child who is relocated in connection with such protection and (2) who has obligations to another parent of that child with respect to custody or visitation of that child under a State court order, the Attorney General shall, as soon as practicable after the person and child are so relocated, notify in writing the child's parent who is not so relocated that the child has been provided protection under this chapter. The notification shall also include statements that the rights of the parent not so relocated to visitation or custody, or both, under the court order shall not be infringed by the relocation of the child and the Department of Justice responsibility with respect thereto. The Department of Justice will pay all reasonable costs of transportation and security incurred in insuring that visitation can occur at a secure location as designated by the United States Marshals Service, but in no event shall it be obligated to pay such costs for visitation in excess of thirty days a year, or twelve in number a year. Additional visitation may be paid for, in the discretion of the Attorney General, by the Department of Justice in extraordinary circumstances. In the event that the unrelocated parent pays visitation costs, the Department of Justice may, in the discretion of the Attorney General, extend security arrangements associated with such visitation.

(d)(1) With respect to any person provided protection under this chapter (A) who is the parent of a child who is relocated in connection with such protection and (B) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, an action to modify that court order may be brought by any party to the court order in the District Court for the District of Columbia or in the district court for the district in which the child's parent resides who has not been relocated in connection with such protection.

(2) With respect to actions brought under paragraph (1), the district courts shall establish a procedure to provide a reasonable opportunity for the parties to the court order to mediate their dispute with respect to the order. The court shall provide a mediator for this purpose. If the dispute is mediated, the court shall issue an order in accordance with the resolution of the dispute.

(3) If, within sixty days after an action is brought under paragraph (1) to modify a court order, the dispute has not been mediated, any party to the court order may request arbitration

of the dispute. In the case of such a request, the court shall appoint a master to act as arbitrator, who shall be experienced in domestic relations matters. Rule 53 of the Federal Rules of Civil Procedure shall apply to masters appointed under this paragraph. The court and the master shall, in determining the dispute, give substantial deference to the need for maintaining parent-child relationships, and any order issued by the court shall be in the best interests of the child. In actions to modify a court order brought under this subsection, the court and the master shall apply the law of the State in which the court order was issued or, in the case of the modification of a court order issued by a district court under this section, the law of the State in which the parent resides who was not relocated in connection with the protection provided under this chapter. The costs to the Government of carrying out a court order may be considered in an action brought under this subsection to modify that court order but shall not outweigh the relative interests of the parties themselves and the child.

(4) Until a court order is modified under this subsection, all parties to that court order shall comply with their obligations under that court order subject to the limitations set forth in subsection (c) of this section.

(5) With respect to any person provided protection under this chapter who is the parent of a child who is relocated in connection with such protection, the parent not relocated in connection with such protection may bring an action, in the District Court for the District of Columbia or in the district court for the district in which that parent resides, for violation by that protected person of a court order with respect to custody or visitation of that child. If the court finds that such a violation has occurred, the court may hold in contempt the protected person. Once held in contempt, the protected person shall have a maximum of sixty days, in the discretion of the Attorney General, to comply with the court order. If the protected person fails to comply with the order within the time specified by the Attorney General, the Attorney General shall disclose the new identity and address of the protected person to the other parent and terminate any financial assistance to the protected person unless otherwise directed by the court.

(6) The United States shall be required by the court to pay litigation costs, including reasonable attorneys' fees, incurred by a parent who prevails in enforcing a custody or visitation order; but shall retain the right to recover such costs from the protected person.

(e)(1) In any case in which the Attorney General determines that, as a result of the relocation of a person and a child of whom that person is a parent in connection with protection provided under this chapter, the implementation of a court order with respect to custody or visitation of that child would be substantially impossible, the Attorney General may bring, on behalf of the person provided protection under this chapter, an action to modify the court order. Such action may be brought in the district court for the district in which the parent resides who would not be or was not relocated in connection with the protection provided under this chapter. In an action brought under this paragraph, if the Attorney General establishes, by clear and convincing evidence, that implementation of the court order involved would be substantially impossible, the court may modify the court order but shall, subject to appropriate security considerations, provide an alternative as substantially equivalent to the original rights of the nonrelocating parent as feasible under the circumstances.

(2) With respect to any State court order in effect to which this section applies, and with respect to any district court order in effect which is issued under this section, if the parent who is not relocated in connection with protection provided under this chapter intentionally violates a reasonable security requirement imposed by the Attorney General with respect to the implementation of that court order, the Attorney General may bring an action in the district court for the district in which that parent resides to modify the court order. The court may modify the court order if the court finds such an intentional violation.

(3) The procedures for mediation and arbitration provided under subsection (d) of this section shall not apply to actions for modification brought under this subsection.

(f) In any case in which a person provided protection under this chapter is the parent of a child of whom that person has custody and has obligations to another parent of that child concerning custody and visitation of that child which are not imposed by court order, that person, or the parent not relocated in connection with such protection, may bring an action in the district court of the district in which that parent not relocated resides to obtain an order providing for custody or visitation, or both, of that child. In any such action, all the provisions of subsection (d) of this section shall apply.

(g) In any case in which an action under this section involves court orders from different States with respect to custody or visitation of the same child, the court shall resolve any conflicts by applying the rules of conflict of laws of the State in which the court is sitting.

(h)(1) Subject to paragraph (2), the costs of any action described in subsection (d), (e), or (f) of this section shall be paid by the United States.

(2) The Attorney General shall insure that any State court order in effect to which this section applies and any district court order in effect which is issued under this section are carried out. The Department of Justice shall pay all costs and fees described in subsections (c) and (d) of this section.

(i) As used in this section, the term ''parent'' includes any person who stands in the place of a parent by law.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2159.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3525. Victims Compensation Fund

(a) The Attorney General may pay restitution to, or in the case of death, compensation for the death of any victim of a crime that causes or threatens death or serious bodily injury and that is committed by any person during a period in which that person is provided protection under this chapter.

(b) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a detailed report on payments made under this section for such year.

(c) There are authorized to be appropriated for the fiscal year 1985 and for each fiscal year thereafter, $1,000,000 for payments under this section.

(d) The Attorney General shall establish guidelines and procedures for making payments under this section. The payments to victims under this section shall be made for the types of expenses provided for in section 3579(b)[1] of this title, except that in the case of the death of the victim, an amount not to exceed $50,000 may be paid to the victim's estate. No payment may be made under this section to a victim unless the victim has sought restitution and compensation provided under Federal or State law or by civil action. Such payments may be made only to the extent the victim, or the victim's estate, has not otherwise received restitution and compensation, including insurance payments, for the crime involved. Payments may be made under this section to victims of crimes occurring on or after the date of the enactment of this chapter.[1] In the case of a crime occurring before the date of the enactment of this chapter,[1] a payment may be made under this section only in the case of the death of the victim, and then only in an amount not exceeding $25,000, and such a payment may be made notwithstanding the requirements of the third sentence of this subsection.

(e) Nothing in this section shall be construed to create a cause of action against the United States.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2162.)

REFERENCES IN TEXT

Section 3579(b) of this title, referred to in subsec. (d), was renumbered section 3663(b) of this title by Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of enactment of Pub. L. 98–473, which was approved Oct. 12, 1984.

RESTITUTION TO ESTATE OF VICTIMS KILLED BEFORE OCTOBER 12, 1984; LIMITATION

Pub. L. 99–180, title II, § 200, Dec. 13, 1985, 99 Stat. 1142, provided: "That restitution of not to exceed $25,000 shall be paid to the estate of victims killed before October 12, 1984 as a result of crimes committed by persons who have been enrolled in the Federal witness protection program, if such crimes were committed within two years after protection was terminated, notwithstanding any limitations contained in part (a) of section 3525 of title 18 of the United States Code."

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 303.

[1] See References in Text note below.

§ 3526. Cooperation of other Federal agencies and State governments; reimbursement of expenses

(a) Each Federal agency shall cooperate with the Attorney General in carrying out the provisions of this chapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.

(b) In any case in which a State government requests the Attorney General to provide protection to any person under this chapter—

(1) the Attorney General may enter into an agreement with that State government in which that government agrees to reimburse the United States for expenses incurred in providing protection to that person under this chapter; and

(2) the Attorney General shall enter into an agreement with that State government in which that government agrees to cooperate with the Attorney General in carrying out the provisions of this chapter with respect to all persons.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2162.)

§ 3527. Additional authority of Attorney General

The Attorney General may enter into such contracts or other agreements as may be necessary to carry out this chapter. Any such contract or agreement which would result in the United States being obligated to make outlays may be entered into only to the extent and in such amount as may be provided in advance in an appropriation Act.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2163.)

§ 3528. Definition

For purposes of this chapter, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 98–473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2163.)

CHAPTER 225—VERDICT

Sec.
3531. Return; several defendants; conviction of less offense; poll of jury—Rule.
3532. Setting aside verdict of guilty; judgment notwithstanding verdict—Rule.

§ 3531. Return; several defendants; conviction of less offense; poll of jury—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Verdict to be unanimous; return; several defendants; disagreement; conviction of less offense; poll of jury, Rule 31.

(June 25, 1948, ch. 645, 62 Stat. 837.)

§ 3532. Setting aside verdict of guilty; judgment notwithstanding verdict—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Setting aside verdict of guilty on motion for judgment of acquittal, entering of such judgment, or ordering new trial; absence of verdict, Rule 29(b).

(June 25, 1948, ch. 645, 62 Stat. 837.)

CHAPTER 227—SENTENCES

Subchapter		Sec.[1]
A.	**General Provisions**	**3551**
B.	**Probation**	**3561**
C.	**Fines**	**3571**
D.	**Imprisonment**	**3581**

PRIOR PROVISIONS

A prior chapter 227 (§ 3561 et seq.) was repealed (except sections 3577 to 3580 which were renumbered sections 3661 to 3664, respectively), by Pub. L. 98–473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended, effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. See Effective Date note set out under section 3551 of this title.

Section 3561, act June 25, 1948, ch. 645, 62 Stat. 837, related to judgment form and entry—(Rule).

Section 3562, act June 25, 1948, ch. 645, 62 Stat. 837, related to sentence—(Rule).

Section 3563, act June 25, 1948, ch. 645, 62 Stat. 837, related to corruption of blood or forfeiture of estate.

Section 3564, act June 25, 1948, ch. 645, 62 Stat. 837, related to pillory and whipping.

Section 3565, acts June 25, 1948, ch. 645, 62 Stat. 837; Oct. 12, 1984, Pub. L. 98–473, title II, §§ 235(a)(1), 238(g)(1), (i), 98 Stat. 2031, 2039; Oct. 30, 1984, Pub. L. 98–596, §§ 2, 12(a)(7)(A), (9), (b), 98 Stat. 3134, 3139, 3140; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, related to collection and payment of fines and penalties.

Section 3566, act June 25, 1948, ch. 645, 62 Stat. 837, related to execution of death sentence.

Section 3567, act June 25, 1948, ch. 645, 62 Stat. 838, related to death sentence may prescribe dissection.

Section 3568, acts June 25, 1948, ch. 645, 62 Stat. 838; Sept. 2, 1960, Pub. L. 86–691, § 1(a), 74 Stat. 738; June 22, 1966, Pub. L. 89–465, § 4, 80 Stat. 217, related to effective date of sentence and credit for time in custody prior to the imposition of sentence.

Section 3569, acts June 25, 1948, ch. 645, 62 Stat. 838; Oct. 17, 1968, Pub. L. 90–578, title III, § 301(a)(1), (3), 82 Stat. 1115; Oct. 12, 1984, Pub. L. 98–473, title II, §§ 235(a)(1), 238(h), (i), 98 Stat. 2031, 2039; Oct. 30, 1984, Pub. L. 98–596, §§ 3, 12(a)(8), (9), (b), 98 Stat. 3136, 3139, 3140, related to discharge of indigent prisoner.

Section 3570, act June 25, 1948, ch. 645, 62 Stat. 839, related to presidential remission as affecting unremitted part.

Section 3571, act June 25, 1948, ch. 645, 62 Stat. 839, related to clerical mistakes—(Rule).

Section 3572, act June 25, 1948, ch. 645, 62 Stat. 839, related to correction or reduction of sentence—(Rule).

Section 3573, act June 25, 1948, ch. 645, 62 Stat. 839, related to arrest or setting aside of judgment—(Rule).

Section 3574, act June 25, 1948, ch. 645, 62 Stat. 839, related to stay of execution and supersedeas—(Rule).

Section 3575, added Pub. L. 91–452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 948, related to increased sentence for dangerous special offenders.

Section 3576, added Pub. L. 91–452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 950, related to review of sentence.

Section 3577 renumbered section 3661 of this title.

Section 3578 renumbered section 3662 of this title.

Section 3579 renumbered section 3663 of this title.

Section 3580 renumbered section 3664 of this title.

[1] Editorially supplied.

SUBCHAPTER A—GENERAL PROVISIONS

SUBCHAPTER A—GENERAL PROVISIONS[1]

Sec.	
3551.	Authorized sentences.
3552.	Presentence reports.
3553.	Imposition of a sentence.
3554.	Order of criminal forfeiture.
3555.	Order of notice to victims.
3556.	Order of restitution.
3557.	Review of a sentence.
3558.	Implementation of a sentence.
3559.	Sentencing classification of offenses.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis for this subchapter to follow heading of this subchapter.

§ 3551. Authorized sentences

(a) IN GENERAL.—Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, including sections 13 and 1153 of this title, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

(b) INDIVIDUALS.—An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B;

(2) a fine as authorized by subchapter C; or

(3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(c) ORGANIZATIONS.—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B; or

(2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988; amended Pub. L. 101–647, title XVI, § 1602, Nov. 29, 1990, 104 Stat. 4843.)

REFERENCES IN TEXT

Acts of Congress applicable exclusively in the District of Columbia, referred to in subsec. (a), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (a), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 inserted ''including sections 13 and 1153 of this title,'' after ''any Federal statute,''.

[1] So in original. Probably should not appear.

EFFECTIVE DATE; SAVINGS PROVISION

Section 235 of chapter II (§§ 211–239) of title II of Pub. L. 98–473, as amended by Pub. L. 99–217, §§ 2, 4, Dec. 26, 1985, 99 Stat. 1728; Pub. L. 99–646, § 35, Nov. 10, 1986, 100 Stat. 3599; Pub. L. 100–182, § 2, Dec. 7, 1987, 101 Stat. 1266; Pub. L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056, provided that:

''(a)(1) This chapter [see Tables for classification] shall take effect on the first day of the first calendar month beginning 36 months after the date of enactment [Oct. 12, 1984] and shall apply only to offenses committed after the taking effect of this chapter, except that—

''(A) the repeal of chapter 402 of title 18, United States Code, shall take effect on the date of enactment [Oct. 12, 1984];

''(B)(i) chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act [Oct. 12, 1984] or October 1, 1983, whichever occurs later, and the United States Sentencing Commission shall submit the initial sentencing guidelines promulgated under section 994(a)(1) of title 28 to the Congress within 30 months of the effective date of such chapter 58; and

''(ii) the sentencing guidelines promulgated pursuant to section 994(a)(1) shall not go into effect until—

''(I) the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (B)(i), along with a report stating the reasons for the Commission's recommendations;

''(II) the General Accounting Office [now Government Accountability Office] has undertaken a study of the guidelines, and their potential impact in comparison with the operation of the existing sentencing and parole release system, and has, within one hundred and fifty days of submission of the guidelines, reported to the Congress the results of its study; and

''(III) the day after the Congress has had six months after the date described in subclause (I) in which to examine the guidelines and consider the reports; and

''(IV) section 212(a)(2) [enacting chapters 227 and 229 of this title and repealing former chapters 227, 229, and 231 of this title] takes effect, in the case of the initial sentencing guidelines so promulgated.

''(2) For the purposes of section 992(a) of title 28, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to paragraph (1)(B)(ii).

''(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for five years after the effective date as to an individual who committed an offense or an act of juvenile delinquency before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B):

''(A) Chapter 311 of title 18, United States Code.

''(B) Chapter 309 of title 18, United States Code.

''(C) Sections 4251 through 4255 of title 18, United States Code.

''(D) Sections 5041 and 5042 of title 18, United States Code.

''(E) Sections 5017 through 5020 of title 18, United States Code, as to a sentence imposed before the date of enactment [Oct. 12, 1984].

''(F) The maximum term of imprisonment in effect on the effective date for an offense committed before the effective date.

''(G) Any other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release.

''[(2) Repealed. Pub. L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056.]

''(3) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this Act, pursuant to section 4206 of title 18, United States Code. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

''(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

''(A) released pursuant to a provision listed in paragraph (1); and

''(B)(i) subject to supervision on the day before the expiration of the five-year period following the effective date of this Act; or

''(ii) released on a date set pursuant to paragraph (3);

including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to the individual until the expiration of his sentence, except that the district court shall determine, in accord with the Federal Rules of Criminal Procedure, whether release should be revoked or the conditions of release amended for violation of a condition of release.

''(5) Notwithstanding the provisions of section 991 of title 28, United States Code, and sections 4351 and 5002 of title 18, United States Code, the Chairman of the United States Parole Commission or his designee shall be a member of the National Institute of Corrections, and the Chairman of the United States Parole Commission shall be a member of the Advisory Corrections Council and a nonvoting member of the United States Sentencing Commission, ex officio, until the expiration of the five-year period following the effective date of this Act. Notwithstanding the provisions of section 4351 of title 18, during the five-year period the National Institute of Corrections shall have seventeen members, including seven ex officio members. Notwithstanding the provisions of section 991 of title 28, during the five-year period the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members.''

[Pub. L. 104–232, § 3(b)(2), Oct. 2, 1996, 110 Stat. 3056, provided that: ''Effective on the date the plan [alternative plan by Attorney General for transfer of United States Parole Commission's functions to another entity within Department of Justice pursuant to section 3 of Pub. L. 104–232, set out as a note under section 4201 of this title] takes effect, paragraphs (3) and (4) of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out above] (98 Stat. 2032) are repealed.'']

[Pub. L. 109–76, § 2, Sept. 29, 2005, 119 Stat. 2035, provided that: ''For purposes of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out above] (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to 'eighteen years' or 'eighteen-year period' shall be deemed a reference to '21 years' or '21-year period', respectively.'']

[For purposes of section 235(b) of Pub. L. 98–473, set out above, as it relates to chapter 311 of this title and the Parole Commission, references to ''fifteen years'' or ''fifteen-year period'' are deemed to be references to ''eighteen years'' or ''eighteen-year period'', respectively, see section 11017(a) of Pub. L. 107–273, set out as a note under section 4202 of this title.]

[For purposes of section 235(b) of Pub. L. 98–473, set out above, as it relates to chapter 311 of this title and the Parole Commission, references to ''ten years'' or ''ten-year period'' are deemed to be references to ''fifteen years'' or ''fifteen-year period'', respectively, see section 2(a) of Pub. L. 104–232, set out as a note under section 4201 of this title.]

[Pub. L. 101–650, title III, § 316, Dec. 1, 1990, 104 Stat. 5115, provided that: ''For the purposes of section 235(b) of Public Law 98–473 [set out above] as it relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in

such section to 'five years' or a 'five-year period' shall be deemed a reference to 'ten years' or a 'ten-year period', respectively.'']

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–76, § 1, Sept. 29, 2005, 119 Stat. 2035, provided that: ''This Act [enacting provisions set out as a note under this section and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'United States Parole Commission Extension and Sentencing Commission Authority Act of 2005'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–132, title II, § 201, Apr. 24, 1996, 110 Stat. 1227, provided that: ''This subtitle [subtitle A (§§ 201–211) of title II of Pub. L. 104–132, enacting sections 3613A and 3663A of this title, amending sections 2248, 2259, 2264, 2327, 3013, 3556, 3563, 3572, 3611 to 3613, 3614, 3663, and 3664 of this title and Rule 32 of the Federal Rules of Criminal Procedure set out in the Appendix to this title, and enacting provisions set out as notes under this section, section 2248 of this title, and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Mandatory Victims Restitution Act of 1996'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–182, § 1, Dec. 7, 1987, 101 Stat. 1266, provided that: ''This Act [amending sections 3006A, 3553, 3561, 3563, 3564, 3583, 3663, 3672, 3742, and 4106 of this title, section 994 of Title 28, Judiciary and Judicial Procedure, and sections 504 and 1111 of Title 29, Labor, enacting provisions set out as notes under sections 3006A and 3553 of this title, rule 35 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and section 994 of Title 28, and amending provisions set out as a note under this section] may be cited as the 'Sentencing Act of 1987'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–217, § 1, Dec. 26, 1985, 99 Stat. 1728, provided that: ''This Act [amending section 994 of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under this section] may be cited as the 'Sentencing Reform Amendments Act of 1985'.''

SHORT TITLE

Section 211 of chapter II (§§ 211–239) of title II of Pub. L. 98–473 provided that: ''This chapter [see Tables for classification] may be cited as the 'Sentencing Reform Act of 1984'.''

MANDATORY VICTIM RESTITUTION; PROMULGATION OF REGULATIONS BY ATTORNEY GENERAL

Pub. L. 104–132, title II, § 209, Apr. 24, 1996, 110 Stat. 1240, provided that: ''Not later than 90 days after the date of enactment of this subtitle [Apr. 24, 1996], the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this subtitle [subtitle A (§§ 201–211) of title II of Pub. L. 104–132, see Short Title of 1996 Amendment note set out above] and the amendments made by this subtitle and to ensure that—

''(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

''(2) orders of restitution made pursuant to the amendments made by this subtitle are enforced to the fullest extent of the law.''

SENTENCING OF NONVIOLENT AND NONSERIOUS OFFENDERS; SENSE OF CONGRESS

Section 239 of Pub. L. 98–473 provided that:

''Since, due to an impending crisis in prison overcrowding, available Federal prison space must be treated as a scarce resource in the sentencing of criminal defendants;

''Since, sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society;

''Since, in cases of nonviolent and nonserious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service;

''Since, in the two years preceding the enactment of sentencing guidelines, Federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and nonserious offenders: Now, therefore, be it

''Declared, That it is the sense of the Senate that in the two years preceding the enactment of the sentencing guidelines, Federal judges, in determining the particular sentence to be imposed, consider—

''(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

''(2) the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense; and

''(3) the general appropriateness of imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense.''

§ 3552. Presentence reports

(a) PRESENTENCE INVESTIGATION AND REPORT BY PROBATION OFFICER.—A United States probation officer shall make a presentence investigation of a defendant that is required pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, and shall, before the imposition of sentence, report the results of the investigation to the court.

(b) PRESENTENCE STUDY AND REPORT BY BUREAU OF PRISONS.—If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a misdemeanor or felony, it may order a study of the defendant. The study shall be conducted in the local community by qualified consultants unless the sentencing judge finds that there is a compelling reason for the study to be done by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. The period of the study shall be no more than sixty days. The order shall specify the additional information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 3581(b) for the offense committed. The study shall inquire into such matters as are specified by the court and any other matters that the Bureau of Prisons or the professional consultants believe are pertinent to the factors set forth in section 3553(a). The period of the study may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of the study, or by

the expiration of any extension granted by the court, the United States marshal shall, if the defendant is in custody, return the defendant to the court for final sentencing. The Bureau of Prisons or the professional consultants shall provide the court with a written report of the pertinent results of the study and make to the court whatever recommendations the Bureau or the consultants believe will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau or the consultants concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that they believe are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

(c) PRESENTENCE EXAMINATION AND REPORT BY PSYCHIATRIC OR PSYCHOLOGICAL EXAMINERS.—If the court, before or after its receipt of a report specified in subsection (a) or (b) desires more information than is otherwise available to it as a basis for determining the mental condition of the defendant, the court may order the same psychiatric or psychological examination and report thereon as may be ordered under section 4244(b) of this title.

(d) DISCLOSURE OF PRESENTENCE REPORTS.—The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988; amended Pub. L. 99–646, § 7(a), Nov. 10, 1986, 100 Stat. 3593; Pub. L. 101–647, title XXXVI, § 3625, Nov. 29, 1990, 104 Stat. 4965.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–647 inserted at end "The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed."

1986—Subsec. (b). Pub. L. 99–646, § 7(a)(1), (2), substituted "study shall be" for "study shall take" and inserted ", if the defendant is in custody," after "United States marshal shall".

Subsec. (c). Pub. L. 99–646, § 7(a)(3), substituted "the court may order the same psychiatric or psychological examination and report thereon as may be ordered under section 4244(b) of this title" for "it may order that the defendant undergo a psychiatric or psychological examination and that the court be provided with a written report of the results of the examination pursuant to the provisions of section 4247".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 7(b) of Pub. L. 99–646 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3552 of title 18, United States Code [Nov. 1, 1987]."

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

USE OF CERTAIN TECHNOLOGY TO FACILITATE CRIMINAL CONDUCT

Pub. L. 104–294, title V, § 501, Oct. 11, 1996, 110 Stat. 3497, provided that:

"(a) INFORMATION.—The Administrative Office of the United States courts shall establish policies and procedures for the inclusion in all presentence reports of information that specifically identifies and describes any use of encryption or scrambling technology that would be relevant to an enhancement under section 3C1.1 (dealing with Obstructing or Impeding the Administration of Justice) of the Sentencing Guidelines or to offense conduct under the Sentencing Guidelines.

"(b) COMPILING AND REPORT.—The United States Sentencing Commission shall—

"(1) compile and analyze any information contained in documentation described in subsection (a) relating to the use of encryption or scrambling technology to facilitate or conceal criminal conduct; and

"(2) based on the information compiled and analyzed under paragraph (1), annually report to the Congress on the nature and extent of the use of encryption or scrambling technology to facilitate or conceal criminal conduct."

§ 3553. Imposition of a sentence

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) CHILD CRIMES AND SEXUAL OFFENSES.—

(A)[2] SENTENCING.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in the written order

[1] So in original. The period probably should be a semicolon.

[2] So in original. No subpar. (B) has been enacted.

of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989; amended Pub. L. 99–570, title I, § 1007(a), Oct. 27, 1986, 100 Stat. 3207–7; Pub. L. 99–646, §§ 8(a), 9(a), 80(a), 81(a), Nov. 10, 1986, 100 Stat. 3593, 3619; Pub. L. 100–182, §§ 3, 16(a), 17, Dec. 7, 1987, 101 Stat. 1266, 1269, 1270; Pub. L. 100–690, title VII, § 7102, Nov. 18, 1988, 102 Stat. 4416; Pub. L. 103–322, title VIII, § 80001(a), title XXVIII, § 280001, Sept. 13, 1994, 108 Stat. 1985, 2095; Pub. L. 104–294, title VI, §§ 601(b)(5), (6), (h), Oct. 11, 1996, 110 Stat. 3499, 3500; Pub. L. 107–273, div. B, title IV, § 4002(a)(8), Nov. 2, 2002, 116 Stat. 1807; Pub. L. 108–21, title IV, § 401(a), (c), (j)(5), Apr. 30, 2003, 117 Stat. 667, 669, 673.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

Section 408 of the Controlled Substances Act, referred to in subsec. (f)(4), is classified to section 848 of Title 21, Food and Drugs.

AMENDMENTS

2003—Subsec. (a)(4)(A). Pub. L. 108–21, § 401(j)(5)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or''.

Subsec. (a)(4)(B). Pub. L. 108–21, § 401(j)(5)(B), inserted before semicolon at end '', taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28)''.

Subsec. (a)(5). Pub. L. 108–21, § 401(j)(5)(C), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced;''.

Subsec. (b). Pub. L. 108–21, § 401(a), designated existing provisions as par. (1), inserted par. heading, sub-

[3] So in original.

stituted ''Except as provided in paragraph (2), the court'' for ''The court'', and added par. (2) and concluding provisions.

Subsec. (c). Pub. L. 108–21, § 401(c)(2), (3), in concluding provisions, inserted '', together with the order of judgment and commitment,'' after ''the court's statement of reasons'' and ''and to the Sentencing Commission,'' after ''to the Probation System''.

Subsec. (c)(2). Pub. L. 108–21, § 401(c)(1), substituted ''described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements'' for ''described''.

2002—Subsec. (e). Pub. L. 107–273 inserted ''a'' before ''minimum sentence''.

1996—Subsec. (f). Pub. L. 104–294, § 601(h), amended directory language of Pub. L. 103–322, § 80001(a). See 1994 Amendment note below.

Pub. L. 104–294, § 601(b)(5), in introductory provisions, substituted ''section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963)'' for ''section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 961, 963)''.

Subsec. (f)(4). Pub. L. 104–294, § 601(b)(6), substituted ''section 408 of the Controlled Substances Act'' for ''21 U.S.C. 848''.

1994—Subsec. (a)(4). Pub. L. 103–322, § 280001, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;''.

Subsec. (f). Pub. L. 103–322, § 80001(a), as amended by Pub. L. 104–294, § 601(h), added subsec. (f).

1988—Subsec. (c). Pub. L. 100–690 inserted ''or other appropriate public record'' after ''transcription'' in second sentence and struck out ''clerk of the'' before ''court'' in last sentence.

1987—Subsec. (b). Pub. L. 100–182, § 3(1), (2), substituted ''court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result'' for ''court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result''.

Pub. L. 100–182, § 3(3), inserted after first sentence ''In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.''

Pub. L. 100–182, § 16(a), substituted ''In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.'' for ''In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, the applicable policy statements of the Sentencing Commission, and the purposes of sentencing set forth in subsection (a)(2).''

Subsec. (c)(1). Pub. L. 100–182, § 17, inserted ''and that range exceeds 24 months,''.

1986—Subsec. (a)(7). Pub. L. 99–646, § 81(a), added par. (7).

Subsec. (b). Pub. L. 99–646, § 9(a), inserted provision relating to sentencing in the absence of applicable guidelines.

Subsec. (c). Pub. L. 99–646, § 8(a), substituted ''If the court does not order restitution, or orders only partial restitution'' for ''If the sentence does not include an order of restitution''.

Subsec. (d). Pub. L. 99–646, § 80(a), struck out ''or restitution'' after ''notice'' in heading, and struck out ''or an order of restitution pursuant to section 3556,'' after ''section 3555,'' in introductory text.

Subsec. (e). Pub. L. 99–570 added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 80001(c) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to all sentences imposed on or after the 10th day beginning after the date of enactment of this Act [Sept. 13, 1994].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 8(c) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section and section 3663 of this title] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [Nov. 1, 1987].''

Section 9(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [Nov. 1, 1987].''

Section 80(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [section 212(a)(2) of Pub. L. 98–473, effective Nov. 1, 1987].''

Section 81(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [section 212(a)(2) of Pub. L. 98–473, effective Nov. 1, 1987].''

Section 1007(b) of Pub. L. 99–570 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

REPORT BY ATTORNEY GENERAL

Pub. L. 108–21, title IV, § 401(*l*), Apr. 30, 2003, 117 Stat. 674, provided that:

''(1) DEFINED TERM.—For purposes of this section [amending this section, section 3742 of this title, and section 994 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as a note under section 991 of Title 28, and enacting provisions listed in a table relating to sentencing guidelines set out under section 994 of Title 28], the term 'report described in paragraph (3)' means a report, submitted by the Attorney General, which states in detail the policies and procedures that the Department of Justice has adopted subsequent to the enactment of this Act [Apr. 30, 2003]—

''(A) to ensure that Department of Justice attorneys oppose sentencing adjustments, including down-

ward departures, that are not supported by the facts and the law;

''(B) to ensure that Department of Justice attorneys in such cases make a sufficient record so as to permit the possibility of an appeal;

''(C) to delineate objective criteria, specified by the Attorney General, as to which such cases may warrant consideration of an appeal, either because of the nature or magnitude of the sentencing error, its prevalence in the district, or its prevalence with respect to a particular judge;

''(D) to ensure that Department of Justice attorneys promptly notify the designated Department of Justice component in Washington concerning such adverse sentencing decisions; and

''(E) to ensure the vigorous pursuit of appropriate and meritorious appeals of such adverse decisions.

''(2) REPORT REQUIRED.—

''(A) IN GENERAL.—Not later than 15 days after a district court's grant of a downward departure in any case, other than a case involving a downward departure for substantial assistance to authorities pursuant to section 5K1.1 of the United States Sentencing Guidelines, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing the information described under subparagraph (B).

''(B) CONTENTS.—The report submitted pursuant to subparagraph (A) shall set forth—

''(i) the case;

''(ii) the facts involved;

''(iii) the identity of the district court judge;

''(iv) the district court's stated reasons, whether or not the court provided the United States with advance notice of its intention to depart; and

''(v) the position of the parties with respect to the downward departure, whether or not the United States has filed, or intends to file, a motion for reconsideration.

''(C) APPEAL OF THE DEPARTURE.—Not later than 5 days after a decision by the Solicitor General regarding the authorization of an appeal of the departure, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate that describes the decision of the Solicitor General and the basis for such decision.

''(3) EFFECTIVE DATE.—Paragraph (2) shall take effect on the day that is 91 days after the date of enactment of this Act [Apr. 30, 2003], except that such paragraph shall not take effect if not more than 90 days after the date of enactment of this Act the Attorney General has submitted to the Judiciary Committees of the House of Representatives and the Senate the report described in paragraph (3).''

AUTHORITY TO LOWER A SENTENCE BELOW STATUTORY MINIMUM FOR OLD OFFENSES

Section 24 of Pub. L. 100–182 provided that: ''Notwithstanding section 235 of the Comprehensive Crime Control Act of 1984 [section 235 of Pub. L. 98–473, set out as a note under section 3551 of this title]—

''(1) section 3553(e) of title 18, United States Code;

''(2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act [set out in the Appendix to this title]; and

''(3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code,

shall apply in the case of an offense committed before the taking effect of such guidelines.''

§ 3554. Order of criminal forfeiture

The court, in imposing a sentence on a defendant who has been found guilty of an offense described in section 1962 of this title or in title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant forfeit property to the United States in accordance with the provisions of section 1963 of this title or section 413 of the Comprehensive Drug Abuse and Control Act of 1970.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1990.)

REFERENCES IN TEXT

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in text, is Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended. Title II of this Act, known as the Controlled Substances Act, is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Title III of this Act, known as the Controlled Substances Import and Export Act, is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. Section 413 of this Act is classified to section 853 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under sections 801 and 951 of Title 21 and Tables.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3555. Order of notice to victims

The court, in imposing a sentence on a defendant who has been found guilty of an offense involving fraud or other intentionally deceptive practices, may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant give reasonable notice and explanation of the conviction, in such form as the court may approve, to the victims of the offense. The notice may be ordered to be given by mail, by advertising in designated areas or through designated media, or by other appropriate means. In determining whether to require the defendant to give such notice, the court shall consider the factors set forth in section 3553(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense, and shall not require the defendant to bear the costs of notice in excess of $20,000.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991; amended Pub. L. 99–646, § 20(b), Nov. 10, 1986, 100 Stat. 3596; Pub. L. 104–132, title II, § 202, Apr. 24, 1996, 110 Stat. 1227.)

AMENDMENTS

1996—Pub. L. 104–132 substituted ''shall order restitution'' for ''may order restitution'' and ''section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section'' for ''sections 3663 and 3664''.

1986—Pub. L. 99–646 substituted ''may order restitution in accordance with sections 3663 and 3664'' for ''under this title, or an offense under section 902(h), (i), (j), or (n) of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant make restitution to any victim of the offense in accordance with the provisions of sections 3663 and 3664''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 20(c) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section and section 3663 of this title] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [section 212(a)(2) of Pub. L. 98–473, effective Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3557. Review of a sentence

The review of a sentence imposed pursuant to section 3551 is governed by the provisions of section 3742.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3558. Implementation of a sentence

The implementation of a sentence imposed pursuant to section 3551 is governed by the provisions of chapter 229.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3559. Sentencing classification of offenses

(a) CLASSIFICATION.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) EFFECT OF CLASSIFICATION.—Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) IMPRISONMENT OF CERTAIN VIOLENT FELONS.—

(1) MANDATORY LIFE IMPRISONMENT.—Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''assault with intent to commit rape'' means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term ''arson'' means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term ''extortion'' means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term ''firearms use'' means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term ''kidnapping'' means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term ''serious violent felony'' means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term ''State'' means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term ''serious drug offense'' means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) NONQUALIFYING FELONIES.—

(A) ROBBERY IN CERTAIN CASES.—Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) ARSON IN CERTAIN CASES.—Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) INFORMATION FILED BY UNITED STATES ATTORNEY.—The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed to preclude imposition of the death penalty.

(6) SPECIAL PROVISION FOR INDIAN COUNTRY.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) RESENTENCING UPON OVERTURNING OF PRIOR CONVICTION.—If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

(A) the victim of the offense has not attained the age of 14 years;

(B) the victim dies as a result of the offense; and

(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

(2) EXCEPTION.—With respect to a person convicted of a Federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the Federal Sentencing Guidelines and the policy statements of the Federal Sentencing Commission pursuant to section 994(p) of title 28, or for other good cause.

(e) MANDATORY LIFE IMPRISONMENT FOR REPEATED SEX OFFENSES AGAINST CHILDREN.—

(1) IN GENERAL.—A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

(2) DEFINITIONS.—For the purposes of this subsection—

(A) the term ''Federal sex offense'' means an offense under section 1591 (relating to sex trafficking of children), 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors);

(B) the term ''State sex offense'' means an offense under State law that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title—

(i) the offense involved interstate or foreign commerce, or the use of the mails; or

(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151);

(C) the term ''prior sex conviction'' means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State sex offense;

(D) the term ''minor'' means an individual who has not attained the age of 17 years; and

(E) the term ''State'' has the meaning given that term in subsection (c)(2).

(3) NONQUALIFYING FELONIES.—An offense described in section 2422(b) or 2423(a) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

(C) no sexual act or activity occurred.

(f) MANDATORY MINIMUM TERMS OF IMPRISONMENT FOR VIOLENT CRIMES AGAINST CHILDREN.—A person who is convicted of a Federal offense that is a crime of violence against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

(1) if the crime of violence is murder, be imprisoned for life or for any term of years not less than 30, except that such person shall be punished by death or life imprisonment if the circumstances satisfy any of subparagraphs (A) through (D) of section 3591(a)(2) of this title;

(2) if the crime of violence is kidnapping (as defined in section 1201) or maiming (as defined in section 114), be imprisoned for life or any term of years not less than 25; and

(3) if the crime of violence results in serious bodily injury (as defined in section 1365), or if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 10.

(g)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

(2) As used in this section—

(A) the term ''falsely registers'' means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term ''domain name'' has the meaning given that term is[1] section 45 of the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'' approved July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1127).

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991; amended Pub. L. 100–185, § 5, Dec. 11, 1987, 101 Stat. 1279; Pub. L. 100–690, title VII, § 7041, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 103–322, title VII, § 70001, Sept. 13, 1994, 108 Stat. 1982; Pub. L. 105–314, title V, § 501, Oct. 30, 1998, 112 Stat. 2980; Pub. L. 105–386, § 1(b), Nov. 13, 1998, 112 Stat. 3470; Pub. L. 108–21, title I, § 106(a), Apr. 30, 2003, 117 Stat. 654; Pub. L. 108–482, title II, § 204(a), Dec. 23, 2004, 118 Stat. 3917; Pub. L. 109–248, title II, §§ 202, 206(c), July 27, 2006, 120 Stat. 612, 614.)

AMENDMENTS

2006—Subsec. (e)(2)(A). Pub. L. 109–248, § 206(c), inserted ''1591 (relating to sex trafficking of children),'' after ''under section''.

Subsecs. (f), (g). Pub. L. 109–248, § 202, added subsec. (f) and redesignated former subsec. (f) as (g).

2004—Subsec. (f). Pub. L. 108–482 added subsec. (f).

2003—Subsec. (e). Pub. L. 108–21 added subsec. (e).

1998—Subsec. (c)(2)(F)(i). Pub. L. 105–386 inserted ''firearms possession (as described in section 924(c));'' after ''firearms use;''.

Subsec. (d). Pub. L. 105–314 added subsec. (d).

1994—Subsec. (b). Pub. L. 103–322, § 70001(1), substituted ''Except as provided in subsection (c), an'' for ''An''.

Subsec. (c). Pub. L. 103–322, § 70001(2), added subsec. (c).

[1] So in original. Probably should be ''in''.

1988—Subsec. (a). Pub. L. 100–690, § 7041(a)(1), substituted ''classified if the maximum term of imprisonment authorized is—'' for ''classified—

''(1) if the maximum term of imprisonment authorized is—''.

Subsec. (a)(1) to (9). Pub. L. 100–690, § 7041(a)(2), (b), redesignated subpars. (A) to (I) as pars. (1) to (9), respectively, and substituted ''twenty-five'' for ''twenty'' in pars. (2) and (3).

1987—Subsec. (b). Pub. L. 100–185 substituted '', except that the maximum term of imprisonment is the term authorized by the law describing the offense.'' for ''except that:

''(1) the maximum fine that may be imposed is the fine authorized by the statute describing the offense, or by this chapter, whichever is the greater; and

''(2) the maximum term of imprisonment is the term authorized by the statute describing the offense.''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

SUBCHAPTER B—PROBATION

SUBCHAPTER B—PROBATION[1]

Sec.
3561. Sentence of probation.
3562. Imposition of a sentence of probation.
3563. Conditions of probation.
3564. Running of a term of probation.
3565. Revocation of probation.
3566. Implementation of a sentence of probation.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis for this subchapter to follow heading for this subchapter.

§ 3561. Sentence of probation

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

(1) the offense is a Class A or Class B felony and the defendant is an individual;

(2) the offense is an offense for which probation has been expressly precluded; or

(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense that is not a petty offense.

(b) DOMESTIC VIOLENCE OFFENDERS.—A defendant who has been convicted for the first time of a domestic violence crime shall be sentenced to a term of probation if not sentenced to a term of imprisonment. The term ''domestic violence crime'' means a crime of violence for which the defendant may be prosecuted in a court of the United States in which the victim or intended victim is the spouse, former spouse, intimate partner, former intimate partner, child, or former child of the defendant, or any other relative of the defendant.

(c) AUTHORIZED TERMS.—The authorized terms of probation are—

(1) for a felony, not less than one nor more than five years;

(2) for a misdemeanor, not more than five years; and

(3) for an infraction, not more than one year.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992; amended Pub. L. 99–646, § 10(a), Nov. 10, 1986, 100 Stat. 3593; Pub. L. 100–182, § 7, Dec. 7, 1987, 101 Stat. 1267; Pub. L. 103–322, title XXVIII, § 280004, title XXXII, § 320921(a), Sept. 13, 1994, 108 Stat. 2096, 2130; Pub. L. 104–294, title VI, § 604(c)(1), Oct. 11, 1996, 110 Stat. 3509.)

PRIOR PROVISIONS

For a prior section 3561, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 struck out ''or any relative defendant, child, or former child of the defendant,'' before ''or any other relative of the defendant''.

1994—Subsec. (a)(3). Pub. L. 103–322, § 280004, inserted before period at end ''that is not a petty offense''.

Subsecs. (b), (c). Pub. L. 103–322, § 320921(a), added subsec. (b) and redesignated former subsec. (b) as (c).

1987—Subsec. (a)(1). Pub. L. 100–182 inserted ''and the defendant is an individual'' after ''Class B felony''.

1986—Subsec. (a). Pub. L. 99–646 struck out at end ''The liability of a defendant for any unexecuted fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 10(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3561(a) [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3562. Imposition of a sentence of probation

(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF PROBATION.—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.

(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence of probation can subsequently be—

(1) modified or revoked pursuant to the provisions of section 3564 or 3565;

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

[1] So in original. Probably should not appear.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992; amended Pub. L. 101–647, title XXXV, § 3583, Nov. 29, 1990, 104 Stat. 4930.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3562, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101–647 inserted ''of the Federal Rules of Criminal Procedure'' after ''rule 35''.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3563. Conditions of probation

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13), unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b);

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance;

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant;

(5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant;

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

(B) pay the assessment imposed in accordance with section 3013;

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments;

(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

(b) DISCRETIONARY CONDITIONS.—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

(1) support his dependents and meet other family responsibilities;

(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));

(3) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

(4) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

(5) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

(6) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(7) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(8) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(9) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

(10) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation;

(11) reside at, or participate in the program of, a community corrections facility (includ-

ing a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;

(12) work in community service as directed by the court;

(13) reside in a specified place or area, or refrain from residing in a specified place or area;

(14) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(15) report to a probation officer as directed by the court or the probation officer;

(16) permit a probation officer to visit him at his home or elsewhere as specified by the court;

(17) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

(18) notify the probation officer promptly if arrested or questioned by a law enforcement officer;

(19) remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration;

(20) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living;

(21) be ordered deported by a United States district court, or United States magistrate judge, pursuant to a stipulation entered into by the defendant and the United States under section 238(d)(5) of the Immigration and Nationality Act, except that, in the absence of a stipulation, the United States district court or a United States magistrate judge, may order deportation as a condition of probation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable;

(22) satisfy such other conditions as the court may impose or;[1]

(23) if required to register under the Sex Offender Registration and Notification Act, submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(c) MODIFICATIONS OF CONDITIONS.—The court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.

(d) WRITTEN STATEMENT OF CONDITIONS.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(e) RESULTS OF DRUG TESTING.—The results of a drug test administered in accordance with subsection (a)(5) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with subsection (a)(5).

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1993; amended Pub. L. 99–646, §§ 11(a), 12(a), Nov. 10, 1986, 100 Stat. 3594; Pub. L. 100–182, §§ 10, 18, Dec. 7, 1987, 101 Stat. 1267, 1270; Pub. L. 100–690, title VII, §§ 7086, 7110, 7303(a)(1), 7305(a), Nov. 18, 1988, 102 Stat. 4408, 4419, 4464, 4465; Pub. L. 101–647, title XXXV, § 3584, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 102–521, § 3, Oct. 25, 1992, 106 Stat. 3404; Pub. L. 103–322, title II, § 20414(b), title XXVIII, § 280002, title XXXII, § 320921(b), Sept. 13, 1994, 108 Stat. 1830, 2096, 2130; Pub. L. 104–132, title II, § 203, Apr. 24, 1996, 110 Stat. 1227; Pub. L. 104–208, div. C, title III, §§ 308(g)(10)(E), 374(b), Sept. 30, 1996, 110 Stat. 3009–625, 3009–647; Pub. L. 104–294, title VI, § 601(k), Oct. 11, 1996, 110 Stat. 3501; Pub. L. 105–119, title I, § 115(a)(8)(B)(i)–(iii), Nov. 26, 1997, 111 Stat. 2465; Pub. L. 106–546, § 7(a), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 107–273, div. B, title IV, § 4002(c)(1), (e)(12), Nov. 2, 2002, 116 Stat. 1808, 1811; Pub. L. 109–248, title I, § 141(d), title II, § 210(a), July 27, 2006, 120 Stat. 603, 615.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsecs. (a)(8) and (b)(23), is title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (a)(9), is classified to

[1] So in original. Probably should be "; or".

section 14135a of Title 42, The Public Health and Welfare.

Section 238(d)(5) of the Immigration and Nationality Act, referred to in subsec. (b)(21), is classified to section 1228(d)(5) of Title 8, Aliens and Nationality.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3563, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

2006—Subsec. (a)(8). Pub. L. 109–248, § 141(d), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994); and''.

Subsec. (b)(21). Pub. L. 109–248, § 210(a)(1), which directed amendment of par. (21) by striking ''or'', was executed by striking ''or'' at the end of the par. to reflect the probable intent of Congress.

Subsec. (b)(22). Pub. L. 109–248, § 210(a)(2), substituted ''or;'' for period at end.

Subsec. (b)(23). Pub. L. 109–248, § 210(a)(3), added par. (23).

2002—Subsec. (a). Pub. L. 107–273, § 4002(e)(12)(A), made technical correction to directory language of Pub. L. 105–119, § 115(a)(8)(B)(i). See 1997 Amendment note below.

Subsec. (a)(3) to (5). Pub. L. 107–273, § 4002(c)(1), repealed Pub. L. 104–294, § 601(k)(1), (2). See 1996 Amendment notes below.

Subsec. (e). Pub. L. 107–273, § 4002(e)(12)(B), made technical correction to directory language of Pub. L. 107–273, § 115(a)(8)(B)(ii). See 1997 Amendment note below.

2000—Subsec. (a)(9). Pub. L. 106–546 added par. (9).

1997—Subsec. (a). Pub. L. 105–119, § 115(a)(8)(B)(i), as amended by Pub. L. 107–273, § 4002(e)(12)(A), struck out at end ''The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4).'' and inserted these provisions at the end of this section.

Subsec. (a)(6), (7). Pub. L. 105–119, § 115(a)(8)(B)(iii)(I), made technical amendment to place pars. (6) and (7) in numerical order immediately after par. (5).

Subsec. (a)(8). Pub. L. 105–119, § 115(a)(8)(B)(iii)(II)–(IV), added par. (8).

Subsec. (e). Pub. L. 105–119, § 115(a)(8)(B)(ii), as amended by Pub. L. 107–273, § 4002(e)(12)(B), designated provisions which were struck out from the concluding provisions of subsec. (a) and inserted at the end of this section by Pub. L. 105–119, § 115(a)(8)(B)(i), as amended, as subsec. (e), inserted subsec. heading, and substituted ''subsection (a)(5)'' for ''paragraph (4)'' in two places.

1996—Subsec. (a)(3). Pub. L. 104–294, § 601(k)(2)(A), which could not be executed due to prior amendment by Pub. L. 104–132, § 203(1)(A), was repealed by Pub. L. 107–273, § 4002(c)(1). See below.

Pub. L. 104–132, § 203(1)(A), struck out ''and'' at end of par. (3).

Subsec. (a)(4), (5). Pub. L. 104–294, § 601(k)(3), transferred pars. (4) and (5) to appear in numerical order.

Pub. L. 104–294, § 601(k)(1), (2)(B), which could not be executed due to prior amendment by Pub. L. 104–132, § 203(1)(B)–(D), was repealed by Pub. L. 107–273, § 4002(c)(1). See below.

Pub. L. 104–132, § 203(1)(B)–(D), redesignated second par. (4), relating to conditions of probation concerning drug use and testing, as (5), and substituted semicolon for period at end of pars. (4) and (5).

Subsec. (a)(6), (7). Pub. L. 104–132, § 203(1)(E), added pars. (6) and (7).

Subsec. (b)(2). Pub. L. 104–132, § 203(2)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''make restitution to a victim of the offense under sections 3663 and 3664 (but not subject to the limitations of section 3663(a));''.

Pub. L. 104–132, § 203(2)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''pay a fine imposed pursuant to the provisions of subchapter C;''.

Subsec. (b)(3) to (20). Pub. L. 104–132, § 203(2)(B), redesignated pars. (4) to (21) as (3) to (20), respectively. Former par. (3) redesignated (2).

Subsec. (b)(21). Pub. L. 104–208, § 374(b), added par. (21). Former par. (21) redesignated (22).

Pub. L. 104–208, § 308(g)(10)(E), substituted ''238(d)(5)'' for ''242A(d)(5)''.

Pub. L. 104–132, § 203(2)(B), redesignated par. (22) as (21). Former par. (21) redesignated (20).

Subsec. (b)(22). Pub. L. 104–208, § 374(b), redesignated par. (21) as (22).

Pub. L. 104–132, § 203(b)(2), redesignated par. (22) as (21).

1994—Subsec. (a). Pub. L. 103–322, § 20414(b)(4), inserted at end of concluding provisions ''The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4).''

Subsec. (a)(2). Pub. L. 103–322, §§ 20414(b)(1), 320921(b)(1), amended par. (2) identically, striking out ''and'' at end.

Subsec. (a)(3). Pub. L. 103–322, § 280002, substituted ''unlawfully possess a controlled substance'' for ''possess illegal controlled substances''.

Pub. L. 103–322, §§ 20414(b)(2), 320921(b)(2), amended par. (3) identically, substituting ''; and'' for period at end.

Subsec. (a)(4). Pub. L. 103–322, § 320921(b)(3), added par. (4) relating to attendance at a rehabilitation program in the case of conviction of a domestic violence crime.

Pub. L. 103–322, § 20414(b)(3), added at end of subsec. (a) par. (4) relating to conditions of probation concerning drug use and testing.

1992—Subsec. (b)(21), (22). Pub. L. 102–521 added par. (21) and redesignated former par. (21) as (22).

1990—Subsec. (a). Pub. L. 101–647, § 3584(1), substituted ''defendant'' for ''defendent'' in last sentence.

Subsec. (b)(3). Pub. L. 101–647, § 3584(2), substituted ''under sections 3663 and 3664'' for ''pursuant to the provisions of section 3663 and 3664'' and ''section 3663(a)'' for ''3663(a)''.

1988—Subsec. (a)(2). Pub. L. 100–690, § 7086, inserted '', unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b)''.

Subsec. (a)(3). Pub. L. 100–690, § 7303(a)(1), added par. (3).

Subsec. (b)(3). Pub. L. 100–690, § 7110, substituted ''3663 and 3664 (but not subject to the limitations of 3663(a))'' for ''3556''.

Subsec. (b)(20), (21). Pub. L. 100–690, § 7305(a), added par. (20) and redesignated former par. (20) as (21).

1987—Subsec. (b)(12). Pub. L. 100–182, § 18, inserted ''(including a facility maintained or under contract to the Bureau of Prisons)'' after ''facility''.

Subsec. (c). Pub. L. 100–182, § 10, struck out comma after ''The court may'' and substituted ''the modification of probation and'' for ''revocation or modification of probation''.

1986—Subsec. (b)(11). Pub. L. 99–646, § 11(a), struck out ''in section 3581(b)'' after ''the offense''.

Subsec. (c). Pub. L. 99–646, § 12(a), struck out '', after a hearing'' after ''court may'' and inserted ''the provisions of the Federal Rules of Criminal Procedure relating to revocation or modification of probation'' after ''pursuant to''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

Pub. L. 107–273, div. B, title IV, § 4002(e)(12), Nov. 2, 2002, 116 Stat. 1811, provided that the amendment made by section 4002(e)(12) is effective Nov. 26, 1997.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(10)(E) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7303(d) of Pub. L. 100–690 provided that: ''The amendments made by this section [amending this section and sections 3565, 3583, 4209, and 4214 of this title] shall apply with respect to persons whose probation, supervised release, or parole begins after December 31, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3563(b)(11) [Nov. 1, 1987].''

Section 12(c)(1) of Pub. L. 99–646 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the taking effect of such section 3563(c) [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3564. Running of a term of probation

(a) COMMENCEMENT.—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) CONCURRENCE WITH OTHER SENTENCES.—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.

(c) EARLY TERMINATION.—The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

(d) EXTENSION.—The court may, after a hearing, extend a term of probation, if less than the maximum authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

(e) SUBJECT TO REVOCATION.—A sentence of probation remains conditional and subject to revocation until its expiration or termination.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1994; amended Pub. L. 99–646, § 13(a), Nov. 10, 1986, 100 Stat. 3594; Pub. L. 100–182, § 11, Dec. 7, 1987, 101 Stat. 1268.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3564, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–182 inserted '', pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation,'' after ''may''.

1986—Subsec. (b). Pub. L. 99–646 substituted provision that the term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days, for provision that the term of probation does not run during any period in which the defendant is imprisoned for a period of at least thirty consecutive days in connection with a conviction for a Federal, State, or local crime.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 13(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of such section 3564 [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3565. Revocation of probation

(a) CONTINUATION OR REVOCATION.—If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable—

(1) continue him on probation, with or without extending the term or modifying or enlarging the conditions; or

(2) revoke the sentence of probation and resentence the defendant under subchapter A.

(b) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR REFUSAL TO COMPLY WITH DRUG TESTING.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing, thereby violating the condition imposed by section 3563(a)(4);[1] or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.

(c) DELAYED REVOCATION.—The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995; amended Pub. L. 100–690, title VI, § 6214, title VII, § 7303(a)(2), Nov. 18, 1988, 102 Stat. 4361, 4464; Pub. L. 101–647, title XXXV, § 3585, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 103–322, title XI, § 110506, Sept. 13, 1994, 108 Stat. 2017; Pub. L. 107–273, div. B, title II, § 2103(a), Nov. 2, 2002, 116 Stat. 1793.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Section 3563(a)(4), referred to in subsec. (b)(3), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub. L. 103–322, which was renumbered par. (5) by Pub. L. 104–132, title II, § 203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

PRIOR PROVISIONS

For a prior section 3565, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–273 added par. (4).

1994—Subsec. (a). Pub. L. 103–322, § 110506(a)(2), struck out concluding sentence which read as follows: ''Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.''

Subsec. (a)(2). Pub. L. 103–322, § 110506(a)(1), substituted ''resentence the defendant under subchapter A'' for ''impose any other sentence that was available under subchapter A at the time of the initial sentencing''.

Subsec. (b). Pub. L. 103–322, § 110506(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.''

1990—Subsec. (a)(1). Pub. L. 101–647 substituted ''or modifying'' for ''of modifying''.

1988—Subsec. (a). Pub. L. 100–690, § 7303(a)(2), inserted at end ''Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.''

Subsecs. (b), (c). Pub. L. 100–690, § 6214, added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(a)(2) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this sec-

[1] See References in Text note below.

tion, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3566. Implementation of a sentence of probation

The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

PRIOR PROVISIONS

For prior sections 3566 to 3570, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

SUBCHAPTER C—FINES

SUBCHAPTER C—FINES[1]

Sec.
3571. Sentence of fine.
3572. Imposition of a sentence of fine and related matters.
3573. Petition of the Government for modification or remission.
3574. Implementation of a sentence of fine.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis for this subchapter to follow heading for this subchapter.

1990—Pub. L. 101–647, title XXXV, § 3586(1), Nov. 29, 1990, 104 Stat. 4930, as amended, effective as of the date on which section 3586(1) of Pub. L. 101–647 took effect, by Pub. L. 103–322, title XXXIII, § 330011(n), Sept. 13, 1994, 108 Stat. 2145, substituted ''sentence of fine and related matters'' for ''sentence of fine'' in item 3572.

Pub. L. 101–647, title XXXV, § 3586(2), Nov. 29, 1990, 104 Stat. 4930, substituted ''remission'' for ''revision'' in item 3573.

1987—Pub. L. 100–185, § 8(b), Dec. 11, 1987, 101 Stat. 1282, substituted ''Petition of the Government for modification or revision'' for ''Modification or remission of fine'' in item 3573.

§ 3571. Sentence of fine

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) FINES FOR INDIVIDUALS.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $250,000;

(4) for a misdemeanor resulting in death, not more than $250,000;

(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

(7) for an infraction, not more than $5,000.

(c) FINES FOR ORGANIZATIONS.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (d) of this section;

(3) for a felony, not more than $500,000;

(4) for a misdemeanor resulting in death, not more than $500,000;

(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

(7) for an infraction, not more than $10,000.

(d) ALTERNATIVE FINE BASED ON GAIN OR LOSS.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) SPECIAL RULE FOR LOWER FINE SPECIFIED IN SUBSTANTIVE PROVISION.—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995; amended Pub. L. 100–185, § 6, Dec. 11, 1987, 101 Stat. 1280.)

PRIOR PROVISIONS

For a prior section 3571, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1987—Pub. L. 100–185 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3572. Imposition of a sentence of fine and related matters

(a) FACTORS TO BE CONSIDERED.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

(1) the defendant's income, earning capacity, and financial resources;

(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

(3) any pecuniary loss inflicted upon others as a result of the offense;

[1] So in original. Probably should not appear.

(4) whether restitution is ordered or made and the amount of such restitution;

(5) the need to deprive the defendant of illegally obtained gains from the offense;

(6) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;

(7) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(8) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) FINE NOT TO IMPAIR ABILITY TO MAKE RESTITUTION.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, other than the United States, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

(c) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

(1) modified or remitted under section 3573;

(2) corrected under rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

(d) TIME, METHOD OF PAYMENT, AND RELATED ITEMS.—(1) A person sentenced to pay a fine or other monetary penalty, including restitution, shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule.

(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(e) ALTERNATIVE SENTENCE PRECLUDED.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

(f) RESPONSIBILITY FOR PAYMENT OF MONETARY OBLIGATION RELATING TO ORGANIZATION.—If a sentence includes a fine, special assessment, restitution or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

(g) SECURITY FOR STAYED FINE.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

(3) restrain the defendant from transferring or dissipating assets.

(h) DELINQUENCY.—A fine or payment of restitution is delinquent if a payment is more than 30 days late.

(i) DEFAULT.—A fine or payment of restitution is in default if a payment is delinquent for more than 90 days. Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995; amended Pub. L. 100–185, § 7, Dec. 11, 1987, 101 Stat. 1280; Pub. L. 101–647, title XXXV, § 3587, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 103–322, title II, § 20403(a), Sept. 13, 1994, 108 Stat. 1825; Pub. L. 104–132, title II, § 207(b), Apr. 24, 1996, 110 Stat. 1236.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

PRIOR PROVISIONS

For a prior section 3572, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–132, § 207(b)(1), inserted ''other than the United States,'' after ''offense,''.

Subsec. (d). Pub. L. 104–132, § 207(b)(2)(A), (B), substituted ''(1) A person sentenced to pay a fine or other monetary penalty, including restitution,'' for ''A person sentenced to pay a fine or other monetary penalty'' and struck out at end ''If the judgment permits other than immediate payment, the period provided for shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense.''

Subsec. (d)(2), (3). Pub. L. 104–132, § 207(b)(2)(C), added pars. (2) and (3).

Subsec. (f). Pub. L. 104–132, § 207(b)(3), inserted ''restitution'' after ''special assessment,''.

Subsec. (h). Pub. L. 104–132, § 207(b)(4), inserted ''or payment of restitution'' after ''A fine''.

Subsec. (i). Pub. L. 104–132, § 207(b)(5), inserted ''or payment of restitution'' after ''A fine'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.''

1994—Subsec. (a)(6) to (8). Pub. L. 103–322 added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1990—Subsec. (c)(2). Pub. L. 101–647 inserted ''of the Federal Rules of Criminal Procedure'' after ''rule 35''.

1987—Pub. L. 100–185 inserted ''and related matters'' in section catchline and amended text generally, revising and restating as subsecs. (a) to (i) provisions formerly contained in subsecs. (a) to (j).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3573. Petition of the Government for modification or remission

Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

(1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;

(2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or

(3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court. This section shall apply to all fines and assessments irrespective of the date of imposition.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997; amended Pub. L. 100–185, § 8(a), Dec. 11, 1987, 101 Stat. 1282; Pub. L. 100–690, title VII, § 7082(a), Nov. 18, 1988, 102 Stat. 4407.)

PRIOR PROVISIONS

For a prior section 3573, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

AMENDMENTS

1988—Pub. L. 100–690 inserted at end ''This section shall apply to all fines and assessments irrespective of the date of imposition.''

1987—Pub. L. 100–185 substituted ''Petition of the Government for modification or remission'' for ''Modification or remission of fine'' in section catchline and amended text generally, revising and restating as a single paragraph with three numbered clauses provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3574. Implementation of a sentence of fine

The implementation of a sentence to pay a fine is governed by the provisions of subchapter B of chapter 229.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997.)

PRIOR PROVISIONS

For prior sections 3574 to 3580, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

SUBCHAPTER D—IMPRISONMENT

SUBCHAPTER D—IMPRISONMENT[1]

Sec.
3581. Sentence of imprisonment.
3582. Imposition of a sentence of imprisonment.
3583. Inclusion of a term of supervised release after imprisonment.
3584. Multiple sentences of imprisonment.
3585. Calculation of a term of imprisonment.
3586. Implementation of a sentence of imprisonment.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis of this subchapter to follow heading for this subchapter.

§ 3581. Sentence of imprisonment

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) AUTHORIZED TERMS.—The authorized terms of imprisonment are—

(1) for a Class A felony, the duration of the defendant's life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than six years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3582. Imposition of a sentence of imprisonment

(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term,

[1] So in original. Probably should not appear.

shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998; amended Pub. L. 100–690, title VII, § 7107, Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101–647, title XXXV, § 3588, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 103–322, title VII, § 70002, Sept. 13, 1994, 108 Stat. 1984; Pub. L. 104–294, title VI, § 604(b)(3), Oct. 11, 1996, 110 Stat. 3506; Pub. L. 107–273, div. B, title III, § 3006, Nov. 2, 2002, 116 Stat. 1806.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), are set out in the Appendix to this title.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (d), is Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to chapter 13 (§ 801 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

2002—Subsec. (c)(1)(A). Pub. L. 107–273 inserted ''(and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)'' after ''may reduce the term of imprisonment'' in introductory provisions.

1996—Subsec. (c)(1)(A)(i). Pub. L. 104–294 inserted ''or'' after semicolon at end.

1994—Subsec. (c)(1)(A). Pub. L. 103–322, inserted a dash after ''if it finds that'', designated ''extraordinary and compelling reasons warrant such a reduction'' as cl. (i), inserted a semicolon at end of cl. (i), realigned margins accordingly, and added cl. (ii) before concluding provisions.

1990—Subsec. (b)(2). Pub. L. 101–647 inserted ''of the Federal Rules of Criminal Procedure'' after ''rule 35''.

1988—Subsec. (c)(2). Pub. L. 100–690 substituted ''994(*o*)'' for ''994(n)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) IN GENERAL.—The court, in imposing a sentence to a term of imprisonment for a felony or

a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) AUTHORIZED TERMS OF SUPERVISED RELEASE.—Except as otherwise provided, the authorized terms of supervised release are—

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) FACTORS TO BE CONSIDERED IN INCLUDING A TERM OF SUPERVISED RELEASE.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4).[1] The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20),[1] and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) MODIFICATION OF CONDITIONS OR REVOCATION.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was pre-

[1] See References in Text note below.

viously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) WRITTEN STATEMENT OF CONDITIONS.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR FOR REFUSAL TO COMPLY WITH DRUG TESTING.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) SUPERVISED RELEASE FOLLOWING REVOCATION.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) SUPERVISED RELEASE TERMS FOR TERRORISM PREDICATES.—Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1999; amended Pub. L. 99–570, title I, § 1006(a)(1)–(3), Oct. 27, 1986, 100 Stat. 3207–6; Pub. L. 99–646, § 14(a), Nov. 10, 1986, 100 Stat. 3594; Pub. L. 100–182, §§ 8, 9, 12, 25, Dec. 7, 1987, 101 Stat. 1267, 1268, 1272; Pub. L. 100–690, title VII, §§ 7108, 7303(b), 7305(b), Nov. 18, 1988, 102 Stat. 4418, 4464, 4465; Pub. L. 101–647, title XXXV, § 3589, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 103–322, title II, § 20414(c), title XI, § 110505, title XXXII, § 320921(c), Sept. 13, 1994, 108 Stat. 1831, 2016, 2130; Pub. L. 105–119, title I, § 115(a)(8)(B)(iv), Nov. 26, 1997, 111 Stat. 2466; Pub. L. 106–546, § 7(b), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 107–56, title VIII, § 812, Oct. 26, 2001, 115 Stat. 382; Pub. L. 107–273, div. B, title II, § 2103(b), title III, § 3007, Nov. 2, 2002, 116 Stat. 1793, 1806; Pub. L. 108–21, title I, § 101, Apr. 30, 2003, 117 Stat. 651; Pub. L. 109–177, title II, § 212, Mar. 9, 2006, 120 Stat. 230; Pub. L. 109–248, title I, § 141(e), title II, § 210(b), July 27, 2006, 120 Stat. 603, 615.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsecs. (d) and (k), is title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For com-

plete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (d), is classified to section 14135a of Title 42, The Public Health and Welfare.

Section 3563(a)(4), referred to in subsec. (d), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub. L. 103–322, which was renumbered par. (5) by Pub. L. 104–132, title II, § 203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

Section 3563(b), referred to in subsec. (d), was amended by Pub. L. 104–132, title II, § 203(2)(A), (B), Apr. 24, 1996, 110 Stat. 1227, which struck out par. (2) and redesignated former pars. (3) to (20) as (2) to (19), respectively.

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), (2), (3), are set out in the Appendix to this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–248, §§ 141(e)(1), 210(b), substituted ''required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act.'' for ''described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).'' in third sentence of introductory provisions and inserted ''The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.'' at end of concluding provisions.

Subsec. (j). Pub. L. 109–177 struck out '', the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person,'' before ''is any term of years or life.''

Subsec. (k). Pub. L. 109–248, § 141(e)(2), substituted ''2243, 2244, 2245, 2250'' for ''2244(a)(1), 2244(a)(2)'', inserted ''not less than 5,'' after ''any term of years'', and inserted ''If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.'' at end.

2003—Subsec. (e)(3). Pub. L. 108–21, § 101(1), inserted ''on any such revocation'' after ''required to serve''.

Subsec. (h). Pub. L. 108–21, § 101(2), struck out ''that is less than the maximum term of imprisonment authorized under subsection (e)(3)'' after ''required to serve a term of imprisonment''.

Subsec. (k). Pub. L. 108–21, § 101(3), added subsec. (k).

2002—Subsecs. (c), (e). Pub. L. 107–273, § 3007, substituted ''(a)(6), and (a)(7)'' for ''and (a)(6)''.

Subsec. (g)(4). Pub. L. 107–273, § 2103(b), added par. (4).

2001—Subsec. (j). Pub. L. 107–56 added subsec. (j).

2000—Subsec. (d). Pub. L. 106–546 inserted ''The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.'' before ''The court shall also order,''.

1997—Subsec. (d). Pub. L. 105–119 inserted after second sentence ''The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994).''

1994—Subsec. (a). Pub. L. 103–322, § 320921(c)(1), inserted before period at end ''or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b)''.

Subsec. (d). Pub. L. 103–322, § 320921(c)(2), inserted after first sentence ''The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant.''

Pub. L. 103–322, § 20414(c), inserted after first sentence ''The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test.''

Pub. L. 103–322, § 110505(1), substituted ''unlawfully possess a controlled substance'' for ''possess illegal controlled substances'' in first sentence.

Subsec. (e)(1). Pub. L. 103–322, § 110505(2)(A), substituted ''defendant'' for ''person'' in two places.

Subsec. (e)(3). Pub. L. 103–322, § 110505(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony; or''.

Subsec. (e)(4). Pub. L. 103–322, § 110505(2)(A), substituted ''defendant'' for ''person''.

Subsecs. (g) to (i). Pub. L. 103–322, § 110505(3), added subsecs. (g) to (i) and struck out former subsec. (g) which read as follows:

''(g) POSSESSION OF CONTROLLED SUBSTANCES.—If the defendant is found by the court to be in the possession of a controlled substance, the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.''

1990—Subsec. (d)(2). Pub. L. 101–647, § 3589(1), inserted a comma after ''3553(a)(2)(B)''.

Subsec. (e)(2) to (5). Pub. L. 101–647, § 3589(2)(A)–(C), struck out ''or'' at end of par. (2), substituted ''; or'' for period at end of par. (3), and redesignated par. (5) as (4).

1988—Subsec. (d). Pub. L. 100–690, § 7303(b)(1), inserted ''and that the defendant not possess illegal controlled substances'' before period at end of first sentence.

Pub. L. 100–690, § 7305(b)(1), substituted ''(b)(20)'' for ''(b)(19)'' in concluding provisions.

Subsec. (d)(1). Pub. L. 100–690, § 7108(a)(1), inserted ''(a)(2)(C),'' after ''(a)(2)(B),''.

Subsec. (d)(2). Pub. L. 100–690, § 7108(a)(2), which directed that ''(a)(2)(C),'' be inserted after ''(a)(2)(B),'', was executed by inserting ''(a)(2)(C),'' after ''(a)(2)(B)'' as the probable intent of Congress, because no comma appeared after ''(a)(2)(B)''.

Subsec. (e). Pub. L. 100–690, § 7108(b)(1), inserted ''(a)(2)(C),'' after ''(a)(2)(B),'' in introductory provisions.

Subsec. (e)(2). Pub. L. 100–690, § 7108(b)(2), inserted ''or'' after ''supervision;''.

Subsec. (e)(3). Pub. L. 100–690, § 7305(b)(2)(A), which directed amendment of par. (3) by striking ''or'' at the end could not be executed because of the intervening amendment by Pub. L. 100–690, § 7108(b)(3), (4). See below.

Pub. L. 100–690, § 7108(b)(3), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''treat a violation of a condition of a term of supervised release as contempt of court pursuant to section 401(3) of this title; or''.

Subsec. (e)(4). Pub. L. 100–690, § 7305(b)(2)(B), which directed amendment of par. (4) by striking the period at the end and inserting ''; or'' could not be executed because subsec. (e) did not contain a par. (4) after the intervening amendment by Pub. L. 100–690, § 7108(b)(4). See below.

Pub. L. 100–690, § 7108(b)(4), redesignated par. (4) as (3).

Subsec. (e)(5). Pub. L. 100–690, § 7305(b)(2)(C), added par. (5).

Subsec. (g). Pub. L. 100–690, § 7303(b)(2), added subsec. (g).

1987—Subsec. (b)(1). Pub. L. 100–182, § 8(1), substituted ''five years'' for ''three years''.

Subsec. (b)(2). Pub. L. 100–182, § 8(2), substituted ''three years'' for ''two years''.

Subsec. (b)(3). Pub. L. 100–182, § 8(3), inserted ''(other than a petty offense)'' after ''misdemeanor''.

Subsec. (c). Pub. L. 100–182, § 9, inserted ''(a)(2)(C),''.

Subsec. (e)(1). Pub. L. 100–182, § 12(1), inserted ''pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation,''.

Subsec. (e)(2). Pub. L. 100–182, § 12(2), struck out ''after a hearing,'' before ''extend a term'' and inserted ''the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and'' after ''pursuant to''.

Subsec. (e)(4). Pub. L. 100–182, § 25, inserted '', except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony'' before ''Commission'' at end.

1986—Subsec. (a). Pub. L. 99–570, § 1006(a)(1), inserted '', except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute''.

Subsec. (b). Pub. L. 99–570, § 1006(a)(2), substituted ''Except as otherwise provided, the'' for ''The''.

Subsec. (e). Pub. L. 99–570, § 1006(a)(3)(A), and Pub. L. 99–646, § 14(a)(1), amended section catchline identically, substituting ''conditions or revocation'' for ''term or conditions''.

Subsec. (e)(1). Pub. L. 99–646, § 14(a)(2), struck out ''previously ordered'' before ''and discharge''.

Subsec. (e)(4). Pub. L. 99–570, § 224(a)(3)(B)–(D), added par. (4).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(b) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 14(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [Nov. 1, 1987].''

Section 1006(a)(4) of Pub. L. 99–570 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3584. Multiple sentences of imprisonment

(a) IMPOSITION OF CONCURRENT OR CONSECUTIVE TERMS.—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) FACTORS TO BE CONSIDERED IN IMPOSING CONCURRENT OR CONSECUTIVE TERMS.—The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) TREATMENT OF MULTIPLE SENTENCE AS AN AGGREGATE.—Multiple terms of imprisonment

ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2000.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3585. Calculation of a term of imprisonment

(a) COMMENCEMENT OF SENTENCE.—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) CREDIT FOR PRIOR CUSTODY.—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3586. Implementation of a sentence of imprisonment

The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229 and, if the sentence includes a term of supervised release, by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

CHAPTER 228—DEATH SENTENCE

Sec.
3591. Sentence of death.
3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified.
3593. Special hearing to determine whether a sentence of death is justified.
3594. Imposition of a sentence of death.
3595. Review of a sentence of death.
3596. Implementation of a sentence of death.
3597. Use of State facilities.
3598. Special provisions for Indian country.
3599. Counsel for financially unable defendants.

PRIOR PROVISIONS

A prior chapter 228 (§§ 3591 to 3599) relating to imposition, payment, and collection of fines was added by Pub. L. 98–473, title II, § 238(a), Oct. 12, 1984, 98 Stat. 2034, effective pursuant to section 235(a)(1) of Pub. L. 98–473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Pub. L. 98–596, § 12(a)(1), Oct. 30, 1984, 98 Stat. 3139, repealed chapter 228 applicable pursuant to section 12(b) of Pub. L. 98–596 on and after the date of enactment of Pub. L. 98–473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98–473 which repealed section 238 of Pub. L. 98–473 on the same date established by section 235(a)(1) of Pub. L. 98–473 was repealed by section 12(a)(9) of Pub. L. 98–596.

AMENDMENTS

2006—Pub. L. 109–177, title II, § 222(b), Mar. 9, 2006, 120 Stat. 232, which directed amendment of the ''table of sections of the bill'' by adding item 3599 after item 3598, was executed by adding item 3599 to the table of sections for this chapter to reflect the probable intent of Congress.

§ 3591. Sentence of death

(a) A defendant who has been found guilty of—

(1) an offense described in section 794 or section 2381; or

(2) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

(A) intentionally killed the victim;

(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

(D) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

(b) A defendant who has been found guilty of—

(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B); or

(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing

criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1959.)

SHORT TITLE

Section 60001 of title VI of Pub. L. 103–322 provided that: ''This title [enacting this chapter and sections 36, 37, 1118 to 1121, 2245, 2280, 2281, and 2332a of this title, amending sections 34, 241, 242, 245, 247, 794, 844, 924, 930, 1091, 1111, 1114, 1116, 1117, 1201, 1203, 1503, 1512, 1513, 1716, 1958, 1959, 1992, 2113, 2119, 2251, 2332, 2340A, 3005, and 3432 of this title and section 1324 of Title 8, Aliens and Nationality, renumbering former section 2245 of this title as 2246, repealing section 46503 of Title 49, Transportation, and enacting provisions set out as notes under this section and sections 36, 37, and 2280 of this title] may be cited as the 'Federal Death Penalty Act of 1994'.''

APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE

Section 60004 of title VI of Pub. L. 103–322 provided that: ''Chapter 228 of title 18, United States Code, as added by this title, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).''

§ 3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified

(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

(1) IMPAIRED CAPACITY.—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(3) MINOR PARTICIPATION.—The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(4) EQUALLY CULPABLE DEFENDANTS.—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(5) NO PRIOR CRIMINAL RECORD.—The defendant did not have a significant prior history of other criminal conduct.

(6) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

(7) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

(8) OTHER FACTORS.—Other factors in the defendant's background, record, or character or any other circumstance of the offense that mitigate against imposition of the death sentence.

(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a)(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) PRIOR ESPIONAGE OR TREASON OFFENSE.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of either life imprisonment or death was authorized by law.

(2) GRAVE RISK TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security.

(3) GRAVE RISK OF DEATH.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

(c) AGGRAVATING FACTORS FOR HOMICIDE.—In determining whether a sentence of death is justified for an offense described in section 3591(a)(2), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 37 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1203 (hostage taking), section 1992[1] (wrecking trains), section 2245 (offenses resulting in death), section 2280 (maritime violence), section 2281 (maritime platform violence), section

[1] See References in Text note below.

2332 (terrorist acts abroad against United States nationals), section 2332a (use of weapons of mass destruction), or section 2381 (treason) of this title, or section 46502 of title 49, United States Code (aircraft piracy).

(2) PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—For any offense, other than an offense for which a sentence of death is sought on the basis of section 924(c), the defendant has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm (as defined in section 921) against another person.

(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of 2 or more Federal or State offenses, punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.

(6) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMITTING OFFENSE.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

(8) PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism.

(10) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of 2 or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

(11) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

(12) CONVICTION FOR SERIOUS FEDERAL DRUG OFFENSES.—The defendant had previously been convicted of violating title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

(13) CONTINUING CRIMINAL ENTERPRISE INVOLVING DRUG SALES TO MINORS.—The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)), and that violation involved the distribution of drugs to persons under the age of 21 in violation of section 418 of that Act (21 U.S.C. 859).

(14) HIGH PUBLIC OFFICIALS.—The defendant committed the offense against—

(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

(C) a foreign official listed in section 1116(b)(3)(A), if the official is in the United States on official business; or

(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

(i) while he or she is engaged in the performance of his or her official duties;

(ii) because of the performance of his or her official duties; or

(iii) because of his or her status as a public servant.

For purposes of this subparagraph, a ''law enforcement officer'' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution or adjudication of an offense, and includes those engaged in corrections, parole, or probation functions.

(15) PRIOR CONVICTION OF SEXUAL ASSAULT OR CHILD MOLESTATION.—In the case of an offense under chapter 109A (sexual abuse) or chapter 110 (sexual abuse of children), the defendant has previously been convicted of a crime of sexual assault or crime of child molestation.

(16) MULTIPLE KILLINGS OR ATTEMPTED KILLINGS.—The defendant intentionally killed or attempted to kill more than one person in a single criminal episode.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591(b), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a

person, for which a sentence of life imprisonment or death was authorized by statute.

(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person.

(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant.

(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant.

(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant.

(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

(Added and amended Pub. L. 103–322, title VI, § 60002(a), title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1960, 2150; Pub. L. 104–132, title VII, § 728, Apr. 24, 1996, 110 Stat. 1302; Pub. L. 104–294, title VI, §§ 601(b)(7), 604(b)(35), Oct. 11, 1996, 110 Stat. 3499, 3508; Pub. L. 107–273, div. B, title IV, § 4002(e)(2), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109–248, title II, § 206(a)(4), July 27, 2006, 120 Stat. 614.)

REFERENCES IN TEXT

Section 1992 of this title, referred to in subsec. (c)(1), was repealed and a new section 1992 enacted by Pub. L. 109–177, title I, § 110(a), Mar. 9, 2006, 120 Stat. 205, and, as so enacted, section 1992 no longer relates only to the crime of wrecking trains.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (c)(12), is Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended. Title II of the Act, known as the Controlled Substances Act, is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Title III of the Act, known as the Controlled Substances Import and Export Act, is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under sections 801 and 951 of Title 21 and Tables.

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–248 inserted ''section 2245 (offenses resulting in death),'' after ''section 1992 (wrecking trains),''.

2002—Subsec. (c)(1). Pub. L. 107–273 substituted ''section 37'' for ''section 36''.

1996—Subsec. (c)(1). Pub. L. 104–294, § 601(b)(7), substituted ''section 2332a (use of weapons of mass destruction)'' for ''section 2339 (use of weapons of mass destruction)''.

Subsec. (c)(12). Pub. L. 104–294, § 604(b)(35), substituted ''Comprehensive Drug Abuse Prevention and Control Act of 1970'' for ''Controlled Substances Act''.

Subsec. (c)(16). Pub. L. 104–132 added par. (16).

1994—Subsec. (c)(1). Pub. L. 103–322, § 330021(1), substituted ''kidnapping'' for ''kidnaping''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(35) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 3593. Special hearing to determine whether a sentence of death is justified

(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, the attorney shall, a reasonable time before the trial or before acceptance by the court of a plea of guilty, sign and file with the court, and serve on the defendant, a notice—

(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family, and may include oral testimony, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an of-

fense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for the purpose of the hearing if—

(A) the defendant was convicted upon a plea of guilty;

(B) the defendant was convicted after a trial before the court sitting without a jury;

(C) the jury that determined the defendant's guilt was discharged for good cause; or

(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32 of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. The defendant may present any information relevant to a mitigating factor. The government may present any information relevant to an aggravating factor for which notice has been provided under subsection (a). Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. For the purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by 1 or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

(1) an offense described in section 3591(a)(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

(2) an offense described in section 3591(a)(2), an aggravating factor required to be considered under section 3592(c) is found to exist; or

(3) an offense described in section 3591(b), an aggravating factor required to be considered under section 3592(d) is found to exist,

the jury, or if there is no jury, the court, shall consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether the defendant should be sentenced to death, to life imprisonment without possibility of release or some other lesser sentence.

(f) SPECIAL PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious

beliefs, national origin, or sex of the defendant or any victim may be.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1964; amended Pub. L. 105–6, § 2(c), Mar. 19, 1997, 111 Stat. 12; Pub. L. 107–273, div. B, title IV, § 4002(e)(8), Nov. 2, 2002, 116 Stat. 1810.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 substituted ''rule 32'' for ''rule 32(c)'' in first sentence.

1997—Subsec. (c). Pub. L. 105–6 inserted ''For the purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–6 applicable to cases pending on Mar. 19, 1997, see section 2(d) of Pub. L. 105–6, set out as an Effective Date note under section 3510 of this title.

§ 3594. Imposition of a sentence of death

Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law. Notwithstanding any other law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without possibility of release.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1966.)

§ 3595. Review of a sentence of death

(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

(1) the evidence submitted during the trial;

(2) the information submitted during the sentencing hearing;

(3) the procedures employed in the sentencing hearing; and

(4) the special findings returned under section 3593(d).

(c) DECISION AND DISPOSITION.—

(1) The court of appeals shall address all substantive and procedural issues raised on the appeal of a sentence of death, and shall consider whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the special finding of the existence of an aggravating factor required to be considered under section 3592.

(2) Whenever the court of appeals finds that—

(A) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(B) the admissible evidence and information adduced does not support the special finding of the existence of the required aggravating factor; or

(C) the proceedings involved any other legal error requiring reversal of the sentence that was properly preserved for appeal under the rules of criminal procedure,

the court shall remand the case for reconsideration under section 3593 or imposition of a sentence other than death. The court of appeals shall not reverse or vacate a sentence of death on account of any error which can be harmless, including any erroneous special finding of an aggravating factor, where the Government establishes beyond a reasonable doubt that the error was harmless.

(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1967.)

§ 3596. Implementation of a sentence of death

(a) IN GENERAL.—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of the State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

(b) PREGNANT WOMAN.—A sentence of death shall not be carried out upon a woman while she is pregnant.

(c) MENTAL CAPACITY.—A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability, lacks the mental capacity to understand the death penalty and why it was imposed on that person.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1967.)

§ 3597. Use of State facilities

(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department of corrections, the United States Department of Justice, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any prosecution or execution under this section if such participation is contrary to the moral or religious convictions of the employee. In this subsection, ''participation in executions'' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1968.)

§ 3598. Special provisions for Indian country

Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151 of this title) and which has occurred within the boundaries of Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

(Added Pub. L. 103–322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1968.)

§ 3599. Counsel for financially unable defendants

(a)(1) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either—

(A) before judgment; or

(B) after the entry of a judgment imposing a sentence of death but before the execution of that judgment;

shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

(2) In any post conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

(b) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

(c) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

(d) With respect to subsections (b) and (c), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(e) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

(f) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under subsection (g). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

(g)(1) Compensation shall be paid to attorneys appointed under this subsection[1] at a rate of not more than $125 per hour for in-court and out-of-court time. The Judicial Conference is authorized to raise the maximum for hourly payment specified in the[2] paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay for the General Schedule made pursuant to section 5305[3] of title 5 on or after such date. After the rates are raised under the preceding sentence, such hourly range may be raised at intervals of not less than one year, up to the aggregate of the overall average percentages of such adjustments made since the last raise under this paragraph.

(2) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under subsection (f) shall not exceed $7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge,

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be ''this''.

[3] So in original. Probably should be ''5303''.

as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

(3) The amounts paid under this paragraph[4] for services in any case shall be disclosed to the public, after the disposition of the petition.

(Added Pub. L. 109–177, title II, § 222(a), Mar. 9, 2006, 120 Stat. 231.)

CHAPTER 228A—POST-CONVICTION DNA TESTING

Sec.
3600. DNA testing.
3600A. Preservation of biological evidence.

§ 3600. DNA testing

(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the ''applicant''), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply:

(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

(B) another Federal or State offense, if—

(i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

(ii) in the case of a State offense—

(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.

(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

(3) The specific evidence to be tested—

(A) was not previously subjected to DNA testing and the applicant did not—

(i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

(ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

(6) The applicant identifies a theory of defense that—

(A) is not inconsistent with an affirmative defense presented at trial; and

(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

(8) The proposed DNA testing of the specific evidence may produce new material evidence that would—

(A) support the theory of defense referenced in paragraph (6); and

(B) raise a reasonable probability that the applicant did not commit the offense.

(9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.

(10) The motion is made in a timely fashion, subject to the following conditions:

(A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing—

(i) that the applicant's motion for a DNA test is based solely upon information used in a previously denied motion; or

(ii) of clear and convincing evidence that the applicant's filing is done solely to cause delay or harass.

(B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court's finding—

(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant's motion for a DNA test;

(ii) the evidence to be tested is newly discovered DNA evidence;

(iii) that the applicant's motion is not based solely upon the applicant's own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or

(iv) upon good cause shown.

[4] So in original. Probably should be ''subsection''.

(C) For purposes of this paragraph—

(i) the term ''incompetence'' has the meaning as defined in section 4241 of title 18, United States Code;

(ii) the term ''manifest'' means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

(A) notify the Government; and

(B) allow the Government a reasonable time period to respond to the motion.

(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A(a)(2)(B).

(c) TESTING PROCEDURES.—

(1) IN GENERAL.—The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

(2) EXCEPTION.—Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

(3) COSTS.—The costs of any DNA testing ordered under this section shall be paid—

(A) by the applicant; or

(B) in the case of an applicant who is indigent, by the Government.

(d) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death—

(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

(e) REPORTING OF TEST RESULTS.—

(1) IN GENERAL.—The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

(2) NDIS.—The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as ''NDIS'').

(3) RETENTION OF DNA SAMPLE.—

(A) ENTRY INTO NDIS.—If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

(A) deny the applicant relief; and

(B) on motion of the Government—

(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

(ii) assess against the applicant the cost of any DNA testing carried out under this section;

(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing,

as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of—

(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

(h) OTHER LAWS UNAFFECTED.—

(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(3) NOT A MOTION UNDER SECTION 2255.—A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

(Added Pub. L. 108–405, title IV, § 411(a)(1), Oct. 30, 2004, 118 Stat. 2279.)

REFERENCES IN TEXT

The date of enactment of the Innocence Protection Act of 2004, referred to in subsec. (a)(3)(A)(i), is the date of enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

Enactment of the Justice For All Act of 2004, referred to in subsec. (a)(10)(A), is the enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

EFFECTIVE DATE

Pub. L. 108–405, title IV, § 411(c), Oct. 30, 2004, 118 Stat. 2284, provided that: ''This section [enacting this chapter and provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of enactment of this Act [Oct. 30, 2004] and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–405, title IV, § 401, Oct. 30, 2004, 118 Stat. 2278, provided that: ''This title [enacting this chapter and sections 14136e and 14163 to 14163e of Title 42, The Public Health and Welfare, amending section 2513 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and section 14136 of Title 42] may be cited as the 'Innocence Protection Act of 2004'.''

SYSTEM FOR REPORTING MOTIONS

Pub. L. 108–405, title IV, § 411(b), Oct. 30, 2004, 118 Stat. 2284, provided that:

''(1) ESTABLISHMENT.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

''(2) OPERATION.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

''(3) REPORT.—Not later than 2 years after the date of enactment of this Act [Oct. 30, 2004], the Attorney General shall submit a report to Congress that contains—

''(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this title;

''(B) whether DNA testing was ordered pursuant to such a motion;

''(C) whether the applicant obtained relief on the basis of DNA test results; and

''(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

''(4) ADDITIONAL INFORMATION.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section.''

§ 3600A. Preservation of biological evidence

(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

(b) DEFINED TERM.—For purposes of this section, the term ''biological evidence'' means—

(1) a sexual assault forensic examination kit; or

(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(c) APPLICABILITY.—Subsection (a) shall not apply if—

(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

(2) the defendant knowingly and voluntarily waived the right to request DNA testing of the biological evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

(3) after a conviction becomes final and the defendant has exhausted all opportunities for direct review of the conviction, the defendant is notified that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice;

(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing; or

(5) the biological evidence has already been subjected to DNA testing under section 3600 and the results included the defendant as the source of such evidence.

(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(Added Pub. L. 108–405, title IV, § 411(a)(1), Oct. 30, 2004, 118 Stat. 2283.)

REFERENCES IN TEXT

The date of enactment of the Innocence Protection Act of 2004, referred to in subsecs. (c)(2) and (e), is the date of enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

CHAPTER 229—POSTSENTENCE ADMINISTRATION

Subchapter		Sec.[1]
A.	**Probation**	**3601**
B.	**Fines**	**3611**
C.	**Imprisonment**	**3621**

PRIOR PROVISIONS

A prior chapter 229 (§ 3611 et seq.) was repealed (except sections 3611, 3612, 3615, 3617 to 3620 which were renumbered sections 3665 to 3671, respectively), by Pub. L. 98–473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended, effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. See Effective Date note set out under section 3551 of this title.

Section 3611 renumbered section 3665 of this title.

Section 3612 renumbered section 3666 of this title.

Section 3613, act June 25, 1948, ch. 645, 62 Stat. 840, related to fines for setting grass and timber fires.

Section 3614, act June 25, 1948, ch. 645, 62 Stat. 840, related to fine for seduction.

Section 3615 renumbered section 3667 of this title.

Section 3616, act June 25, 1948, ch. 645, 62 Stat. 840, authorized use of confiscated vehicles by narcotics agents and payment of costs of acquisition, maintenance, repair, and operation thereof, prior to repeal by Pub. L. 91–513, title III, § 1101(b)(2)(A), Oct. 27, 1970, 84 Stat. 1292.

Section 3617 renumbered section 3668 of this title.

Section 3618 renumbered section 3669 of this title.

Section 3619 renumbered section 3670 of this title.

Section 3620 renumbered section 3671 of this title.

Section 3621, added Pub. L. 98–596, § 6(a), Oct. 30, 1984, 98 Stat. 3136, related to criminal default on fine.

Section 3622, added Pub. L. 98–596, § 6(a), Oct. 30, 1984, 98 Stat. 3136, related to factors relating to imposition of fines.

Section 3623, added Pub. L. 98–596, § 6(a), Oct. 30, 1984, 98 Stat. 3137, related to alternative fines.

Section 3624, added Pub. L. 98–596, § 6(a), Oct. 30, 1984, 98 Stat. 3138, related to security for stayed fine.

SUBCHAPTER A—PROBATION

SUBCHAPTER A—PROBATION[1]

Sec.
3601. Supervision of probation.
3602. Appointment of probation officers.
3603. Duties of probation officers.
3604. Transportation of a probationer.
3605. Transfer of jurisdiction over a probationer.
3606. Arrest and return of a probationer.
3607. Special probation and expungement procedures for drug possessors.
3608. Drug testing of Federal offenders on post-conviction release.

AMENDMENTS

1994—Pub. L. 103–322, title II, § 20414(a)(2), title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 1830, 2143, transferred analysis of this subchapter to follow heading for this subchapter and added item 3608.

1990—Pub. L. 101–647, title XXXV, § 3590, Nov. 29, 1990, 104 Stat. 4930, substituted ''possessors'' for ''possessor'' in item 3607.

§ 3601. Supervision of probation

A person who has been sentenced to probation pursuant to the provisions of subchapter B of chapter 227, or placed on probation pursuant to the provisions of chapter 403, or placed on supervised release pursuant to the provisions of section 3583, shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 801], Apr. 26, 1996, 110 Stat. 1321, 1321–66; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that: ''This title [enacting sections 1915A and 1932 of Title 28, Judiciary and Judicial Procedure, amending sections 3624 and 3626 of this title, section 523 of Title 11, Bankruptcy, sections 1346 and 1915 of Title 28, and sections 1997a to 1997c, 1997e, 1997f, and 1997h of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 3626 of this title, and repealing provisions set out as a note under section 3626 of this title] may be cited as the 'Prison Litigation Reform Act of 1995'.''

POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES

Pub. L. 107–273, div. B, title II, § 2411, Nov. 2, 2002, 116 Stat. 1799, provided that:

''(a) FEDERAL REENTRY CENTER DEMONSTRATION.—

''(1) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—The Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry Center Demonstration project. The project shall involve appropriate prisoners from the Federal prison population and shall utilize community corrections facilities, home confinement, and a coordi-

[1] Editorially supplied.

[1] So in original. Probably should not appear.

nated response by Federal agencies to assist participating prisoners in preparing for and adjusting to reentry into the community.

''(2) PROJECT ELEMENTS.—The project authorized by paragraph (1) shall include the following core elements:

''(A) A Reentry Review Team for each prisoner, consisting of a representative from the Bureau of Prisons, the United States Probation System, the United States Parole Commission, and the relevant community corrections facility, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner.

''(B) A system of graduated levels of supervision with the community corrections facility to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project.

''(C) Substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, assistance obtaining suitable affordable housing, and other programming to promote effective reintegration into the community as needed.

''(3) PROBATION OFFICERS.—From funds made available to carry out this section, the Director of the Administrative Office of the United States Courts shall assign 1 or more probation officers from each participating judicial district to the Reentry Demonstration project. Such officers shall be assigned to and stationed at the community corrections facility and shall serve on the Reentry Review Teams.

''(4) PROJECT DURATION.—The Reentry Center Demonstration project shall begin not later than 6 months following the availability of funds to carry out this subsection, and shall last 3 years.

''(b) DEFINITIONS.—In this section, the term 'appropriate prisoner' shall mean a person who is considered by prison authorities—

''(1) to pose a medium to high risk of committing a criminal act upon reentering the community; and

''(2) to lack the skills and family support network that facilitate successful reintegration into the community.

''(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated, to remain available until expended—

''(1) to the Federal Bureau of Prisons—

''(A) $1,375,000 for fiscal year 2003;

''(B) $1,110,000 for fiscal year 2004;

''(C) $1,130,000 for fiscal year 2005;

''(D) $1,155,000 for fiscal year 2006; and

''(E) $1,230,000 for fiscal year 2007; and

''(2) to the Federal Judiciary—

''(A) $3,380,000 for fiscal year 2003;

''(B) $3,540,000 for fiscal year 2004;

''(C) $3,720,000 for fiscal year 2005;

''(D) $3,910,000 for fiscal year 2006; and

''(E) $4,100,000 for fiscal year 2007.''

§ 3602. Appointment of probation officers

(a) APPOINTMENT.—A district court of the United States shall appoint qualified persons to serve, with or without compensation, as probation officers within the jurisdiction and under the direction of the court making the appointment. The court may, for cause, remove a probation officer appointed to serve with compensation, and may, in its discretion, remove a probation officer appointed to serve without compensation.

(b) RECORD OF APPOINTMENT.—The order of appointment shall be entered on the records of the court, a copy of the order shall be delivered to the officer appointed, and a copy shall be sent to the Director of the Administrative Office of the United States Courts.

(c) CHIEF PROBATION OFFICER.—If the court appoints more than one probation officer, one may be designated by the court as chief probation officer and shall direct the work of all probation officers serving in the judicial district.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3603. Duties of probation officers

A probation officer shall—

(1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

(2) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court;

(3) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition;

(4) be responsible for the supervision of any probationer or a person on supervised release who is known to be within the judicial district;

(5) keep a record of his work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

(6) upon request of the Attorney General or his designee, assist in the supervision of and furnish information about, a person within the custody of the Attorney General while on work release, furlough, or other authorized release from his regular place of confinement, or while in prerelease custody pursuant to the provisions of section 3624(c);

(7) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within thirty days after notification that it is in default so that the court may determine whether probation should be revoked;

(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such

person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee;

(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and

(10) perform any other duty that the court may designate.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2002; amended Pub. L. 99–646, § 15(a), Nov. 10, 1986, 100 Stat. 3595; Pub. L. 102–572, title VII, § 701(a), Oct. 29, 1992, 106 Stat. 4514; Pub. L. 104–317, title I, § 101(a), Oct. 19, 1996, 110 Stat. 3848.)

AMENDMENTS

1996—Pars. (9), (10). Pub. L. 104–317 added par. (9) and redesignated former par. (9) as (10).

1992—Pars. (8), (9). Pub. L. 102–572 added par. (8) and redesignated former par. (8) as (9).

1986—Pub. L. 99–646 redesignated pars. (a) to (h) as (1) to (8), respectively, and in par. (6) substituted ''assist in the supervision of'' for ''supervise'' and inserted a comma after ''about''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 15(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3603 of title 18, United States Code [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3604. Transportation of a probationer

A court, after imposing a sentence of probation, may direct a United States marshal to furnish the probationer with—

(a) transportation to the place to which he is required to proceed as a condition of his probation; and

(b) money, not to exceed such amount as the Attorney General may prescribe, for subsistence expenses while traveling to his destination.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2002.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3605. Transfer of jurisdiction over a probationer

A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release, or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer or releasee that are permitted by this subchapter or subchapter B or D of chapter 227.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3606. Arrest and return of a probationer

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3607. Special probation and expungement procedures for drug possessors

(a) PRE-JUDGMENT PROBATION.—If a person found guilty of an offense described in section 404 of the Controlled Substances Act (21 U.S.C. 844)—

(1) has not, prior to the commission of such offense, been convicted of violating a Federal or State law relating to controlled substances; and

(2) has not previously been the subject of a disposition under this subsection;

the court may, with the consent of such person, place him on probation for a term of not more than one year without entering a judgment of conviction. At any time before the expiration of the term of probation, if the person has not violated a condition of his probation, the court may, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. At the expiration of the term of probation, if the person has not

violated a condition of his probation, the court shall, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. If the person violates a condition of his probation, the court shall proceed in accordance with the provisions of section 3565.

(b) RECORD OF DISPOSITION.—A nonpublic record of a disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall be retained by the Department of Justice solely for the purpose of use by the courts in determining in any subsequent proceeding whether a person qualifies for the disposition provided in subsection (a) or the expungement provided in subsection (c). A disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall not be considered a conviction for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or for any other purpose.

(c) EXPUNGEMENT OF RECORD OF DISPOSITION.—If the case against a person found guilty of an offense under section 404 of the Controlled Substances Act (21 U.S.C. 844) is the subject of a disposition under subsection (a), and the person was less than twenty-one years old at the time of the offense, the court shall enter an expungement order upon the application of such person. The expungement order shall direct that there be expunged from all official records, except the nonpublic records referred to in subsection (b), all references to his arrest for the offense, the institution of criminal proceedings against him, and the results thereof. The effect of the order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or institution of criminal proceedings. A person concerning whom such an order has been entered shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge such arrests or institution of criminal proceedings, or the results thereof, in response to an inquiry made of him for any purpose.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3608. Drug testing of Federal offenders on post-conviction release

The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, subject to the availability of appropriations, establish a program of drug testing of Federal offenders on post-conviction release. The program shall include such standards and guidelines as the Director may determine necessary to ensure the reliability and accuracy of the drug testing programs. In each judicial district the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4).[1]

(Added Pub. L. 103–322, title II, § 20414(a)(1), Sept. 13, 1994, 108 Stat. 1830.)

REFERENCES IN TEXT

Section 3563(a)(4), referred to in text, probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub. L. 103–322, which was renumbered par. (5) by Pub. L. 104–132, title II, § 203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

SUBCHAPTER B—FINES

SUBCHAPTER B—FINES[1]

Sec.
3611. Payment of a fine or restitution.
3612. Collection of an unpaid fine or restitution.[2]
3613. Civil remedies for satisfaction of an unpaid fine.
3613A. Effect of default.
3614. Resentencing upon failure to pay a fine or restitution.
3615. Criminal default.

AMENDMENTS

1996—Pub. L. 104–132, title II, § 207(d), Apr. 24, 1996, 110 Stat. 1240, amended table of sections generally, inserting ''or restitution'' after ''fine'' in items 3611, 3612, and 3614, reenacting items 3613 and 3615 without change, and adding item 3613A.

1994—Pub. L. 103–322, title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, transferred analysis of this subchapter to follow heading for this subchapter.

§ 3611. Payment of a fine or restitution

A person who is sentenced to pay a fine, assessment, or restitution, shall pay the fine, assessment, or restitution (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(18) of title 28, United States Code.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2004; amended Pub. L. 100–185, § 10(a), Dec. 11, 1987, 101 Stat. 1283; Pub. L. 101–647, title XXXV, § 3591, Nov. 29, 1990, 104 Stat. 4931; Pub. L. 104–132, title II, § 207(c)(1), Apr. 24, 1996, 110 Stat. 1237.)

PRIOR PROVISIONS

For a prior section 3611, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''Payment of a fine or restitution'' for ''Payment of a fine'' in section catchline and '', assessment, or restitution, shall pay the fine, assessment, or restitution'' for ''or assessment shall pay the fine or assessment'' in text.

1990—Pub. L. 101–647 substituted ''604(a)(18)'' for ''604(a)(17)''.

1987—Pub. L. 100–185 amended section generally. Prior to amendment, section read as follows: ''A person who has been sentenced to pay a fine pursuant to the provisions of subchapter C of chapter 227 shall pay the fine

[1] See References in Text note below.

[1] So in original. Probably should not appear.

[2] So in original. Does not conform to section catchline.

sions of subchapter C of chapter 227 shall pay the fine immediately, or by the time and method specified by the sentencing court, to the clerk of the court. The clerk shall forward the payment to the United States Treasury.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10(b) of Pub. L. 100–185 provided that: ''The amendment made by this section [amending this section] shall apply with respect to any fine imposed after October 31, 1988. Such amendment shall also apply with respect to any fine imposed on or before October 31, 1988, if the fine remains uncollected as of February 1, 1989, unless the Director of the Administrative Office of the United States Courts determines further delay is necessary. If the Director so determines, the amendment made by this section shall apply with respect to any such fine imposed on or before October 31, 1988, if the fine remains uncollected as of May 1, 1989.''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

RECEIPT OF FINES—INTERIM PROVISIONS

Section 9 of Pub. L. 100–185 provided that:

''(a) NOVEMBER 1, 1987, TO APRIL 30, 1988.—Notwithstanding section 3611 of title 18, United States Code, a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

''(b) MAY 1, 1988, TO OCTOBER 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code, a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

''(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.

''(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.''

§ 3612. Collection of unpaid fine or restitution

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(18) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the clerk, or the person designated under section 604(a)(18) of title 28, shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine or restitution order of more than $100 shall include—

(A) the name, social security account number, mailing address, and residence address of the defendant;

(B) the docket number of the case;

(C) the original amount of the fine or restitution order and the amount that is due and unpaid;

(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

(E) a description of any modification or remission;

(F) if other than immediate payment is permitted, a requirement that, until the fine or restitution order is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs; and

(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.

(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine or restitution concerning which a certification has been issued as provided in subsection (b). An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid. Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

(1) A penalty assessment under section 3013 of title 18, United States Code.

(2) Restitution of all victims.

(3) All other fines, penalties, costs, and other payments required under the sentence.

(d) NOTIFICATION OF DELINQUENCY.—Within ten working days after a fine or restitution is deter-

mined to be delinquent as provided in section 3572(h), the Attorney General shall notify the person whose fine or restitution is delinquent, to inform the person of the delinquency.

(e) NOTIFICATION OF DEFAULT.—Within ten working days after a fine or restitution is determined to be in default as provided in section 3572(i), the Attorney General shall notify the person defaulting to inform the person that the fine or restitution is in default and the entire unpaid balance, including interest and penalties, is due within thirty days.

(f) INTEREST ON FINES AND RESTITUTION.—

(1) IN GENERAL.—The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

(2) COMPUTATION.—Interest on a fine shall be computed—

(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

(B) at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the first day on which the defendant is liable for interest under paragraph (1).

(3) MODIFICATION OF INTEREST BY COURT.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

(A) waive the requirement for interest;

(B) limit the total of interest payable to a specific dollar amount; or

(C) limit the length of the period during which interest accrues.

(g) PENALTY FOR DELINQUENT FINE.—If a fine or restitution becomes delinquent, the defendant shall pay, as a penalty, an amount equal to 10 percent of the principal amount that is delinquent. If a fine or restitution becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

(h) WAIVER OF INTEREST OR PENALTY BY ATTORNEY GENERAL.—The Attorney General may waive all or part of any interest or penalty under this section or any interest or penalty relating to a fine imposed under any prior law if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

(i) APPLICATION OF PAYMENTS.—Payments relating to fines and restitution shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2004; amended Pub. L. 100–185, § 11, Dec. 11, 1987, 101 Stat. 1283; Pub. L. 100–690, title VII, § 7082(c), (d), Nov. 18, 1988, 102 Stat. 4408; Pub. L. 101–647, title XXXV, § 3592, Nov. 29, 1990, 104 Stat. 4931; Pub. L. 104–132, title II, § 207(c)(2), Apr. 24, 1996, 110 Stat. 1237; Pub. L. 106–554, § 1(a)(7) [title III, § 307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–635; Pub. L. 107–273, div. B, title IV, § 4002(b)(15), Nov. 2, 2002, 116 Stat. 1808.)

PRIOR PROVISIONS

For a prior section 3612, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

2002—Subsec. (f)(2)(B). Pub. L. 107–273 substituted ''preceding the first day'' for ''preceding. the first day''.

2000—Subsec. (f)(2)(B). Pub. L. 106–554 substituted ''the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.'' for ''the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before''.

1996—Pub. L. 104–132, § 207(c)(2)(A), substituted ''Collection of unpaid fine or restitution'' for ''Collection of an unpaid fine'' in section catchline.

Subsec. (b)(1). Pub. L. 104–132, § 207(c)(2)(B)(i), inserted ''or restitution order'' after ''fine'' in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 104–132, § 207(c)(2)(B)(ii), inserted ''or restitution order'' after ''fine''.

Subsec. (b)(1)(E). Pub. L. 104–132, § 207(c)(2)(B)(iii), struck out ''and'' at end.

Subsec. (b)(1)(F). Pub. L. 104–132, § 207(c)(2)(B)(iv), inserted ''or restitution order'' after ''fine'' and substituted ''; and'' for period at end.

Subsec. (b)(1)(G). Pub. L. 104–132, § 207(c)(2)(B)(v), added subpar. (G).

Subsec. (c). Pub. L. 104–132, § 207(c)(2)(C), inserted ''or restitution'' after ''unpaid fine'' in first sentence and inserted at end ''Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

''(1) A penalty assessment under section 3013 of title 18, United States Code.

''(2) Restitution of all victims.

''(3) All other fines, penalties, costs, and other payments required under the sentence.''

Subsec. (d). Pub. L. 104–132, § 207(c)(2)(D)(ii), which directed substitution of ''or restitution is delinquent, to inform the person of the delinquency'' for ''is delinquent, to inform him that the fine is delinquent'', was executed by making the substitution for ''is delinquent to inform him that the fine is delinquent'' to reflect the probable intent of Congress.

Pub. L. 104–132, § 207(c)(2)(D)(i), inserted ''or restitution'' after ''Within ten working days after a fine''.

Subsec. (e). Pub. L. 104–132, § 207(c)(2)(E), inserted ''or restitution'' after ''days after a fine'' and substituted ''the person that the fine or restitution is in default'' for ''him that the fine is in default''.

Subsec. (f). Pub. L. 104–132, § 207(c)(2)(F)(i), which directed amendment of heading by inserting ''and restitution'' after ''on fines'', was executed by inserting the material after ''on fines'' to reflect the probable intent of Congress.

Subsec. (f)(1). Pub. L. 104–132, § 207(c)(2)(F)(ii), inserted ''or restitution'' after ''any fine''.

Subsec. (g). Pub. L. 104–132, § 207(c)(2)(G), inserted ''or restitution'' after ''fine'' in two places.

Subsec. (i). Pub. L. 104–132, § 207(c)(2)(H), inserted ''and restitution'' after ''fines''.

1990—Subsec. (a). Pub. L. 101–647 substituted ''604(a)(18)'' for ''604(a)(17)'' wherever appearing.

1988—Subsec. (d). Pub. L. 100–690, § 7082(d), struck out '', by certified mail,'' after ''fine is delinquent''.

Subsec. (e). Pub. L. 100–690, § 7082(d), struck out '', by certified mail,'' after ''the person defaulting''.

Subsec. (h). Pub. L. 100–690, § 7082(c), inserted ''or any interest or penalty relating to a fine imposed under any prior law'' after ''under this section''.

1987—Subsec. (a). Pub. L. 100–185, § 11(a), substituted ''Notification of receipt and related matters'' for ''Dis-

position of payment'' in heading and amended text generally. Prior to amendment, text read as follows: ''The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within ten working days.''

Subsec. (b). Pub. L. 100–185, § 11(b), substituted ''Information to be included in judgment; judgment to be transmitted to Attorney General'' for ''Certification of imposition'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a fine exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, or modifying such fine, and promptly certify to the Attorney General—

''(1) the name of the person fined;

''(2) his current address;

''(3) the docket number of the case;

''(4) the amount of the fine imposed;

''(5) any installment schedule;

''(6) the nature of any modification or remission of the fine or installment schedule; and

''(7) the amount of the fine that is due and unpaid.''

Subsec. (d). Pub. L. 100–185, § 11(c)(1), substituted ''section 3572(h)'' for ''section 3572(i)''.

Subsec. (e). Pub. L. 100–185, § 11(c)(2), substituted ''section 3572(i)'' for ''section 3572(j)''.

Subsec. (f). Pub. L. 100–185, § 11(d), amended subsec. (f) generally, substituting provisions relating to interest on fines, computation of interest, and modification of interest by court, for provisions relating to interest and monetary penalties for delinquent fines.

Subsecs. (g) to (i). Pub. L. 100–185, § 11(e), added subsecs. (g) to (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

COLLECTION OF OUTSTANDING FINES

Section 237 of Pub. L. 98–473 provided that:

''(a)(1) Except as provided in paragraph (2), for each criminal fine for which the unpaid balance exceeds $100 as of the effective date of this Act [see section 235 of Pub. L. 98–473, as amended, set out as a note under section 3551 of this title], the Attorney General shall, within one hundred and twenty days, notify the person by certified mail of his obligation, within thirty days after notification, to—

''(A) pay the fine in full;

''(B) specify, and demonstrate compliance with, an installment schedule established by a court before enactment of the amendments made by this Act [Oct. 12, 1984], specifying the dates on which designated partial payments will be made; or

''(C) establish with the concurrence of the Attorney General, a new installment schedule of a duration not exceeding two years, except in special circumstances, and specifying the dates on which designated partial payments will be made.

''(2) This subsection shall not apply in cases in which—

''(A) the Attorney General believes the likelihood of collection is remote; or

''(B) criminal fines have been stayed pending appeal.

''(b) The Attorney General shall, within one hundred and eighty days after the effective date of this Act, declare all fines for which this obligation is unfulfilled to be in criminal default, subject to the civil and criminal remedies established by amendments made by this Act [see Short Title note set out under section 3551 of this title]. No interest or monetary penalties shall be charged on any fines subject to this section.

''(c) Not later than one year following the effective date of this Act, the Attorney General shall include in the annual crime report steps taken to implement this Act and the progress achieved in criminal fine collection, including collection data for each judicial district.''

§ 3613. Civil remedies for satisfaction of an unpaid fine

(a) ENFORCEMENT.—The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and

(3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

(b) TERMINATION OF LIABILITY.—The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.

(c) LIEN.—A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, or an order of restitution made pursuant to sections[1] 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).

(d) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with

[1] So in original. Probably should be ''section''.

the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

(e) DISCHARGE OF DEBT INAPPLICABLE.—No discharge of debts in a proceeding pursuant to any chapter of title 11, United States Code, shall discharge liability to pay a fine pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding.

(f) APPLICABILITY TO ORDER OF RESTITUTION.—In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2005; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–647, title XXXV, § 3593, Nov. 29, 1990, 104 Stat. 4931; Pub. L. 104–132, title II, § 207(c)(3), Apr. 24, 1996, 110 Stat. 1238.)

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a), is classified to section 407 of Title 42, The Public Health and Welfare.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1), (c), and (d), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For a prior section 3613, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

1996—Pub. L. 104–132 amended section generally, reenacting section catchline without change and substituting, in subsec. (a), provisions relating to enforcement for provisions relating to lien, in subsec. (b), provisions relating to termination of liability for provisions relating to expiration of lien, in subsec. (c), provisions relating to lien for provisions relating to application of other lien provisions, in subsec. (d), provisions relating to effect of filing notice of lien for provisions relating to effect of notice of lien, in subsec. (e), provisions relating to inapplicability of bankruptcy discharges of debt for provisions relating to alternative enforcement, and in subsec. (f), provisions relating to applicability to order of restitution for provisions relating to inapplicability of bankruptcy discharges of debt.

1990—Subsec. (c). Pub. L. 101–647, which directed amendment of ''Section 3613(c)'' by striking the period before the closing quotation marks and inserting a period after such marks, without identifying a Code title or Act for section 3613, was executed by substituting ''construed to mean 'fine'.'' for ''construed to mean 'fine.' '' in subsec. (c) of this section to reflect the probable intent of Congress.

1986—Subsecs. (b) to (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3613A. Effect of default

(a)(1) Upon a finding that the defendant is in default on a payment of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the fine or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.

(b)(1) Any hearing held pursuant to this section may be conducted by a magistrate judge, subject to de novo review by the court.

(2) To the extent practicable, in a hearing held pursuant to this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

(Added Pub. L. 104–132, title II, § 207(c)(4), Apr. 24, 1996, 110 Stat. 1239.)

EFFECTIVE DATE

Section to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which the defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as an Effective Date of 1996 Amendment note under section 2248 of this title.

§ 3614. Resentencing upon failure to pay a fine or restitution

(a) RESENTENCING.—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine or restitution the court may resentence the defendant to any sentence which might originally have been imposed.

(b) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section

solely on the basis of inability to make payments because the defendant is indigent.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2006; amended Pub. L. 104–132, title II, § 207(c)(5), Apr. 24, 1996, 110 Stat. 1240.)

PRIOR PROVISIONS

For a prior section 3614, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

1996—Pub. L. 104–232, § 207(c)(5)(A), inserted ''or restitution'' after ''fine'' in section catchline.

Subsec. (a). Pub. L. 104–232, § 207(c)(5)(B), inserted ''or restitution'' after ''fine''.

Subsec. (c). Pub. L. 104–232, § 207(c)(5)(C), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3615. Criminal default

Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2006.)

PRIOR PROVISIONS

For prior sections 3615 to 3620, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

SUBCHAPTER C—IMPRISONMENT

SUBCHAPTER C—IMPRISONMENT[1]

Sec.
3621. Imprisonment of a convicted person.
3622. Temporary release of a prisoner.
3623. Transfer of a prisoner to State authority.
3624. Release of a prisoner.
3625. Inapplicability of the Administrative Procedure Act.
3626. Appropriate remedies with respect to prison conditions.

AMENDMENTS

1996—Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 802(c)], Apr. 26, 1996, 110 Stat. 1321, 1321–70; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which directed that table of sections at beginning of subchapter C of this chapter be amended generally to read ''3626. Appropriate remedies with respect to prison conditions.'', was executed by making amendment in item 3626 to reflect the probable intent of Congress. Prior to amendment, item 3626 read as follows: ''3626. Appropriate remedies with respect to prison crowding.''

1994—Pub. L. 103–322, title II, § 20409(c), title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 1828, 2143, transferred analysis of this subchapter to follow heading for this subchapter and added item 3626.

§ 3621. Imprisonment of a convicted person

(a) COMMITMENT TO CUSTODY OF BUREAU OF PRISONS.—A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) PLACE OF IMPRISONMENT.—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

(1) the resources of the facility contemplated;

(2) the nature and circumstances of the offense;

(3) the history and characteristics of the prisoner;

(4) any statement by the court that imposed the sentence—

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

(B) recommending a type of penal or correctional facility as appropriate; and

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.

(c) DELIVERY OF ORDER OF COMMITMENT.—When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) DELIVERY OF PRISONER FOR COURT APPEARANCES.—The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government.

[1] So in original. Probably should not appear.

(e) SUBSTANCE ABUSE TREATMENT.—

(1) PHASE-IN.—In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)—

(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

(2) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—

(A) GENERALLY.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under paragraph (1) of this subsection, shall remain in the custody of the Bureau under such conditions as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) PERIOD OF CUSTODY.—The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

(3) REPORT.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain—

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this subsection such sums as may be necessary for each of fiscal years 2007 through 2011.

(5) DEFINITIONS.—As used in this subsection—

(A) the term ''residential substance abuse treatment'' means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set apart from the general prison population—

(i) directed at the substance abuse problems of the prisoner;

(ii) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and

(iii) which may include the use of pharmacoptherapies[1], if appropriate, that may extend beyond the treatment period;

(B) the term ''eligible prisoner'' means a prisoner who is—

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program; and

(C) the term ''aftercare'' means placement, case management and monitoring of the participant in a community-based substance abuse treatment program when the participant leaves the custody of the Bureau of Prisons.

(6) COORDINATION OF FEDERAL ASSISTANCE.—The Bureau of Prisons shall consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches including relapse prevention and aftercare services.

(f) SEX OFFENDER MANAGEMENT.—

(1) IN GENERAL.—The Bureau of Prisons shall make available appropriate treatment to sex offenders who are in need of and suitable for treatment, as follows:

(A) SEX OFFENDER MANAGEMENT PROGRAMS.—The Bureau of Prisons shall establish non-residential sex offender management programs to provide appropriate treatment, monitoring, and supervision of sex offenders and to provide aftercare during prerelease custody.

(B) RESIDENTIAL SEX OFFENDER TREATMENT PROGRAMS.—The Bureau of Prisons shall establish residential sex offender treatment programs to provide treatment to sex offenders who volunteer for such programs and are deemed by the Bureau of Prisons to be in need of and suitable for residential treatment.

(2) REGIONS.—At least 1 sex offender management program under paragraph (1)(A), and at least one residential sex offender treatment program under paragraph (1)(B), shall be established in each region within the Bureau of Prisons.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Bureau of Prisons for each fiscal year such

[1] So in original. Probably should be ''pharmacotherapies''.

sums as may be necessary to carry out this subsection.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007; amended Pub. L. 101–647, title XXIX, § 2903, Nov. 29, 1990, 104 Stat. 4913; Pub. L. 103–322, title II, § 20401, title III, § 32001, Sept. 13, 1994, 108 Stat. 1824, 1896; Pub. L. 109–162, title XI, § 1146, Jan. 5, 2006, 119 Stat. 3112; Pub. L. 109–248, title VI, § 622, July 27, 2006, 120 Stat. 634.)

PRIOR PROVISIONS

For a prior section 3621, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

2006—Subsec. (e)(4). Pub. L. 109–162, § 1146(1), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''There are authorized to be appropriated to carry out this subsection—

''(A) $13,500,000 for fiscal year 1996;

''(B) $18,900,000 for fiscal year 1997;

''(C) $25,200,000 for fiscal year 1998;

''(D) $27,000,000 for fiscal year 1999; and

''(E) $27,900,000 for fiscal year 2000.''

Subsec. (e)(5)(A)(iii). Pub. L. 109–162, § 1146(2), added cl. (iii).

Subsec. (f). Pub. L. 109–248 added subsec. (f).

1994—Subsec. (b). Pub. L. 103–322, § 32001(1), struck out '', to the extent practicable,'' after ''The Bureau shall'' in concluding provisions.

Pub. L. 103–322, § 20401, inserted ''In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status.'' after subsec. (b)(5).

Subsec. (e). Pub. L. 103–322, § 32001(2), added subsec. (e).

1990—Subsec. (b). Pub. L. 101–647 inserted at end ''The Bureau shall, to the extent practicable, make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3622. Temporary release of a prisoner

The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to—

(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of—

(1) visiting a relative who is dying;

(2) attending a funeral of a relative;

(3) obtaining medical treatment not otherwise available;

(4) contacting a prospective employer;

(5) establishing or reestablishing family or community ties; or

(6) engaging in any other significant activity consistent with the public interest;

(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

(1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and

(2) the prisoner agrees to pay to the Bureau such costs incident to official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

PRIOR PROVISIONS

For a prior section 3622, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

EX. ORD. NO. 11755. PRISON LABOR

Ex. Ord. No. 11755, Dec. 29, 1973, 39 F.R. 779, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12943, Dec. 13, 1994, 59 F.R. 64553, provided:

The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.

Under sections 3621 and 3622 of title 18, United States Code, the Bureau of Prisons is empowered to authorize Federal prisoners to work at paid employment in the community during their terms of imprisonment under conditions that protect against both the exploitation of convict labor and unfair competition with free labor.

Several states and other jurisdictions have similar laws or regulations under which individuals confined for violations of the laws of those places may be authorized to work at paid employment in the community.

Executive Order No. 325A, which was originally issued by President Theodore Roosevelt in 1905, prohibits the employment, in the performance of Federal contracts, of any person who is serving a sentence of imprisonment at hard labor imposed by a court of a State, territory, or municipality.

I have now determined that Executive Order No. 325A should be replaced with a new Executive Order which would permit the employment of non-Federal prison inmates in the performance of Federal contracts under terms and conditions that are comparable to those now applicable to inmates of Federal prisons.

NOW, THEREFORE, pursuant to the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) All contracts involving the use of appropriated funds which shall hereafter be entered into by any department or agency of the executive branch for performance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the

Northern Mariana Islands, or the Trust Territory of the Pacific Islands shall, unless otherwise provided by law, contain a stipulation forbidding in the performance of such contracts, the employment of persons undergoing sentences of imprisonment which have been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by a contractor in the performance of such contracts of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by a contractor in the performance of such contracts of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if

(1)(A) The worker is paid or is in an approved work training program on a voluntary basis;

(B) Representatives of local union central bodies or similar labor union organizations have been consulted;

(C) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(D) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(2) The Attorney General has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of this order.

(b) After notice and opportunity for hearing, the Attorney General shall revoke any such certification under section 1(a)(2) if he finds that the work-release program of the jurisdiction involved is not being conducted in conformity with the requirements of this order or with its intent or purposes.

(c) The provisions of this order do not apply to purchases made under the micropurchase authority contained in section 32 of the Office of Federal Procurement Policy Act, as amended [41 U.S.C. 428].

SEC. 2. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the executive branch shall be revised to reflect the policy prescribed by this order.

SEC. 3. Executive Order No. 325A is hereby superseded.

SEC. 4. This order shall be effective as of January 1, 1974.

§ 3623. Transfer of a prisoner to State authority

The Director of the Bureau of Prisons shall order that a prisoner who has been charged in an indictment or information with, or convicted of, a State felony, be transferred to an official detention facility within such State prior to his release from a Federal prison facility if—

(1) the transfer has been requested by the Governor or other executive authority of the State;

(2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and

(3) the Director finds that the transfer would be in the public interest.

If more than one request is presented with respect to a prisoner, the Director shall determine which request should receive preference. The expenses of such transfer shall be borne by the State requesting the transfer.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008.)

PRIOR PROVISIONS

For a prior section 3623, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3624. Release of a prisoner

(a) DATE OF RELEASE.—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.—(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year[1] other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

(3) The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development program for inmates who have not earned a high school diploma or its equivalent.

[1] So in original. Probably should be followed by a comma.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) PRE-RELEASE CUSTODY.—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community. The authority provided by this subsection may be used to place a prisoner in home confinement. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

(d) ALLOTMENT OF CLOTHING, FUNDS, AND TRANSPORTATION.—Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with—

(1) suitable clothing;

(2) an amount of money, not more than $500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) SUPERVISION AFTER RELEASE.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.

(f) MANDATORY FUNCTIONAL LITERACY REQUIREMENT.—

(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period sufficient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

(3) As used in this section, the term "functional literacy" means—

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008; amended Pub. L. 99–646, §§ 16(a), 17(a), Nov. 10, 1986, 100 Stat. 3595; Pub. L. 101–647, title XXIX, §§ 2902(a), 2904, Nov. 29, 1990, 104 Stat. 4913; Pub. L. 103–322, title II, §§ 20405, 20412, Sept. 13, 1994, 108 Stat. 1825, 1828; Pub. L. 104–66, title I, § 1091(c), Dec. 21, 1995, 109 Stat. 722; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 809(c)], Apr. 26, 1996, 110 Stat. 1321, 1321–76; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

The date of enactment of the Prison Litigation Reform Act, referred to in subsec. (b)(2), probably means the date of enactment of the Prison Litigation Reform Act of 1995, section 101[(a)] [title VIII] of Pub. L. 104–134, which was approved Apr. 26, 1996.

The date of the enactment of this Act, referred to in subsec. (f)(1), probably means the date of enactment of Pub. L. 101–647, which enacted subsec. (f) and was approved Nov. 29, 1990.

PRIOR PROVISIONS

For a prior section 3624, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3601 of this title.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(1)(A)], struck out at beginning "A prisoner (other than a prisoner serving a sentence for a crime of violence) who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of the prisoner's life, shall receive credit toward the service of the prisoner's sentence, beyond the time served, of fifty-four days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during that year, the prisoner has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner."

Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(1)(B)], in second sentence substituted "Subject to paragraph (2), a prisoner" for "A prisoner", struck out "for a crime of

violence,'' after ''1 year'', and struck out ''such'' after ''compliance with''.

Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(1)(C)], in third sentence substituted ''Subject to paragraph (2), if the Bureau'' for ''If the Bureau''.

Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(1)(D)], in fourth sentence substituted ''In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree.'' for ''The Bureau's determination shall be made within fifteen days after the end of each year of the sentence.''

Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(1)(E)], in sixth sentence substituted ''Subject to paragraph (2), credit for the last'' for ''Credit for the last''.

Subsec. (b)(2). Pub. L. 104–134, § 101[(a)] [title VIII, § 809(c)(2)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Credit toward a prisoner's service of sentence shall not be vested unless the prisoner has earned or is making satisfactory progress toward a high school diploma or an equivalent degree.''

1995—Subsec. (f)(6). Pub. L. 104–66 struck out par. (6) which read as follows: ''A report shall be provided to Congress on an annual basis summarizing the results of this program, including the number of inmate participants, the number successfully completing the program, the number who do not successfully complete the program, and the reasons for failure to successfully complete the program.''

1994—Subsec. (a). Pub. L. 103–322, § 20405(2), substituted ''the prisoner's'' for ''his'' after ''the expiration of'' and ''toward the service of''.

Subsec. (b). Pub. L. 103–322, § 20412(1), (2), designated existing provisions as par. (1), substituted ''Credit that has not been earned may not later be granted.'' for ''Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted.'', and added pars. (2) to (4).

Pub. L. 103–322, § 20405, inserted ''(other than a prisoner serving a sentence for a crime of violence)'' after ''A prisoner'' in first sentence, substituted ''the prisoner'' for ''he'' before ''has not satisfactorily complied with'' in first sentence and before ''shall receive no such credit toward'' in third sentence and ''the prisoner's'' for ''his'' wherever appearing in first and third sentences, and inserted after first sentence ''A prisoner who is serving a term of imprisonment of more than 1 year for a crime of violence, other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations.''

Subsec. (c). Pub. L. 103–322, § 20405(2), substituted ''the prisoner's re-entry'' for ''his re-entry''.

Subsec. (d). Pub. L. 103–322, § 20405(2), (3), substituted ''the prisoner'' for ''him'' in introductory provisions and ''the prisoner's'' for ''his'' wherever appearing in introductory provisions and par. (3).

1990—Subsec. (c). Pub. L. 101–647, § 2902(a), inserted after first sentence ''The authority provided by this subsection may be used to place a prisoner in home confinement.''

Subsec. (f). Pub. L. 101–647, § 2904, added subsec. (f).

1986—Subsec. (b). Pub. L. 99–646, § 16(a), substituted ''beginning at the end of'' for ''beginning after''.

Subsec. (e). Pub. L. 99–646, § 17(a), substituted ''imprisonment and runs concurrently'' for ''imprisonment. The term runs concurrently'' and ''supervised released. A term of supervised release does not run'' for ''supervised release, except that it does not run'', struck out '', other than during limited intervals as a condition of probation or supervised release,'' after ''person is imprisoned'', and inserted ''unless the imprisonment is for a period of less than 30 consecutive days'' before the period at end of third sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2902(b) of Pub. L. 101–647 provided that: ''Section 3624(c) of title 18, United States Code, as amended by this section, shall apply with respect to all inmates, regardless of the date of their offense.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 16(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3624 [Nov. 1, 1987].''

Section 17(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3624 [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3625. Inapplicability of the Administrative Procedure Act

The provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this subchapter.

(Added Pub. L. 98–473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2010.)

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

§ 3626. Appropriate remedies with respect to prison conditions

(a) REQUIREMENTS FOR RELIEF.—

(1) PROSPECTIVE RELIEF.—(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless—

(i) Federal law requires such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construc-

tion of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) PRELIMINARY INJUNCTIVE RELIEF.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

(3) PRISONER RELEASE ORDER.—(A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless—

(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that—

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

(F) Any State or local official including a legislator or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

(b) TERMINATION OF RELIEF.—

(1) TERMINATION OF PROSPECTIVE RELIEF.—(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) LIMITATION.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) TERMINATION OR MODIFICATION OF RELIEF.—Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

(c) SETTLEMENTS.—

(1) CONSENT DECREES.—In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) PRIVATE SETTLEMENT AGREEMENTS.—(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement

agreement has been breached from seeking in State court any remedy available under State law.

(d) STATE LAW REMEDIES.—The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.—

(1) GENERALLY.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) AUTOMATIC STAY.—Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) POSTPONEMENT OF AUTOMATIC STAY.—The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) ORDER BLOCKING THE AUTOMATIC STAY.—Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) SPECIAL MASTERS.—

(1) IN GENERAL.—(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) APPOINTMENT.—(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) INTERLOCUTORY APPEAL.—Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) COMPENSATION.—The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) REGULAR REVIEW OF APPOINTMENT.—In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) LIMITATIONS ON POWERS AND DUTIES.—A special master appointed under this subsection—

(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

(B) shall not make any findings or communications ex parte;

(C) may be authorized by a court to assist in the development of remedial plans; and

(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) DEFINITIONS.—As used in this section—

(1) the term ''consent decree'' means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term ''civil action with respect to prison conditions'' means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;

(3) the term ''prisoner'' means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

(4) the term ''prisoner release order'' includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

(5) the term ''prison'' means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(6) the term ''private settlement agreement'' means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term ''prospective relief'' means all relief other than compensatory monetary damages;

(8) the term ''special master'' means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

(9) the term ''relief'' means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

(Added Pub. L. 103–322, title II, § 20409(a), Sept. 13, 1994, 108 Stat. 1827; amended Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 802(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–66; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–119, title I, § 123(a), Nov. 26, 1997, 111 Stat. 2470.)

REFERENCES IN TEXT

The date of enactment of the Prison Litigation Reform Act, referred to in subsec. (b)(1)(A)(iii), probably means the date of enactment of the Prison Litigation Reform Act of 1995, section 101[(a)] [title VIII] of Pub. L. 104–134, which was approved Apr. 26, 1996.

The Federal Rules of Civil Procedure, referred to in subsec. (g)(8), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1997—Subsec. (a)(1)(B)(i). Pub. L. 105–119, § 123(a)(1)(A), substituted ''requires'' for ''permits''.

Subsec. (a)(3)(A). Pub. L. 105–119, § 123(a)(1)(B)(i), substituted ''no court shall enter a prisoner release order unless'' for ''no prisoner release order shall be entered unless''.

Subsec. (a)(3)(F). Pub. L. 105–119, § 123(a)(1)(B)(ii), inserted ''including a legislator'' after ''local official'' and substituted ''prison facilities'' for ''program facilities''.

Subsec. (b)(3). Pub. L. 105–119, § 123(a)(2), substituted ''current and ongoing'' for ''current or ongoing''.

Subsec. (e)(1). Pub. L. 105–119, § 123(a)(3)(A), inserted at end ''Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.''

Subsec. (e)(2). Pub. L. 105–119, § 123(a)(3)(B), substituted ''Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay'' for ''Any prospective relief subject to a pending motion shall be automatically stayed''.

Subsec. (e)(3), (4). Pub. L. 105–119, § 123(a)(3)(C), added pars. (3) and (4).

1996—Pub. L. 104–134 amended section generally, substituting provisions relating to appropriate remedies with respect to prison conditions for former provisions relating to appropriate remedies with respect to prison crowding.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 123(b) of Pub. L. 105–119 provided that: ''The amendments made by this Act [probably should be ''section'', amending this section] shall take effect upon the date of the enactment of this Act [Nov. 26, 1997] and shall apply to pending cases.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101[(a)] [title VIII, § 802(b)(1)] of Pub. L. 104–134 provided that: ''Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after the date of the enactment of this title [Apr. 26, 1996].''

EFFECTIVE AND TERMINATION DATES

Section 20409(b) of Pub. L. 103–322, which provided that this section applied to all court orders outstanding on Sept. 13, 1994, and section 20409(d) of Pub. L. 103–322, which provided for the repeal of this section 5 years after Sept. 13, 1994, were repealed by Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 802(b)(2)], Apr. 26, 1996, 110 Stat. 1321, 1321–70; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

SEVERABILITY

Section 101[(a)] [title VIII, § 810] of Pub. L. 104–134 provided that: ''If any provision of this title [see Short Title of 1996 Amendment note set out under section 3601 of this title], an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

SPECIAL MASTERS APPOINTED PRIOR TO APRIL 26, 1996; PROHIBITION ON USE OF FUNDS

Pub. L. 104–208, div. A, title I, § 101(a) [title III, § 306], Sept. 30, 1996, 110 Stat. 3009, 3009–45, provided that: ''None of the funds available to the Judiciary in fiscal years 1996 and 1997 and hereafter shall be available for expenses authorized pursuant to section 802(a) of title VIII of section 101(a) of title I of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134 [amending this section], for costs related to the appointment of Special Masters prior to April 26, 1996.''

PAYMENT OF DAMAGE AWARD IN SATISFACTION OF PENDING RESTITUTION ORDERS

Section 101[(a)] [title VIII, § 807] of Pub. L. 104–134 provided that: ''Any compensatory damages awarded to a prisoner in connection with a civil action brought against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. The remainder of any such award after full payment of all pending restitution orders shall be forwarded to the prisoner.''

NOTICE TO CRIME VICTIMS OF PENDING DAMAGE AWARD

Section 101[(a)] [title VIII, § 808] of Pub. L. 104–134 provided that: ''Prior to payment of any compensatory damages awarded to a prisoner in connection with a civil action brought against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, reasonable efforts shall be made to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of any such compensatory damages.''

[CHAPTER 231—REPEALED]

[§§ 3651 to 3656. Repealed or Renumbered. Pub. L. 98–473, title II, § 212(a)(1), (2), Oct. 12, 1984, 98 Stat. 1987]

Section 3651, acts June 25, 1948, ch. 645, 62 Stat. 842; June 20, 1958, Pub. L. 85–463, § 1, 72 Stat. 216; Aug. 23, 1958, Pub. L. 85–741, 72 Stat. 834; Oct. 22, 1970, Pub. L. 91–492, § 1, 84 Stat. 1090; May 11, 1972, Pub. L. 92–293, § 1, 86 Stat. 136; Oct. 27, 1978, Pub. L. 95–537, § 2, 92 Stat. 2038; Oct. 12, 1984, Pub. L. 98–473, title II, §§ 235(a)(1), 238(b), (c), (i), 98 Stat. 2031, 2038, 2039; Oct. 30, 1984, Pub. L.

98–596, §§ 4, 12(a)(2), (3), (9), (b), 98 Stat. 3136, 3139, 3140, related to suspension of sentence and probation.

Section 3652, act June 25, 1948, ch. 645, 62 Stat. 842, related to probation—(Rule).

Section 3653, acts June 25, 1948, ch. 645, 62 Stat. 842; May 24, 1949, ch. 139, § 56, 63 Stat. 96, related to report of probation officer and arrest of probationer.

Section 3654, acts June 25, 1948, ch. 645, 62 Stat. 843; Aug. 2, 1949, ch. 383, § 2, 63 Stat. 491, related to appointment and removal of probation officers.

Section 3655, acts June 25, 1948, ch. 645, 62 Stat. 843; Mar. 15, 1976, Pub. L. 94–233, § 14, 90 Stat. 233; Oct. 12, 1984, Pub. L. 98–473, title II, §§ 235(a)(1), 238(d), (i), 98 Stat. 2031, 2038, 2039; Oct. 30, 1984, Pub. L. 98–596, §§ 5, 12(a)(4), (9), (b), 98 Stat. 3136, 3139, 3140, related to duties of probation officers.

Section 3656 renumbered section 3672 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

Sec.
3661. Use of information for sentencing.
3662. Conviction records.
3663. Order of restitution.
3663A. Mandatory restitution to victims of certain crimes.
3664. Procedure for issuance and enforcement of order of restitution.
3665. Firearms possessed by convicted felons.
3666. Bribe moneys.
3667. Liquors and related property; definitions.
3668. Remission or mitigation of forfeitures under liquor laws; possession pending trial.
3669. Conveyances carrying liquor.
3670. Disposition of conveyances seized for violation of the Indian liquor laws.
3671. Vessels carrying explosives and steerage passengers.
3672. Duties of Director of Administrative Office of the United States Courts.
3673. Definitions for sentencing provisions.

AMENDMENTS

1996—Pub. L. 104–132, title II, §§ 204(b), 206(b), Apr. 24, 1996, 110 Stat. 1229, 1236, added item 3663A and substituted ''issuance and enforcement of order of restitution'' for ''issuing order of restitution'' in item 3664.

1990—Pub. L. 101–647, title XXXV, § 3594, Nov. 29, 1990, 104 Stat. 4931, substituted ''Conveyances'' for ''Conveyance'' in item 3669.

1984—Pub. L. 98–473, title II, §§ 212(a)(5), 235(a)(1), Oct. 12, 1984, 98 Stat. 2010, 2031, as amended, added chapter heading and analysis of sections for chapter 232 consisting of items 3661 to 3673, effective Nov. 1, 1987.

EFFECTIVE DATE

Pub. L. 98–473, title II, §§ 212(a)(1), (3)–(5), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2010, 2031, as amended, enacted heading, analysis, and section 3673 of this chapter (§§ 3661 to 3673), provided that sections 3577, 3578, 3579, 3580, 3611, 3612, 3615, 3617, 3618, 3619, 3620, and 3656 of this title are renumbered as sections 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, and 3672, respectively, of this chapter, and amended section 3663 of this chapter, effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this chapter. Section 235 of Pub. L. 98–473, as amended, relating to effective dates, is set out as a note under section 3551 of this title.

§ 3661. Use of information for sentencing

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

(Added Pub. L. 91–452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951, § 3577; renumbered § 3661, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–421, § 1, Oct. 12, 1990, 104 Stat. 909, provided that: ''This Act [amending provisions set out as a note under section 3672 of this title] may be cited as the 'Drug and Alcohol Dependent Offenders Treatment Act of 1989'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title I, § 1861(a), Oct. 27, 1986, 100 Stat. 3207–53, provided that: ''This section [amending sections 3672 and 4255 of this title, enacting provisions set out as a note under section 3672 of this title, and amending provisions set out as a note under section 4255 of this title] may be cited as the 'Drug and Alcohol Dependent Offenders Treatment Act of 1986'.''

§ 3662. Conviction records

(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

(b) Upon the conviction thereafter of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

(c) Records maintained in the repository shall not be public records. Certified copies thereof—

(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(2) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of a State, any political subdivision, or any department, agency, or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

(3) shall be prima facie evidence in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section.

(Added Pub. L. 91–452, title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951, § 3578; renumbered § 3662, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

§ 3663. Order of restitution

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term ''victim'' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B)(i)(II) and (ii),[1] when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

[1] So in original. Probably should be ''(ii)),''.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

(Added Pub. L. 97–291, § 5(a), Oct. 12, 1982, 96 Stat. 1253, § 3579; renumbered § 3663 and amended Pub. L. 98–473, title II, § 212(a)(1), (3), Oct. 12, 1984, 98 Stat. 1987, 2010; Pub. L. 98–596, § 9, Oct. 30, 1984, 98 Stat. 3138; Pub. L. 99–646, §§ 8(b), 20(a), 77(a), 78(a), 79(a), Nov. 10, 1986, 100 Stat. 3593, 3596, 3618, 3619; Pub. L. 100–182, § 13, Dec. 7, 1987, 101 Stat. 1268; Pub. L. 100–185, § 12, Dec. 11, 1987, 101 Stat. 1285; Pub. L. 100–690, title VII, § 7042, Nov. 18, 1988, 102 Stat. 4399; Pub. L. 101–647, title XXV, § 2509, title XXXV, § 3595, Nov. 29, 1990, 104 Stat. 4863, 4931; Pub. L. 103–272, § 5(e)(12), July 5, 1994, 108 Stat. 1374; Pub. L. 103–322, title IV, §§ 40504, 40505, Sept. 13, 1994, 108 Stat. 1947; Pub. L. 104–132, title II, § 205(a), Apr. 24, 1996, 110 Stat. 1229; Pub. L. 104–294, title VI, §§ 601(r)(1), (2), 605(*l*), Oct. 11, 1996, 110 Stat. 3502, 3510; Pub. L. 106–310, div. B, title XXXVI, § 3613(c), Oct. 17, 2000, 114 Stat. 1230; Pub. L. 109–59, title VII, § 7128(b), Aug. 10, 2005, 119 Stat. 1910.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (c)(4), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

2005—Subsec. (a)(1)(A). Pub. L. 109–59 inserted ''5124,'' before ''46312,''.

2000—Subsec. (c)(2)(B). Pub. L. 106–310 inserted ''which may be'' after ''fine''.

1996—Subsec. (a)(1). Pub. L. 104–132, § 205(a)(1)(A)–(E), substituted ''(a)(1)(A) The court'' for ''(a)(1) The court'', inserted '', section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section),'' before ''or section 46312,'', ''other than an offense described in section 3663A(c),'' after ''title 49'', and '', or if the victim is deceased, to the victim's estate'' before period at end, and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 104–294, § 601(r)(1), inserted at end ''The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.''

Subsec. (a)(2). Pub. L. 104–132, § 205(a)(1)(F), as amended by Pub. L. 104–294, § 605(*l*), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.''

Subsec. (c). Pub. L. 104–132, § 205(a)(2), (3), added subsec. (c) and struck out former subsec. (c) which read as follows: ''If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.''

Subsec. (c)(4). Pub. L. 104–294, § 601(r)(2), inserted ''or chapter 96'' after ''under chapter 46''.

Subsec. (d). Pub. L. 104–132, § 205(a)(2), (3), added subsec. (d) and struck out former subsec. (d) which read as follows: ''To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.''

Subsecs. (e) to (i). Pub. L. 104–132, § 205(a)(2), struck out subsecs. (e) to (i), relating to provisions for restitution to persons who had compensated victims for their loss as well as offsets for restitution received by victims against amounts later recovered as compensatory damages, court orders that defendant make restitution in specified time period or in specified installments, payment of restitution as condition of probation or of supervised release, enforcement of restitution orders by United States or by victim, and supervision, termination, or restoration of eligibility for Federal benefits of persons delinquent in making restitution, respectively.

1994—Subsec. (a)(1). Pub. L. 103–272 substituted ''section 46312, 46502, or 46504 of title 49'' for ''under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472)''.

Subsec. (b)(2). Pub. L. 103–322, § 40504(1), in introductory provisions, inserted ''including an offense under chapter 109A or chapter 110'' after ''victim''.

Subsec. (b)(3) to (5). Pub. L. 103–322, § 40504(2)–(4), struck out ''and'' at end of par. (3), added par. (4), and redesignated former par. (4) as (5).

Subsec. (i). Pub. L. 103–322, § 40505, added subsec. (i).

1990—Subsec. (a). Pub. L. 101–647, § 2509, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f)(4). Pub. L. 101–647, § 3595, substituted ''604(a)(18)'' for ''604(a)(17)''.

1988—Subsec. (h). Pub. L. 100–690 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''An order of restitution may be enforced by the United States in the manner provided in sections 3812 and 3813 or in the same manner as a judgment in a civil action, and by the victim named in the order to receive the restitution in the same manner as a judgment in a civil action.''

1987—Subsec. (f)(4). Pub. L. 100–185 inserted ''or the person designated under section 604(a)(17) of title 28'' after ''Attorney General''.

Subsec. (g). Pub. L. 100–182 substituted ''revoke probation or a term of supervised release,'' for ''revoke probation,'' in two places and inserted ''probation or'' after ''modify the term or conditions of'' in two places.

1986—Subsec. (a). Pub. L. 99–646, § 20(a), which directed that subsec. (a)(1) be amended by inserting '', in the case of a misdemeanor,'' after ''in addition to or'', was executed to subsec. (a) to reflect the probable intent of Congress and the prior amendment to subsec. (a) by Pub. L. 99–646, § 8(b), below.

Pub. L. 99–646, § 8(b), struck out par. (1) designation, and struck out par. (2) which read as follows: ''If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.''

Subsec. (a)(1). Pub. L. 99–646, § 79(a), substituted ''such offense'' for ''the offense''.

Subsec. (d). Pub. L. 99–646, § 77(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.''

Subsec. (h). Pub. L. 99–646, § 78(a), substituted ''in the manner provided for the collection of fines and penalties by section 3565 or by a victim'' for ''or a victim''.

1984—Pub. L. 98–473, § 212(a)(1), renumbered section 3579 of this title as this section.

Subsec. (c). Pub. L. 98–596, § 9(1), substituted ''court'' for ''Court'' after ''If the''.

Subsec. (f)(4). Pub. L. 98–596, § 9(2), added par. (4).

Subsec. (g). Pub. L. 98–473, § 212(a)(3)(A), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''If such defendant is placed on probation or paroled under this title, any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation and the Parole Commission may revoke parole if the defendant fails to comply with such order. In determining whether to revoke probation or parole, the court or Parole Commission shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.''

Subsec. (h). Pub. L. 98–473, § 212(a)(3)(B), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''An order of restitution may be enforced by the United States in the manner provided for the collection of fines and penalties by section 3565 or by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 8(b) of Pub. L. 99–646 effective Nov. 1, 1987, see section 8(c) of Pub. L. 99–646, set out as a note under section 3553 of this title.

Amendment by section 20(a) of Pub. L. 99–646 effective Nov. 1, 1987, see section 20(c) of Pub. L. 99–646, set out as a note under section 3556 of this title.

Section 77(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the 30th day after the date of the enactment of this Act [Nov. 10, 1986].''

Section 78(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the 30th day after the date of the enactment of this Act [Nov. 10, 1986].''

Section 79(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98–596.

Amendment by section 212(a)(3) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE

Section effective with respect to offenses occurring after Jan. 1, 1983, see section 9(b)(2) of Pub. L. 97–291, set out as a note under section 1512 of this title.

PROFIT BY A CRIMINAL FROM SALE OF HIS STORY

Section 7 of Pub. L. 97–291 required the Attorney General to report, by Oct. 12, 1982, to Congress regarding any laws that are necessary to ensure that no Federal felon derives any profit from the sale of the recollections, thoughts, and feelings of such felon with regards to the offense committed by the felon until any victim of the offense receives restitution.

§ 3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term ''victim'' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit; or

(iii) an offense described in section 1365 (relating to tampering with consumer products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

(Added Pub. L. 104–132, title II, § 204(a), Apr. 24, 1996, 110 Stat. 1227; amended Pub. L. 106–310, div. B, title XXXVI, § 3613(d), Oct. 17, 2000, 114 Stat. 1230.)

AMENDMENTS

2000—Subsec. (c)(1)(A)(ii). Pub. L. 106–310 inserted ''or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)),'' after ''under this title,''.

EFFECTIVE DATE

Section to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as an Effective Date of 1996 Amendment note under section 2248 of this title.

§ 3664. Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable—

(A) provide notice to all identified victims of—

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(4) An in-kind payment described in paragraph (3) may be in the form of—

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.

(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(*l*) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

(ii) by all other available and reasonable means.

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

(*o*) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

(1) such a sentence can subsequently be—

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under subsection (d)(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.

(Added Pub. L. 97–291, § 5(a), Oct. 12, 1982, 96 Stat. 1255, § 3580; renumbered § 3664, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987; amended Pub. L. 101–647, title XXXV, § 3596, Nov. 29, 1990, 104 Stat. 4931; Pub. L. 104–132, title II, § 206(a), Apr. 24, 1996, 110 Stat. 1232; Pub. L. 107–273, div. B, title IV, § 4002(e)(1), Nov. 2, 2002, 116 Stat. 1810.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (c) and (*o*)(1)(A), are set out in the Appendix to this title.

AMENDMENTS

2002—Subsec. (*o*)(1)(C). Pub. L. 107–273 substituted ''subsection (d)(5)'' for ''section 3664(d)(3)''.

1996—Pub. L. 104–132 amended section generally, substituting provisions relating to procedure for issuance and enforcement of orders of restitution for provisions relating to procedure for issuing orders of restitution.

1990—Subsec. (a). Pub. L. 101–647 substituted ''3663'' for ''3579''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104–132, set out as a note under section 2248 of this title.

EFFECTIVE DATE

Section effective with respect to offenses occurring after Jan. 1, 1983, see section 9(b)(2) of Pub. L. 97–291, set out as a note under section 1512 of this title.

§ 3665. Firearms possessed by convicted felons

A judgment of conviction for transporting a stolen motor vehicle in interstate or foreign commerce or for committing or attempting to commit a felony in violation of any law of the United States involving the use of threats, force, or violence or perpetrated in whole or in part by the use of firearms, may, in addition to the penalty provided by law for such offense, order the confiscation and disposal of firearms and ammunition found in the possession or under the immediate control of the defendant at the time of his arrest.

The court may direct the delivery of such firearms or ammunition to the law-enforcement agency which apprehended such person, for its use or for any other disposition in its discretion.

(June 25, 1948, ch. 645, 62 Stat. 839, § 3611; renumbered § 3665, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 645 (June 13, 1939, ch. 197, 53 Stat. 814).

The condensation and simplification of this section clarifies its intent to confiscate the firearms taken from persons convicted of crimes of violence without any real change of substance.

§ 3666. Bribe moneys

Moneys received or tendered in evidence in any United States Court, or before any officer

thereof, which have been paid to or received by any official as a bribe, shall, after the final disposition of the case, proceeding or investigation, be deposited in the registry of the court to be disposed of in accordance with the order of the court, to be subject, however, to the provisions of section 2042 of Title 28.

(June 25, 1948, ch. 645, 62 Stat. 840, § 3612; May 24, 1949, ch. 139, § 55, 63 Stat. 96; renumbered § 3666, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 570 (Jan. 7, 1925, ch. 33, 43 Stat. 726).

Changes were made in phraseology.

1949 ACT

This section [section 55] corrects section 3612 of title 18, U.S.C., so that the reference in such section will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

AMENDMENTS

1949—Act May 24, 1949, substituted ''section 2042'' for ''section 852''.

§ 3667. Liquors and related property; definitions

All liquor involved in any violation of sections 1261–1265 of this title, the containers of such liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited and such property or its proceeds disposed of in accordance with the laws relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws.

As used in this section, ''vessel'' includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; ''vehicle'' includes animals and every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air.

(June 25, 1948, ch. 645, 62 Stat. 840, § 3615; renumbered § 3667, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

HISTORICAL AND REVISION NOTES

Based on sections 222 and 224 of title 27, U.S.C., 1940 ed., Intoxicating Liquors (June 25, 1936, ch. 815, §§ 2, 4, 49 Stat. 1928).

Section consolidates sections 222 and 224 of title 27, U.S.C., 1940 ed., with changes in phraseology and arrangement necessary to effect the consolidation. Said section 222 is also incorporated in section 1262 of this title.

Definition of ''State'' in section 222 of title 27 U.S.C., 1940 ed., as meaning and including ''every State, Territory, and Possession of the United States,'' was omitted because the words ''Territory, District,'' and so forth, appear after ''State'' in sections 1262, 1265, of this title, which are the only sections in chapter 59, constituting sections 1261–1265 of this title, to which such definition would have been applicable.

Changes made in phraseology.

REFERENCES IN TEXT

The internal-revenue laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

§ 3668. Remission or mitigation of forfeitures under liquor laws; possession pending trial

(a) JURISDICTION OF COURT

Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) CONDITIONS PRECEDENT TO REMISSION OR MITIGATION

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(c) CLAIMANTS FIRST ENTITLED TO DELIVERY

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in the order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in section 1306 of title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

(d) DELIVERY ON BOND PENDING TRIAL

In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession.

(June 25, 1948, ch. 645, 62 Stat. 840, § 3617; renumbered § 3668, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987; amended Pub. L. 107–217, § 3(d), Aug. 21, 2002, 116 Stat. 1299.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 646 (Aug. 27, 1935, ch. 740, § 204, 49 Stat. 878).

A minor change was made in phraseology.

REFERENCES IN TEXT

The internal-revenue laws relating to liquor, referred to in subsecs. (a) and (d), are classified generally to chapter 51 (§ 5001 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–217 substituted ''section 1306 of title 40'' for ''sections 304f–304m of Title 40''.

§ 3669. Conveyances carrying liquor

Any conveyance, whether used by the owner or another in introducing or attempting to introduce intoxicants into the Indian country, or into other places where the introduction is prohibited by treaty or enactment of Congress, shall be subject to seizure, libel, and forfeiture.

(June 25, 1948, ch. 645, 62 Stat. 841, § 3618; renumbered § 3669, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

HISTORICAL AND REVISION NOTES

Based on section 247 of title 25, U.S.C., 1940 ed., Indians (Mar. 2, 1917, ch. 146, § 1, 39 Stat. 970).

Words ''Automobiles or any other vehicles or'' at beginning of section were omitted, and ''any conveyance'' substituted to remove possible ambiguity as to scope of section.

Words at conclusion of section ''provided in section 246 of this title'' added nothing and were therefore omitted. (See also rule 41 of the Federal Rules of Criminal Procedure.)

Minor changes were made in arrangement and phraseology.

§ 3670. Disposition of conveyances seized for violation of the Indian liquor laws

The provisions of section 3668 of this title shall apply to any conveyances seized, proceeded against by libel, or forfeited under the provisions of section 3113 or 3669 of this title for having been used in introducing or attempting to introduce intoxicants into the Indian country or into other places where such introduction is prohibited by treaty or enactment of Congress.

(Added Oct. 24, 1951, ch. 546, § 2, 65 Stat. 609, § 3619; renumbered § 3670 and amended Pub. L. 98–473, title II, §§ 212(a)(1), 223(k), Oct. 12, 1984, 98 Stat. 1987, 2029.)

AMENDMENTS

1984—Pub. L. 98–473 renumbered section 3619 of this title as this section and substituted ''3668'' for ''3617'' and ''3669'' for ''3618''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(k) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 3671. Vessels carrying explosives and steerage passengers

The amount of any fine imposed upon the master of a steamship or other vessel under the provisions of section 2278 of this title shall be a lien upon such vessel, and such vessel may be libeled therefor in the district court of the United States for any district in which such vessel shall arrive or from which it shall depart.

(Added Sept. 3, 1954, ch. 1263, § 36, 68 Stat. 1239, § 3620; renumbered § 3671, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

§ 3672. Duties of Director of Administrative Office of the United States Courts

The Director of the Administrative Office of the United States Courts, or his authorized agent, shall investigate the work of the probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of all probation officers.

He shall collect for publication statistical and other information concerning the work of the probation officers.

He shall prescribe record forms and statistics to be kept by the probation officers and shall formulate general rules for the proper conduct of the probation work.

He shall endeavor by all suitable means to promote the efficient administration of the probation system and the enforcement of the probation laws in all United States courts.

He shall, under the supervision and direction of the Judicial Conference of the United States, fix the salaries of probation officers and shall provide for their necessary expenses including clerical service and travel expenses.

He shall incorporate in his annual report a statement concerning the operation of the probation system in such courts.

He shall have the authority to contract with any appropriate public or private agency or per-

son for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act. This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes of the United States.

He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under subsection (b) or (c) of section 3552, except for studies conducted by the Bureau of Prisons.

Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.

(June 25, 1948, ch. 645, 62 Stat. 843, § 3656; May 24, 1949, ch. 139, § 57, 63 Stat. 97; renumbered § 3672, Pub. L. 98–473, title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987; Pub. L. 99–570, title I, § 1861(b)(1), Oct. 27, 1986, 100 Stat. 3207–53; Pub. L. 99–646, § 18(a), Nov. 10, 1986, 100 Stat. 3595; Pub. L. 100–182, § 20, Dec. 7, 1987, 101 Stat. 1270.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 728 (Mar. 4, 1925, ch. 521, § 4(a), as added June 6, 1930, ch. 406, § 2, 46 Stat. 503).

The only change made in this section was the substitution of the ''Director of the Administrative Office of the United States Courts'' for ''Attorney General''. (See reviser's note under section 3654 of this title.)

1949 ACT

This amendment [see section 57] conforms the language of section 3656 of title 18, U.S.C., to that of title 28, U.S.C., section 604(a).

REFERENCES IN TEXT

Section 2 of the Public Health Service Act, referred to in the seventh undesignated par., is classified to section 201 of Title 42, The Public Health and Welfare.

Section 3709 of the Revised Statutes, referred to in the seventh undesignated par., is classified to section 5 of Title 41, Public Contracts.

AMENDMENTS

1987—Pub. L. 100–182, § 20(1), amended seventh undesignated par. generally. Prior to amendment, seventh undesignated par. read as follows: ''He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict, or drug-dependent person by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).''

Pub. L. 100–182, § 20(2), added ninth undesignated par.: ''Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.''

1986—Pub. L. 99–570 and Pub. L. 99–646 added substantially identical seventh and eighth undesignated pars. containing provision relating to authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict, or a drug-dependent person and provision relating to payment for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric and psychological examiners ordered by the court under section 3552(b) or (c).

1949—Act May 24, 1949, inserted in fifth par. of section ''and direction'' after ''supervision''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 18(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such redesignation [section 3656 of this title renumbered section 3672 effective Nov. 1, 1987].''

Section 1861(b)(2) of Pub. L. 99–570 provided that: ''The amendment made by this section [probably should be ''subsection'', amending this section] shall take effect on the date of the taking effect of such redesignation [section 3656 of this title renumbered section 3672 effective Nov. 1, 1987].''

AUTHORIZATION OF APPROPRIATIONS

Section 4(a) of Pub. L. 95–537, as amended by Pub. L. 98–236, § 2, Mar. 20, 1984, 98 Stat. 66; Pub. L. 99–570, title I, § 1861(d), Oct. 27, 1986, 100 Stat. 3207–53; Pub. L. 100–690, title VI, § 6291, Nov. 18, 1988, 102 Stat. 4369; Pub. L. 101–421, § 2, Oct. 12, 1990, 104 Stat. 909, provided that: ''To carry out the purposes of this Act [amending sections 3651 and 4255 of this title] and the 7th paragraph of section 3672 of title 18, United States Code, there are authorized to be appropriated sums not to exceed $3,500,000 for the fiscal year ending September 30, 1980; $3,645,000 for the fiscal year ending September 30, 1981; $3,750,000 for the fiscal year ending September 30, 1982; $5,000,000 for the fiscal year ending September 30, 1984; $5,500,000 for the fiscal year ending September 30, 1985; $6,500,000 for the fiscal year ending September 30, 1986; $12,000,000 for the fiscal year ending September 30, 1987; $24,000,000 for the fiscal year ending September 30, 1988; $26,000,000 for the fiscal year ending September 30, 1989; $30,000,000 for the fiscal year ending September 30, 1990; $40,000,000 for the fiscal year ending September 30, 1991; and $45,000,000 for the fiscal year ending September 30, 1992.''

INCREASE IN COMPENSATION RATES

Increase in compensation rates fixed under this section, see note under section 603 of Title 28, Judiciary and Judicial Procedure.

§ 3673. Definitions for sentencing provisions

As used in chapters 227 and 229—

(1) the term ''found guilty'' includes acceptance by a court of a plea of guilty or nolo contendere;

(2) the term ''commission of an offense'' includes the attempted commission of an offense, the consummation of an offense, and any immediate flight after the commission of an offense; and

(3) the term ''law enforcement officer'' means a public servant authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

(Added Pub. L. 98–473, title II, § 212(a)(4), Oct. 12, 1984, 98 Stat. 2010; amended Pub. L. 99–646, § 2(a), Nov. 10, 1986, 100 Stat. 3592.)

AMENDMENTS

1986—Pub. L. 99–646 redesignated pars. (a) to (c) as (1) to (3), respectively, and inserted ''the term'' after ''(1)'', ''(2)'', and ''(3)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3673 of title 18, United States Code [Nov. 1, 1987].''

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

CHAPTER 232A—SPECIAL FORFEITURE OF COLLATERAL PROFITS OF CRIME

Sec.
3681. Order of special forfeiture.
3682. Notice to victims of order of special forfeiture.

AMENDMENTS

1986—Pub. L. 99–646, § 41(b), (c), Nov. 10, 1986, 100 Stat. 3600, renumbered chapter 232 (relating to special forfeiture of collateral profits of crime) as chapter 232A, and renumbered items 3671 and 3672 as items 3681 and 3682, respectively.

§ 3681. Order of special forfeiture

(a) Upon the motion of the United States attorney made at any time after conviction of a defendant for an offense under section 794 of this title or for an offense against the United States resulting in physical harm to an individual, and after notice to any interested party, the court shall, if the court determines that the interest of justice or an order of restitution under this title so requires, order such defendant to forfeit all or any part of proceeds received or to be received by that defendant, or a transferee of that defendant, from a contract relating to a depiction of such crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of that defendant's thoughts, opinions, or emotions regarding such crime.

(b) An order issued under subsection (a) of this section shall require that the person with whom the defendant contracts pay to the Attorney General any proceeds due the defendant under such contract.

(c)(1) Proceeds paid to the Attorney General under this section shall be retained in escrow in the Crime Victims Fund in the Treasury by the Attorney General for five years after the date of an order under this section, but during that five year period may—

(A) be levied upon to satisfy—

(i) a money judgment rendered by a United States district court in favor of a victim of an offense for which such defendant has been convicted, or a legal representative of such victim; and

(ii) a fine imposed by a court of the United States; and

(B) if ordered by the court in the interest of justice, be used to—

(i) satisfy a money judgment rendered in any court in favor of a victim of any offense for which such defendant has been convicted, or a legal representative of such victim; and

(ii) pay for legal representation of the defendant in matters arising from the offense for which such defendant has been convicted, but no more than 20 percent of the total proceeds may be so used.

(2) The court shall direct the disposition of all such proceeds in the possession of the Attorney General at the end of such five years and may require that all or any part of such proceeds be released from escrow and paid into the Crime Victims Fund in the Treasury.

(d) As used in this section, the term ''interested party'' includes the defendant and any transferee of proceeds due the defendant under the contract, the person with whom the defendant has contracted, and any person physically harmed as a result of the offense for which the defendant has been convicted.

(Added Pub. L. 98–473, title II, § 1406(a), Oct. 12, 1984, 98 Stat. 2175, § 3671; amended Pub. L. 99–399, title XIII, § 1306(c), Aug. 27, 1986, 100 Stat. 899; renumbered § 3681 and amended Pub. L. 99–646, §§ 40, 41(a), Nov. 10, 1986, 100 Stat. 3600.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–646, § 40, struck out ''chapter 227 or 231 of'' after ''restitution under''.

Pub. L. 99–399 inserted ''an offense under section 794 of this title or for''.

EFFECTIVE DATE

Chapter effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98–473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

§ 3682. Notice to victims of order of special forfeiture

The United States attorney shall, within thirty days after the imposition of an order under this chapter and at such other times as the Attorney General may require, publish in a newspaper of general circulation in the district in which the offense for which a defendant was convicted occurred, a notice that states—

(1) the name of, and other identifying information about, the defendant;

(2) the offense for which the defendant was convicted; and

(3) that the court has ordered a special forfeiture of certain proceeds that may be used to satisfy a judgment obtained against the defendant by a victim of an offense for which the defendant has been convicted.

(Added Pub. L. 98–473, title II, § 1406(a), Oct. 12, 1984, 98 Stat. 2176, § 3672; renumbered § 3682, Pub. L. 99–646, § 41(a), Nov. 10, 1986, 100 Stat. 3600.)

CHAPTER 233—CONTEMPTS

Sec.
3691. Jury trial of criminal contempts.
3692. Jury trial for contempt in labor dispute cases.
3693. Summary disposition or jury trial; notice—Rule.

§ 3691. Jury trial of criminal contempts

Whenever a contempt charged shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States.

(June 25, 1948, ch. 645, 62 Stat. 844.)

HISTORICAL AND REVISION NOTES

Based on sections 386, 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§ 21, 24, 38 Stat. 738, 739).

The first paragraph of this section is completely rewritten from section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting everything covered and superseded by rules 23 and 42 of the Federal Rules of Criminal Procedure.

The second paragraph of this section is derived from section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, omitting directions as to the trial of other contempts which are now covered by rule 42 of the Federal Rules of Criminal Procedure.

Minor changes were made in phraseology.

§ 3692. Jury trial for contempt in labor dispute cases

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(June 25, 1948, ch. 645, 62 Stat. 844.)

HISTORICAL AND REVISION NOTES

Based on section 111 of Title 29, U.S.C., 1940 ed., Labor (Mar. 23, 1932, ch. 90, § 11, 47 Stat. 72).

The phrase ''or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute'' was inserted and the reference to specific sections of the Norris-LaGuardia Act (sections 101–115 of Title 29, U.S.C., 1940 ed.) were eliminated.

TAFT-HARTLEY INJUNCTIONS

Former section 111 of Title 29, Labor, upon which this section is based, as inapplicable to injunctions issued under the Taft-Hartley Act, see section 178 of Title 29.

§ 3693. Summary disposition or jury trial; notice—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Summary punishment; certificate of judge; order; notice; jury trial; bail; disqualification of judge, Rule 42.

(June 25, 1948, ch. 645, 62 Stat. 844.)

CHAPTER 235—APPEAL

Sec.
3731. Appeal by United States.
3732. Taking of appeal; notice; time—Rule.
3733. Assignment of errors—Rule.
3734. Bill of exceptions abolished—Rule.
3735. Bail on appeal or certiorari—Rule.
3736. Certiorari—Rule.
3737. Record—Rule.
3738. Docketing appeal and record—Rule.
3739. Supervision—Rule.
3740. Argument—Rule.
3741. Harmless error and plain error—Rule.
3742. Review of a sentence.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 213(b), Oct. 12, 1984, 98 Stat. 2013, added item 3742.

§ 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, or any part thereof, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

An appeal by the United States shall lie to a court of appeals from a decision or order, en-

tered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

The provisions of this section shall be liberally construed to effectuate its purposes.

(June 25, 1948, ch. 645, 62 Stat. 844; May 24, 1949, ch. 139, § 58, 63 Stat. 97; Pub. L. 90–351, title VIII, § 1301, June 19, 1968, 82 Stat. 237; Pub. L. 91–644, title III, § 14(a), Jan. 2, 1971, 84 Stat. 1890; Pub. L. 98–473, title II, §§ 205, 1206, Oct. 12, 1984, 98 Stat. 1986, 2153; Pub. L. 99–646, § 32, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 103–322, title XXXIII, § 330008(4), Sept. 13, 1994, 108 Stat. 2142; Pub. L. 107–273, div. B, title III, § 3004, Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 682 (Mar. 2, 1907, ch. 2564, 34 Stat. 1246; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; May 9, 1942, ch. 295, § 1, 56 Stat. 271).

The word ''dismissing'' was substituted for ''sustaining a motion to dismiss'' in two places for conciseness and clarity, there being no difference in effect of a decision of dismissal whether made on motion or by the court sua sponte.

Minor changes were made to conform to Rule 12 of the Federal Rules of Criminal Procedure. The final sentence authorizing promulgation of rules is omitted as redundant.

1949 ACT

This section [section 58] corrects a typographical error in the second paragraph of section 3731 of title 18, U.S.C., and conforms the language of the fifth, tenth, and eleventh paragraphs of such section 3731 with the changed nomenclature of title 28, U.S.C., Judiciary and Judicial Procedure. See sections 41, 43, and 451 of the latter title.

AMENDMENTS

2002—First par. Pub. L. 107–273 inserted '', or any part thereof'' after ''as to any one or more counts''.

1994—Second par. Pub. L. 103–322 substituted ''order of a district court'' for ''order of a district courts''.

1986—Fifth par. Pub. L. 99–646 struck out fifth par. which read as follows: ''Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.''

1984—First par. Pub. L. 98–473, § 1206, inserted ''or granting a new trial after verdict or judgment,'' after ''indictment or information''.

Third par. Pub. L. 98–473, § 205, inserted third par. relating to appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

1971—First par. Pub. L. 91–644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub. L. 91–644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub. L. 91–644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub. L. 91–644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub. L. 91–644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

1968—Pub. L. 90–351 inserted eighth par. providing for an appeal by the United States from decisions sustaining motions to suppress evidence and substituted in tenth par. ''defendant shall be released in accordance with chapter 207 of this title'' for ''defendant shall be admitted to bail on his own recognizance'', respectively.

1949—Act May 24, 1949, substituted ''invalidity'' for ''validity'' after ''upon the'' in second par., and conformed language of fifth, tenth, and eleventh pars. to the changed nomenclature of the courts.

SAVINGS PROVISION

Section 14(b) of Pub. L. 91–644 provided that: ''The amendments made by this section [amending this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971].''

§ 3732. Taking of appeal; notice; time—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Taking appeal; notice, contents, signing; time, Rule 37(a).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is cov-

ered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3733. Assignment of errors—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Assignments of error on appeal abolished, Rule 37(a)(1).
Necessity of specific objection in order to assign error in instructions, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1947, eff. July 1, 1968, and is covered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3734. Bill of exceptions abolished—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Exceptions abolished, Rule 51.
Bill of exceptions not required, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 3, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3735. Bail on appeal or certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bail on appeal or certiorari; application, Rules 38(c) and 46(a)(2).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 38(c) of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by rule 9, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.
Rule 46 was amended as part of the Bail Reform Act in 1966 and in 1972, and some provisions originally contained in Rule 46 are covered by this chapter, see Notes of Advisory Committee on Rules and Amendment notes under Rule 46, this Appendix.

§ 3736. Certiorari—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Petition to Supreme Court, time, Rule 37(b).

(June 25, 1948, ch. 645, 62 Stat. 845.)

REFERENCES IN TEXT

Rule 37 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968. Provisions of such former rule for certiorari are covered by rule 19 et seq. of the Rules of the United States Supreme Court.

§ 3737. Record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Preparation, form; typewritten record, Rule 39(b).
Exceptions abolished, Rule 51.
Bill of exceptions unnecessary, Rule 37(a)(1).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rules 37 and 39 of the Federal Rules of Criminal Procedure were abrogated Dec. 4, 1967, eff. July 1, 1968, and are covered by Rule 10, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3738. Docketing appeal and record—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Filing record on appeal and docketing proceeding; time, Rule 39(c).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rules 10 to 12, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3739. Supervision—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Control and supervision in appellate court, Rule 39(a).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 27, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3740. Argument—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Setting appeal for argument; preference to criminal appeals, Rule 39(d).

(June 25, 1948, ch. 645, 62 Stat. 846.)

REFERENCES IN TEXT

Rule 39 of the Federal Rules of Criminal Procedure was abrogated Dec. 4, 1967, eff. July 1, 1968, and is covered by Rule 34, Federal Rules of Appellate Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3741. Harmless error and plain error—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Error or defect as affecting substantial rights, Rule 52.
Defects in indictment, Rule 7.
Waiver of error, Rules 12(b)(2) and 30.

(June 25, 1948, ch. 645, 62 Stat. 846.)

§ 3742. Review of a sentence

(a) APPEAL BY A DEFENDANT.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11)[1] than

[1] See References in Text note below.

the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(b) APPEAL BY THE GOVERNMENT.—The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11)[1] than the minimum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.

(c) PLEA AGREEMENTS.—In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure—

(1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and

(2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

(d) RECORD ON REVIEW.—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(2) the presentence report; and

(3) the information submitted during the sentencing proceeding.

(e) CONSIDERATION.—Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c);

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2); or

(ii) is not authorized under section 3553(b); or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) DECISION AND DISPOSITION.—If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

(g) SENTENCING UPON REMAND.—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28,

United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.

(h) APPLICATION TO A SENTENCE BY A MAGISTRATE JUDGE.—An appeal of an otherwise final sentence imposed by a United States magistrate judge may be taken to a judge of the district court, and this section shall apply (except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal) as though the appeal were to a court of appeals from a sentence imposed by a district court.

(i) GUIDELINE NOT EXPRESSED AS A RANGE.—For the purpose of this section, the term ''guideline range'' includes a guideline range having the same upper and lower limits.

(j) DEFINITIONS.—For purposes of this section—

(1) a factor is a ''permissible'' ground of departure if it—

(A) advances the objectives set forth in section 3553(a)(2); and

(B) is authorized under section 3553(b); and

(C) is justified by the facts of the case; and

(2) a factor is an ''impermissible'' ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).

(Added Pub. L. 98–473, title II, § 213(a), Oct. 12, 1984, 98 Stat. 2011; amended Pub. L. 99–646, § 73(a), Nov. 10, 1986, 100 Stat. 3617; Pub. L. 100–182, §§ 4–6, Dec. 7, 1987, 101 Stat. 1266, 1267; Pub. L. 100–690, title VII, § 7103(a), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–647, title XXXV, §§ 3501, 3503, Nov. 29, 1990, 104 Stat. 4921; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–322, title XXXIII, § 330002(k), Sept. 13, 1994, 108 Stat. 2140; Pub. L. 108–21, title IV, § 401(d)–(f), Apr. 30, 2003, 117 Stat. 670, 671.)

REFERENCES IN TEXT

Section 3563(b)(6) or (b)(11), referred to in subsecs. (a)(3) and (b)(3), was renumbered section 3563(b)(5) or (b)(10) by Pub. L. 104–132, title II, § 203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix of this title.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–21, § 401(d)(2), in concluding provisions, substituted '', except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts'' for ''shall give due deference to the district court's application of the guidelines to the facts''.

Subsec. (e)(3). Pub. L. 108–21, § 401(d)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''is outside the applicable guideline range, and is unreasonable, having regard for—

''(A) the factors to be considered in imposing a sentence, as set forth in chapter 227 of this title; and

''(B) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or''.

Subsec. (f). Pub. L. 108–21, § 401(d)(3)(A), struck out ''the sentence'' before dash at end of introductory provisions.

Subsec. (f)(1). Pub. L. 108–21, § 401(d)(3)(B), inserted ''the sentence'' before ''was imposed''.

Subsec. (f)(2). Pub. L. 108–21, § 401(d)(3)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is outside the applicable guideline range and is unreasonable or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

''(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

''(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;''.

Subsec. (f)(3). Pub. L. 108–21, § 401(d)(3)(D), inserted ''the sentence'' before ''is not described''.

Subsecs. (g) to (i). Pub. L. 108–21, § 401(e), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

Subsec. (j). Pub. L. 108–21, § 401(f), added subsec. (j).

1994—Subsec. (b). Pub. L. 103–322 struck out comma after ''Government'' in introductory provisions.

1990—Subsec. (b). Pub. L. 101–647, § 3501, struck out '', with the personal approval of the Attorney General or the Solicitor General'' after ''The Government'' in introductory provisions and inserted at end ''The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.''

Subsec. (g). Pub. L. 101–647, § 3503, inserted ''(except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal)'' after ''and this section shall apply''.

1988—Subsec. (a)(2). Pub. L. 100–690, § 7103(a)(1), struck out ''issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)'' after ''guidelines''.

Subsec. (a)(3). Pub. L. 100–690, § 7103(a)(2), added par. (3) and struck out former par. (3) which read as follows: ''was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is greater than—

''(A) the sentence specified in the applicable guideline to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline; and

''(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or''.

Subsec. (a)(4). Pub. L. 100–690, § 7103(a)(4), added par. (4) and struck out former par. (4) which read as follows: ''was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or greater than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.''

Subsec. (b). Pub. L. 100–690, § 7103(a)(5), inserted '', with the personal approval of the Attorney General

or the Solicitor General,'' after ''The Government'' in introductory provisions, and struck out concluding provisions which read as follows: ''and the Attorney General or the Solicitor General personally approves the filing of the notice of appeal.''

Subsec. (b)(2). Pub. L. 100–690, § 7103(a)(1), struck out ''issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)'' after ''guidelines''.

Subsec. (b)(3). Pub. L. 100–690, § 7103(a)(3), added par. (3) and struck out former par. (3) which read as follows: ''was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

''(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline; and

''(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or''.

Subsec. (b)(4). Pub. L. 100–690, § 7103(a)(5)(A), added par. (4) and struck out former par. (4) which read as follows: ''was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or less than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;''.

Subsec. (c). Pub. L. 100–690, § 7103(a)(8), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–690, § 7103(a)(8), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 100–690, § 7103(a)(6), (7), substituted ''applicable guideline range'' for ''range of the applicable sentencing guideline'' in par. (3) and inserted ''and shall give due deference to the district court's application of the guidelines to the facts'' after ''are clearly erroneous'' in concluding provisions.

Subsec. (e). Pub. L. 100–690, § 7103(a)(8), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 100–690, § 7103(a)(6), substituted ''applicable guideline range'' for ''range of the applicable sentencing guideline''.

Subsecs. (f), (g). Pub. L. 100–690, § 7103(a)(8), redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

Subsec. (h). Pub. L. 100–690, § 7103(a)(9), added subsec. (h).

1987—Subsec. (a)(4). Pub. L. 100–182, § 5(1), substituted ''and is plainly unreasonable or greater than the sentence specified in a plea agreement under'' for ''and is greater than the sentence specified in a plea agreement, if any, under''.

Subsec. (b)(4). Pub. L. 100–182, § 5(2), substituted ''and is plainly unreasonable or less than the sentence specified in a plea agreement under'' for ''and is less than the sentence specified in a plea agreement, if any, under''.

Subsec. (d)(4). Pub. L. 100–182, § 5(3), added par. (4).

Subsec. (e)(2). Pub. L. 100–182, § 5(4), inserted ''or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable'' in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 100–182, § 5(5), substituted ''and'' for ''the court shall'' before ''remand''.

Subsec. (e)(3). Pub. L. 100–182, § 6, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''was not imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, and is not unreasonable, it shall affirm the sentence.''

Subsec. (f). Pub. L. 100–182, § 4, added subsec. (f).

1986—Subsec. (e)(1). Pub. L. 99–646, § 73(a)(1), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for further sentencing proceedings or correct the sentence.

Subsec. (e)(2)(A). Pub. L. 99–646, § 73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate for provision directing the court to remand the case for imposition of a lesser sentence, remand the case for further sentencing proceedings, or impose a lesser sentence.

Subsec. (e)(2)(B). Pub. L. 99–646, § 73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for imposition of a greater sentence, remand the case for further sentencing proceedings, or impose a greater sentence.

CHANGE OF NAME

Words ''Magistrate Judge'' and ''United States magistrate judge'' substituted for ''Magistrate'' and ''United States magistrate'', respectively, in subsec. (g) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98–473, set out as a note under section 3551 of this title.

CHAPTER 237—CRIME VICTIMS' RIGHTS

Sec.
3771. Crime victims' rights.

PRIOR PROVISIONS

A prior chapter 237, consisting of sections 3771 and 3772, related to criminal procedure, prior to repeal by Pub. L. 100–702, title IV, §§ 404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988. See sections 2071 to 2074 of Title 28, Judiciary and Judicial Procedure.

§ 3771. Crime victims' rights

(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) RIGHTS AFFORDED.—

(1) IN GENERAL.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) HABEAS CORPUS PROCEEDINGS.—

(A) IN GENERAL.—In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) ENFORCEMENT.—

(i) IN GENERAL.—These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) MULTIPLE VICTIMS.—In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) LIMITATION.—This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) DEFINITION.—For purposes of this paragraph, the term ''crime victim'' means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) BEST EFFORTS TO ACCORD RIGHTS.—

(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) ENFORCEMENT AND LIMITATIONS.—

(1) RIGHTS.—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) DEFINITIONS.—For the purposes of this chapter, the term ''crime victim'' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representa-

tives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(f) PROCEDURES TO PROMOTE COMPLIANCE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

(Added Pub. L. 108–405, title I, § 102(a), Oct. 30, 2004, 118 Stat. 2261; amended Pub. L. 109–248, title II, § 212, July 27, 2006, 120 Stat. 616.)

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The date of enactment of this chapter, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

PRIOR PROVISIONS

A prior section 3771, acts June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 59, 63 Stat. 98; May 10, 1950, ch. 174, § 1, 64 Stat. 158; July 7, 1958, Pub. L. 85–508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86–3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub. L. 90–578, title III, § 301(a)(2), 82 Stat. 1115, related to procedure to and including verdict, prior to repeal by Pub. L. 100–702, title IV, §§ 404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988.

A prior section 3772, acts June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 60, 63 Stat. 98; July 7, 1958, Pub. L. 85–508, § 12(*l*), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86–3, § 14(h), 73 Stat. 11; Oct. 12, 1984, Pub. L. 98–473, title II, § 206, 98 Stat. 1986, related to procedure after verdict, prior to repeal by Pub. L. 100–702, title IV, §§ 404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–248 designated existing provisions as par. (1), inserted heading, and added par. (2).

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–405, title I, § 101, Oct. 30, 2004, 118 Stat. 2261, provided that: "This title [enacting this chapter and sections 10603d and 10603e of Title 42, The Public Health and Welfare, repealing section 10606 of Title 42, and enacting provisions set out as a note under this section] may be cited as the 'Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act'."

REPORTS ON ASSERTION OF CRIME VICTIMS' RIGHTS IN CRIMINAL CASES

Pub. L. 108–405, title I, § 104(a), Oct. 30, 2004, 118 Stat. 2265, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 30, 2004] and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached."

PART III—PRISONS AND PRISONERS

Chap.		Sec.
301.	**General provisions**	**4001**
303.	**Bureau of Prisons**	**4041**
305.	**Commitment and transfer**	**4081**
306.	**Transfer to or from foreign countries**	**4100**
307.	**Employment**	**4121**
[309.	**Repealed.]**	
[311.	**Repealed.]**	
313.	**Offenders with mental disease or defect**	**4241**
[314.	**Repealed.]**	
315.	**Discharge and release payments**	**4281**
317.	**Institutions for women**	**4321**
319.	**National Institute of Corrections**	**4351**

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3597, Nov. 29, 1990, 104 Stat. 4931, added items 306 and 319.

1984—Pub. L. 98–473, title II, § 218(d), Oct. 12, 1984, 98 Stat. 2027, in items 309, 311, and 314 substituted "Repealed" for "Good time allowances", "Parole", and "Narcotic addicts", respectively.

Pub. L. 98–473, title II, § 403(b), Oct. 12, 1984, 98 Stat. 2067, substituted "Offenders with mental disease or defect" for "Mental defectives" in item 313.

1966—Pub. L. 89–793, title VI, § 603, Nov. 8, 1966, 80 Stat. 1450, added item 314.

CHAPTER 301—GENERAL PROVISIONS

Sec.
4001. Limitation on detention; control of prisons.
4002. Federal prisoners in State institutions; employment.
4003. Federal institutions in States without appropriate facilities.
4004. Oaths and acknowledgments.
4005. Medical relief; expenses.
4006. Subsistence for prisoners.
4007. Expenses of prisoners.
4008. Transportation expenses.
4009. Appropriations for sites and buildings.
4010. Acquisition of additional land.
4011. Disposition of cash collections for meals, laundry, etc.

Sec.
4012. Summary seizure and forfeiture of prison contraband.
4013. Support of United States prisoners in non-Federal institutions.
4014. Testing for human immunodeficiency virus.

AMENDMENTS

1998—Pub. L. 105–370, § 2(b), Nov. 12, 1998, 112 Stat. 3375, added item 4014.

1988—Pub. L. 100–690, title VII, § 7608(d)(2), Nov. 18, 1988, 102 Stat. 4517, added item 4013.

1984—Pub. L. 98–473, title II, § 1109(e), Oct. 12, 1984, 98 Stat. 2148, added item 4012.

1971—Pub. L. 92–128, § 1(c), Sept. 25, 1971, 85 Stat. 347, substituted ''Limitation on detention; control of prisons'' for ''Control by Attorney General'' in item 4001.

1966—Pub. L. 89–554, § 3(e), Sept. 6, 1966, 80 Stat. 610, added items 4010 and 4011.

§ 4001. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

(June 25, 1948, ch. 645, 62 Stat. 847; Pub. L. 92–128, § 1(a), (b), Sept. 25, 1971, 85 Stat. 347.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1934 ed., §§ 741 and 753e (Mar. 3, 1891, ch. 529, §§ 1, 4, 26 Stat. 839; May 14, 1930, ch. 274, § 6, 46 Stat. 326).

This section consolidates said sections 741 and 753e with such changes of language as were necessary to effect consolidation.

''The Classification Act, as amended,'' was inserted more clearly to express the existing procedure for appointment of officers and employees as noted in letter of the Director of Bureau of Prisons, June 19, 1944.

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (b)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Classification Act, as amended, referred to in subsec. (b)(1), originally was the Classification Act of 1923, Mar. 4, 1923, ch. 265, 42 Stat. 1488, as amended, which was repealed by section 1202 of the Classification Act of 1949, Oct. 28, 1949, ch. 782, 63 Stat. 972. Section 1106(a) of the 1949 Act provided that references in other laws to the Classification Act of 1923 shall be held and considered to mean the Classification Act of 1949. The Classification Act of 1949 was in turn repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 and subchapter III of chapter 53 of Title 5.

AMENDMENTS

1971—Pub. L. 92–128, § 1(b), substituted ''Limitation on detention; control of prisons'' for ''Control by Attorney General'' in section catchline.

Subsec. (a). Pub. L. 92–128, § 1(a), added subsec. (a).

Subsec. (b). Pub. L. 92–128, § 1(a), designated existing first and second pars. as pars. (1) and (2) of subsec. (b).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–294, § 1, Oct. 12, 2000, 114 Stat. 1038, provided that: ''This Act [enacting section 4048 of this title and amending section 4013 of this title] may be cited as the 'Federal Prisoner Health Care Copayment Act of 2000'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–370, § 1, Nov. 12, 1998, 112 Stat. 3374, provided that: ''This Act [enacting section 4014 of this title and provisions set out as a note under section 4042 of this title] may be cited as the 'Correction Officers Health and Safety Act of 1998'.''

PLACEMENT OF CERTAIN PERSONS IN PRIVATELY OPERATED PRISONS

Pub. L. 106–553, § 1(a)(2) [title I, § 114, formerly § 115], Dec. 21, 2000, 114 Stat. 2762, 2762A–68; renumbered § 114, Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–179, provided that: ''Beginning in fiscal year 2001 and thereafter, funds appropriated to the Federal Prison System may be used to place in privately operated prisons only such persons sentenced to incarceration under the District of Columbia Code as the Director, Bureau of Prisons, may determine to be appropriate for such placement consistent with Federal classification standards, after consideration of all relevant factors, including the threat of danger to public safety.''

FEE TO RECOVER COST OF INCARCERATION

Pub. L. 102–395, title I, § 111(a), Oct. 6, 1992, 106 Stat. 1842, provided that:

''(1) For fiscal year 1993 and thereafter the Attorney General shall establish and collect a fee to cover the costs of confinement from any person convicted in a United States District Court and committed to the Attorney General's custody.

''(2) Such fee shall be equivalent to the average cost of one year of incarceration, and the Attorney General shall credit or rebate a prorated portion of the fee with respect to any such person incarcerated for 334 days or fewer in a given fiscal year.

''(3) The calculation of the number of days of incarceration in a given fiscal year for the purpose of such fee shall include time served prior to conviction.

''(4) The Attorney General shall not collect such fee from any person with respect to whom a fine was imposed or waived by a judge of a United States District Court pursuant to section 5E1.2(f) and (i) of the United States Sentencing Guidelines, or any successor provisions.

''(5) In cases in which the Attorney General has authority to collect the fee, the Attorney General shall have discretion to waive the fee or impose a lesser fee if the person under confinement establishes that (1) he or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or (2) imposition of a fine would unduly burden the defendant's dependents.

''(6) For fiscal year 1993 only, fees collected in accordance with this section shall be deposited as offsetting receipts to the Treasury.

''(7) For fiscal year 1994 and thereafter, fees collected in accordance with this section shall be deposited as offsetting collections to the appropriation Federal Prison System, 'Salaries and expenses', and shall be available, inter alia, to enhance alcohol and drug abuse prevention programs.''

USE OF INACTIVE DEPARTMENT OF DEFENSE FACILITIES AS PRISONS

Pub. L. 95–624, § 9, Nov. 9, 1978, 92 Stat. 3463, provided that: ''The Attorney General shall consult with the Secretary of Defense in order to develop a plan to as-

sure that such suitable facilities as the Department of Defense operates which are not in active use shall be made available for operation by the Department of Justice for the confinement of United States prisoners. Such plan shall provide for the return to the management of the Department of Defense of any such facility upon a finding by the Secretary of Defense that such return is necessary to the operation of the Department.''

§ 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

(June 25, 1948, ch. 645, 62 Stat. 847; Pub. L. 95–624, § 8, Nov. 9, 1978, 92 Stat. 3463.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753b, (May 14, 1930, ch. 274, § 3, 46 Stat. 325).

Changes were made in phraseology. The first sentence was incorporated in section 4042 of this title.

AMENDMENTS

1978—Pub. L. 95–624 substituted ''Attorney General'' for ''Director of the Bureau of Prisons''.

§ 4003. Federal institutions in States without appropriate facilities

If by reason of the refusal or inability of the authorities having control of any jail, workhouse, penal, correctional, or other suitable institution of any State or Territory, or political subdivision thereof, to enter into a contract for the imprisonment, subsistence, care, or proper employment of United States prisoners, or if there are no suitable or sufficient facilities available at reasonable cost, the Attorney General may select a site either within or convenient to the State, Territory, or judicial district concerned and cause to be erected thereon a house of detention, workhouse, jail, prison-industries project, or camp, or other place of confinement, which shall be used for the detention of persons held under authority of any Act of Congress, and of such other persons as in the opinion of the Attorney General are proper subjects for confinement in such institutions.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753c (May 14, 1930, ch. 274, § 4, 46 Stat. 326).

Words ''with or without hard labor'' were omitted as unnecessary in view of omission of ''hard labor'' as part of the punishment. (See reviser's note under section 1 of this title.)

The phrase ''held under authority of any Act of Congress,'' was substituted for the following ''held as material witnesses, persons awaiting trial, persons sentenced to imprisonment and awaiting transfer to other institutions, persons held for violation of the immigration laws or awaiting deportation, and for the confinement of persons convicted of offenses against the United States and sentenced to imprisonment''.

Minor changes in arrangement and phraseology were made.

§ 4004. Oaths and acknowledgments

The wardens and superintendents, associate wardens and superintendents, chief clerks, and record clerks, of Federal penal or correctional institutions, may administer oaths to and take acknowledgments of officers, employees, and inmates of such institutions, but shall not demand or accept any fee or compensation therefor.

(June 25, 1948, ch. 645, 62 Stat. 848; July 7, 1955, ch. 282, 69 Stat. 282; Pub. L. 98–473, title II, § 223(*l*), Oct. 12, 1984, 98 Stat. 2029.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 754 (Feb. 11, 1938, ch. 24, §§ 1, 2, 52 Stat. 28).

Section was extended to include superintendents and associate superintendents.

Minor changes were made in phraseology. Words ''the authority conferred by'' were omitted as surplusage.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''and record clerks'' for ''record clerks, and parole officers''.

1955—Act July 7, 1955, permitted chief clerks, record clerks, and parole officers to administer oaths and take acknowledgments.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4005. Medical relief; expenses

(a) Upon request of the Attorney General and to the extent consistent with the Assisted Suicide Funding Restriction Act of 1997, the Federal Security Administrator shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions.

(b) The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the

Attorney General may make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, for payment of compensation, allowances, and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service.

(June 25, 1948, ch. 645, 62 Stat. 848; Pub. L. 105–12, § 9(k), Apr. 30, 1997, 111 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 751, 752 (May 13, 1930, ch. 256, §§ 1, 2, 46 Stat. 273; Reorg. Plan No. I, §§ 201, 205, 4 F.R. 2728, 2729, 53 Stat. 1424, 1425).

Section consolidates sections 751 and 752 of title 18, U.S.C., 1940 ed., as subsections (a) and (b), respectively.

''Federal Security Administrator'' was substituted for ''Federal Security Agency.''

Functions of the Secretary of the Treasury were transferred to the Federal Security Administrator by Reorg. Plan No. I, § 205, 4 F.R. 2729, 53 Stat. 1425. (See note under section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

The first part of said section 751, which read ''Authorized medical relief under the Department of Justice in Federal penal and correctional institutions shall be supervised and furnished by personnel of the Public Health Service, and'' was omitted as surplusage, considering the remainder of the text.

Minor changes of phraseology were made.

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–12 inserted ''and to the extent consistent with the Assisted Suicide Funding Restriction Act of 1997'' after ''Upon request of the Attorney General''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare, and office of Federal Security Administrator abolished by sections 5 and 8 of Reorg. Plan No. 1 of 1953, as amended, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5.

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

§ 4006. Subsistence for prisoners

(a) IN GENERAL.—The Attorney General or the Secretary of Homeland Security, as applicable, shall allow and pay only the reasonable and actual cost of the subsistence of prisoners in the custody of any marshal of the United States, and shall prescribe such regulations for the government of the marshals as will enable him to determine the actual and reasonable expenses incurred.

(b) HEALTH CARE ITEMS AND SERVICES.—

(1) IN GENERAL.—Payment for costs incurred for the provision of health care items and services for individuals in the custody of the United States Marshals Service, the Federal Bureau of Investigation and the Department of Homeland Security shall be the amount billed, not to exceed the amount that would be paid for the provision of similar health care items and services under the Medicare program under title XVIII of the Social Security Act.

(2) FULL AND FINAL PAYMENT.—Any payment for a health care item or service made pursuant to this subsection, shall be deemed to be full and final payment.

(June 25, 1948, ch. 645, 62 Stat. 848; Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 114], Nov. 29, 1999, 113 Stat. 1535, 1501A–20; Pub. L. 106–553, § 1(a)(2) [title VI, § 626], Dec. 21, 2000, 114 Stat. 2762, 2762A–108; Pub. L. 109–162, title XI, § 1157, Jan. 5, 2006, 119 Stat. 3114.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 703 (R.S. § 5545; Mar. 2, 1911, ch. 192, 36 Stat. 1003).

The provisions relating to the Washington Asylum and Jail are now included in the District of Columbia Code. (See D.C. Code, 1940 ed., § 24–421.)

Changes of phraseology were made.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, § 1157(1), inserted ''or the Secretary of Homeland Security, as applicable,'' after ''The Attorney General''.

Subsec. (b)(1). Pub. L. 109–162, § 1157(2), substituted ''the Department of Homeland Security'' for ''the Immigration and Naturalization Service'', ''shall be the amount billed, not to exceed the amount'' for ''shall not exceed the lesser of the amount'', and ''items and services under the Medicare program'' for ''items and services under—

''(A) the Medicare program''

and struck out subpar. (B) which read as follows: ''the Medicaid program under title XIX of such Act of the State in which the services were provided.''

2000—Subsec. (b)(1). Pub. L. 106–553 inserted '', the Federal Bureau of Investigation'' after ''United States Marshals Service''.

1999—Pub. L. 106–113 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 4007. Expenses of prisoners

The expenses attendant upon the confinement of persons arrested or committed under the laws

of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 701 (R.S. § 5536).

Provision authorizing expenses for transportation was omitted as covered by similar provision in section 4008 of this title.

Minor changes of phraseology were made.

PAYMENT OF COSTS OF INCARCERATION BY FEDERAL PRISONERS

Pub. L. 100–690, title VII, § 7301, Nov. 18, 1988, 102 Stat. 4463, provided that: ''Not later than 1 year after the date of enactment of this section [Nov. 18, 1988], the United States Sentencing Commission shall study the feasibility of requiring prisoners incarcerated in Federal correctional institutions to pay some or all of the costs incident to the prisoner's confinement, including, but not limited to, the costs of food, housing, and shelter. The study shall review measures which would allow prisoners unable to pay such costs to work at paid employment within the community, during incarceration or after release, in order to pay the costs incident to the prisoner's confinement.''

§ 4008. Transportation expenses

Prisoners shall be transported by agents designated by the Attorney General or his authorized representative.

The reasonable expense of transportation, necessary subsistence, and hire and transportation of guards and agents shall be paid by the Attorney General from such appropriation for the Department of Justice as he shall direct.

Upon conviction by a consular court or court martial the prisoner shall be transported from the court to the place of confinement by agents of the Department of State, the Army, Navy, or Air Force, as the case may be, the expense to be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 849; May 24, 1949, ch. 139, § 61, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 753g (May 14, 1930, ch. 274, § 8, 46 Stat. 327).

The second paragraph was originally a proviso.

Minor changes of phraseology were made.

1949 ACT

This section [section 61] corrects the third paragraph of section 4008 of title 18, U.S.C., by redesignating the ''War Department'' as the ''Department of the Army'', to conform to such redesignation by act of July 26, 1947 (ch. 343, title II, § 205(a), 61 Stat. 501), and by inserting a reference to the Department of the Air Force, in view of the creation of such Department by the same act.

AMENDMENTS

1949—Act May 24, 1949, substituted ''the Army, Navy, or Air Force'' for ''War, or the Navy''.

§ 4009. Appropriations for sites and buildings

The Attorney General may authorize the use of a sum not to exceed $100,000 in each instance, payable from any unexpended balance of the appropriation ''Support of United States prisoners'' for the purpose of leasing or acquiring a site, preparation of plans, and erection of necessary buildings under section 4003 of this title.

If in any instance it shall be impossible or impracticable to secure a proper site and erect the necessary buildings within the above limitation the Attorney General may authorize the use of a sum not to exceed $10,000 in each instance, payable from any unexpended balance of the appropriation ''Support of United States prisoners'' for the purpose of securing options and making preliminary surveys or sketches.

Upon selection of an appropriate site the Attorney General shall submit to Congress an estimate of the cost of purchasing same and of remodeling, constructing, and equipping the necessary buildings thereon.

(June 25, 1948, ch. 645, 62 Stat. 849.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753d (May 14, 1930, ch. 274, § 5, 46 Stat. 326).

Minor changes of phraseology were made.

§ 4010. Acquisition of additional land

The Attorney General may, when authorized by law, acquire land adjacent to or in the vicinity of a Federal penal or correctional institution if he considers the additional land essential to the protection of the health or safety of the inmates of the institution.

(Added Pub. L. 89–554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341f.	July 28, 1950, ch. 503, § 7, 64 Stat. 381. Sept. 16, 1959, Pub. L. 86–286, 73 Stat. 567.

The reference to an appropriation law is omitted as covered by the words ''when authorized by law''.

§ 4011. Disposition of cash collections for meals, laundry, etc.

Collections in cash for meals, laundry, barber service, uniform equipment, and other items for which payment is made originally from appropriations for the maintenance and operation of Federal penal and correctional institutions, may be deposited in the Treasury to the credit of the appropriation currently available for those items when the collection is made.

(Added Pub. L. 89–554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341g.	July 28, 1950, ch. 503, § 8, 64 Stat. 381.

§ 4012. Summary seizure and forfeiture of prison contraband

An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director of the Bureau of Prisons, sum-

marily seize any object introduced into a Federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation or order promulgated by the Director, and such object shall be forfeited to the United States.

(Added Pub. L. 98–473, title II, § 1109(d), Oct. 12, 1984, 98 Stat. 2148.)

§ 4013. Support of United States prisoners in non-Federal institutions

(a) The Attorney General, in support of United States prisoners in non-Federal institutions, is authorized to make payments from funds appropriated for Federal prisoner detention for—

(1) necessary clothing;

(2) medical care and necessary guard hire; and

(3) the housing, care, and security of persons held in custody of a United States marshal pursuant to Federal law under agreements with State or local units of government or contracts with private entities.

(b) The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any State or local jurisdiction which agrees to provide guaranteed bed space for Federal detainees within that correctional system, in accordance with regulations which are issued by the Attorney General and are comparable to the regulations issued under section 4006 of this title, except that—

(1) amounts made available for purposes of this paragraph shall not exceed the average per-inmate cost of constructing similar confinement facilities for the Federal prison population,

(2) the availability of such federally assisted facility shall be assured for housing Federal prisoners, and

(3) the per diem rate charged for housing such Federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement.

(c)(1) The United States Marshals Service may designate districts that need additional support from private detention entities under subsection (a)(3) based on—

(A) the number of Federal detainees in the district; and

(B) the availability of appropriate Federal, State, and local government detention facilities.

(2) In order to be eligible for a contract for the housing, care, and security of persons held in custody of the United States Marshals pursuant to Federal law and funding under subsection (a)(3), a private entity shall—

(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

(B) meet the standards of the American Correctional Association;

(C) comply with all applicable State and local laws and regulations;

(D) have approved fire, security, escape, and riot plans; and

(E) comply with any other regulations that the Marshals Service deems appropriate.

(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).

(d) HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.—

(1) IN GENERAL.—Notwithstanding amounts paid under subsection (a)(3), a State or local government may assess and collect a reasonable fee from the trust fund account (or institutional equivalent) of a Federal prisoner for health care services, if—

(A) the prisoner is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government;

(B) the fee—

(i) is authorized under State law; and

(ii) does not exceed the amount collected from State or local prisoners for the same services; and

(C) the services—

(i) are provided within or outside of the institution by a person who is licensed or certified under State law to provide health care services and who is operating within the scope of such license;

(ii) constitute a health care visit within the meaning of section 4048(a)(4) of this title; and

(iii) are not preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment.

(2) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this subsection may be construed to permit any refusal of treatment to a prisoner on the basis that—

(A) the account of the prisoner is insolvent; or

(B) the prisoner is otherwise unable to pay a fee assessed under this subsection.

(3) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this subsection and the applicability of this subsection to the prisoner. Notwithstanding any other provision of this subsection, a fee under this section may not be assessed against, or collected from, such person—

(A) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

(B) for services provided before the expiration of such period.

(4) NOTICE TO PRISONERS OF STATE OR LOCAL IMPLEMENTATION.—The implementation of this subsection by the State or local government, and any amendment to that implementation,

shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of that implementation (or amendment, as the case may be). A fee under this subsection may not be assessed against, or collected from, a prisoner pursuant to such implementation (or amendments, as the case may be) for services provided before the expiration of such period.

(5) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed implementation under this subsection is open to public comment, written and oral notice of the provisions of that proposed implementation shall be provided to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed implementation.

(6) COMPREHENSIVE HIV/AIDS SERVICES REQUIRED.—Any State or local government assessing or collecting a fee under this subsection shall provide comprehensive coverage for services relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) to each Federal prisoner in the custody of such State or local government when medically appropriate. The State or local government may not assess or collect a fee under this subsection for providing such coverage.

(Added Pub. L. 100–690, title VII, § 7608(d)(1), Nov. 18, 1988, 102 Stat. 4516; amended Pub. L. 101–647, title XVII, § 1701, title XXXV, § 3599, Nov. 29, 1990, 104 Stat. 4843, 4931; Pub. L. 103–322, title XXXIII, § 330011(*o*), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 106–294, § 3, Oct. 12, 2000, 114 Stat. 1040; Pub. L. 107–273, div. A, title III, § 302(2), Nov. 2, 2002, 116 Stat. 1781.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 302(2)(A), in introductory provisions, substituted ''Federal prisoner detention'' for ''the support of United States prisoners'', inserted ''and'' at end of par. (2), substituted period for ''; and'' at end of par. (3), and in introductory provisions of par. (4), inserted ''The Attorney General, in support of Federal prisoner detainees in non-Federal institutions, is authorized to make payments, from funds appropriated for State and local law enforcement assistance, for'' before ''entering''.

Subsecs. (a)(4), (b). Pub. L. 107–273, § 302(2)(B)(ii), redesignated par. (4) of subsec. (a) as subsec. (b) and subpars. (A) to (C) as pars. (1) to (3), respectively. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 107–273, § 302(2)(B)(i), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

2000—Subsec. (c). Pub. L. 106–294 added subsec. (c).

1994—Pub. L. 103–322, § 330011(*o*), repealed Pub. L. 101–647, § 3599. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–647, § 3599, which struck out ''(a)'' at beginning of text, was repealed by Pub. L. 103–322, § 330011(*o*).

Subsec. (b). Pub. L. 101–647, § 1701, added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(*o*) of Pub. L. 103–322 provided that the amendment made by that section is effective Nov. 29, 1990.

CONTRACTS FOR SPACE OR FACILITIES

Pub. L. 106–553, § 1(a)(2) [title I, § 118, formerly § 119], Dec. 21, 2000, 114 Stat. 2762, 2762A–69; renumbered § 118, Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–179, provided that: ''Notwithstanding any other provision of law, including section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)), the Attorney General hereafter may enter into contracts and other agreements, of any reasonable duration, for detention or incarceration space or facilities, including related services, on any reasonable basis.''

JUSTICE PRISONER AND ALIEN TRANSPORTATION SYSTEM FUND, UNITED STATES MARSHALS SERVICE

Pub. L. 106–553, § 1(a)(2) [title I], Dec. 21, 2000, 114 Stat. 2762, 2762A–55, provided in part that: ''Beginning in fiscal year 2000 and thereafter, payment shall be made from the Justice Prisoner and Alien Transportation System Fund for necessary expenses related to the scheduling and transportation of United States prisoners and illegal and criminal aliens in the custody of the United States Marshals Service, as authorized in 18 U.S.C. 4013, including, without limitation, salaries and expenses, operations, and the acquisition, lease, and maintenance of aircraft and support facilities: *Provided*, That the Fund shall be reimbursed or credited with advance payments from amounts available to the Department of Justice, other Federal agencies, and other sources at rates that will recover the expenses of Fund operations, including, without limitation, accrual of annual leave and depreciation of plant and equipment of the Fund: *Provided further*, That proceeds from the disposal of Fund aircraft shall be credited to the Fund: *Provided further*, That amounts in the Fund shall be available without fiscal year limitation, and may be used for operating equipment lease agreements that do not exceed 10 years.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 106–113, div. B, § 1000(a)(1) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–7.

Pub. L. 105–277, div. A, § 101(b) [title I], Oct. 21, 1998, 112 Stat. 2681–50, 2681–54, provided that: ''There is hereby established a Justice Prisoner and Alien Transportation System Fund for the payment of necessary expenses related to the scheduling and transportation of United States prisoners and illegal and criminal aliens in the custody of the United States Marshals Service, as authorized in 18 U.S.C. 4013, including, without limitation, salaries and expenses, operations, and the acquisition, lease, and maintenance of aircraft and support facilities: *Provided*, That the Fund shall be reimbursed or credited with advance payments from amounts available to the Department of Justice, other Federal agencies, and other sources at rates that will recover the expenses of Fund operations, including, without limitation, accrual of annual leave and depreciation of plant and equipment of the Fund: *Provided further*, That proceeds from the disposal of Fund aircraft shall be credited to the Fund: *Provided further*, That amounts in the Fund shall be available without fiscal year limitation, and may be used for operating equipment lease agreements that do not exceed 5 years.''

§ 4014. Testing for human immunodeficiency virus

(a) The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus, as appropriate, after the commencement of that incarceration, if such individual is determined to be at risk for infection with such virus in accordance with the guidelines issued by the Bureau of Prisons relating to infectious disease management.

(b) If the Attorney General has a well-founded reason to believe that a person sentenced to a

term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall—

(1) cause the person who may have transmitted the virus to be tested promptly for the presence of such virus and communicate the test results to the person tested; and

(2) consistent with the guidelines issued by the Bureau of Prisons relating to infectious disease management, inform any person (in, as appropriate, confidential consultation with the person's physician) who may have been exposed to such virus, of the potential risk involved and, if warranted by the circumstances, that prophylactic or other treatment should be considered.

(c) If the results of a test under subsection (a) or (b) indicate the presence of the human immunodeficiency virus, the Attorney General shall provide appropriate access for counselling, health care, and support services to the affected officer, employee, or other person, and to the person tested.

(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

(e) Not later than 1 year after the date of the enactment of this section, the Attorney General shall issue rules to implement this section. Such rules shall require that the results of any test are communicated only to the person tested, and, if the results of the test indicate the presence of the virus, to correctional facility personnel consistent with guidelines issued by the Bureau of Prisons. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.

(Added Pub. L. 105–370, § 2(a), Nov. 12, 1998, 112 Stat. 3374.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 105–370, which was approved Nov. 12, 1998.

CHAPTER 303—BUREAU OF PRISONS

Sec.
4041. Bureau of Prisons; director and employees.
4042. Duties of Bureau of Prisons.
4043. Acceptance of gifts and bequests to the Commissary Funds, Federal Prisons.
4044. Donations on behalf of the Bureau of Prisons.
4045. Authority to conduct autopsies.
4046. Shock incarceration program.
4047. Prison impact assessments.
4048. Fees for health care services for prisoners.

AMENDMENTS

2000—Pub. L. 106–294, § 2(b), Oct. 12, 2000, 114 Stat. 1040, added item 4048.

1994—Pub. L. 103–322, title II, § 20402(b), Sept. 13, 1994, 108 Stat. 1825, added item 4047.

1990—Pub. L. 101–647, title XXX, § 3001(b), Nov. 29, 1990, 104 Stat. 4915, added item 4046.

1986—Pub. L. 99–646, § 67(b), Nov. 10, 1986, 100 Stat. 3616, added items 4044 and 4045.

1982—Pub. L. 97–258, § 2(d)(4)(A), Sept. 13, 1982, 96 Stat. 1059, added item 4043.

§ 4041. Bureau of Prisons; director and employees

The Bureau of Prisons shall be in charge of a director appointed by and serving directly under the Attorney General. The Attorney General may appoint such additional officers and employees as he deems necessary.

(June 25, 1948, ch. 645, 62 Stat. 849; Pub. L. 107–273, div. A, title III, § 302(1), Nov. 2, 2002, 116 Stat. 1781.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753 (May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The entire second sentence was omitted as executed. All powers and authority originally vested in the former Superintendent of Prisons are now possessed by the Bureau of Prisons.

Minor changes of phraseology were made.

AMENDMENTS

2002—Pub. L. 107–273 struck out "at a salary of $10,000 a year" after "under the Attorney General".

COMPENSATION OF DIRECTOR

Compensation of Director, see section 5315 of Title 5, Government Organization and Employees.

§ 4042. Duties of Bureau of Prisons

(a) IN GENERAL.—The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local governments in the improvement of their correctional systems; and

(5) provide notice of release of prisoners in accordance with subsections (b) and (c).

(b) NOTICE OF RELEASE OF PRISONERS.—(1) At least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, written notice of the release or change of residence shall be provided to the chief law enforcement officer of the State and of the local jurisdiction in which the prisoner will reside. Notice prior to release shall be provided by the Director of the Bureau of Prisons. Notice concerning a change of residence following release shall be provided by the probation officer responsible for the supervision of the released prisoner, or in a manner specified by the Director of the Administrative Office of the United States Courts. The notice requirements under this subsection do not apply in relation to a prisoner being protected under chapter 224.

(2) A notice under paragraph (1) shall disclose—

(A) the prisoner's name;

(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

(3) A prisoner is described in this paragraph if the prisoner was convicted of—

(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

(B) a crime of violence (as defined in section 924(c)(3)).

(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to—

(A) the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and

(B) a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall register as required by the Sex Offender Registration and Notification Act. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (3) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.

[(4) Repealed. Pub. L. 109–248, title I, § 141(h), July 27, 2006, 120 Stat. 604.]

(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).

(d) APPLICATION OF SECTION.—This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

(June 25, 1948, ch. 645, 62 Stat. 849; Pub. L. 90–371, July 1, 1968, 82 Stat. 280; Pub. L. 103–322, title II, § 20417, Sept. 13, 1994, 108 Stat. 1834; Pub. L. 105–119, title I, § 115(a)(8)(A), Nov. 26, 1997, 111 Stat. 2464; Pub. L. 109–248, title I, § 141(f)–(h), July 27, 2006, 120 Stat. 603, 604.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753a, 753b, (May 14, 1930, ch. 274, §§ 2, 3, 46 Stat. 325).

Because of similarity in the provisions, the first sentence of section 753b of title 18, U.S.C., 1940 ed., was consolidated with section 753a of title 18, U.S.C., 1940 ed., to form this section.

Minor changes were made in phraseology.

The remainder of said section 753b of title 18, U.S.C., 1940 ed., is incorporated in section 4002 of this title.

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (c)(2), (3), is title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–248, § 141(g)(1), substituted "paragraph (3), or any other person in a category specified by the Attorney General," for "paragraph (4)" in introductory provisions.

Subsec. (c)(2). Pub. L. 109–248, § 141(g)(2), substituted "shall register as required by the Sex Offender Registration and Notification Act" for "shall be subject to a registration requirement as a sex offender" in first sentence and "paragraph (3)" for "paragraph (4)" in fourth sentence.

Subsec. (c)(3). Pub. L. 109–248, § 141(f), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts."

Subsec. (c)(4). Pub. L. 109–248, § 141(h), struck out par. (4) which read as follows: "A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):

"(A) An offense under section 1201 involving a minor victim.

"(B) An offense under chapter 109A.

"(C) An offense under chapter 110.

"(D) An offense under chapter 117.

"(E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection."

1997—Subsec. (a)(5). Pub. L. 105–119, § 115(a)(8)(A)(i), substituted "subsections (b) and (c)" for "subsection (b)".

Subsec. (b)(4). Pub. L. 105–119, § 115(a)(8)(A)(ii), struck out par. (4) which read as follows: "The notice provided

under this section shall be used solely for law enforcement purposes.''

Subsecs. (c), (d). Pub. L. 105–119, § 115(a)(8)(A)(iv), added subsec. (c) and redesignated former subsec. (c) as (d).

1994—Pub. L. 103–322 designated first par. of existing provisions as subsec. (a) and inserted heading, substituted ''provide'' for ''Provide'' and ''; and'' for period at end of par. (4), added par. (5) and subsec. (b), and designated second sentence of existing provisions as subsec. (c) and inserted heading.

1968—Pub. L. 90–371 added cl. (4).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

AMENITIES OR PERSONAL COMFORTS

Pub. L. 107–77, title VI, § 611, Nov. 28, 2001, 115 Stat. 800, provided that: ''Hereafter, none of the funds appropriated or otherwise made available to the Bureau of Prisons shall be used to provide the following amenities or personal comforts in the Federal prison system—

''(1) in-cell television viewing except for prisoners who are segregated from the general prison population for their own safety;

''(2) the viewing of R, X, and NC–17 rated movies, through whatever medium presented;

''(3) any instruction (live or through broadcasts) or training equipment for boxing, wrestling, judo, karate, or other martial art, or any bodybuilding or weightlifting equipment of any sort;

''(4) possession of in-cell coffee pots, hot plates or heating elements; or

''(5) the use or possession of any electric or electronic musical instrument.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 106–553, § 1(a)(2) [title VI, § 611], Dec. 21, 2000, 114 Stat. 2762, 2762A–105.

Pub. L. 106–113, div. B, § 1000(a)(1) [title VI, § 612], Nov. 29, 1999, 113 Stat. 1535, 1501A–54.

Pub. L. 105–277, div. A, § 101(b) [title VI, § 611], Oct. 21, 1998, 112 Stat. 2681–50, 2681–113.

Pub. L. 105–119, title VI, § 611, Nov. 26, 1997, 111 Stat. 2517.

Pub. L. 104–208, div. A, title I, § 101(a) [title VI, § 611], Sept. 30, 1996, 110 Stat. 3009, 3009–66.

Pub. L. 104–134, title I, § 101[(a)] [title VI, § 611], Apr. 26, 1996, 110 Stat. 1321, 1321–64; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

SEXUALLY EXPLICIT COMMERCIALLY PUBLISHED MATERIAL

Pub. L. 107–77, title VI, § 614, Nov. 28, 2001, 115 Stat. 801, provided that: ''Hereafter, none of the funds appropriated or otherwise made available to the Federal Bureau of Prisons may be used to distribute or make available any commercially published information or material to a prisoner when it is made known to the Federal official having authority to obligate or expend such funds that such information or material is sexually explicit or features nudity.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 106–553, § 1(a)(2) [title VI, § 614], Dec. 21, 2000, 114 Stat. 2762, 2762A–106.

Pub. L. 106–113, div. B, § 1000(a)(1) [title VI, § 615], Nov. 29, 1999, 113 Stat. 1535, 1501A–54.

Pub. L. 105–277, div. A, § 101(b) [title VI, § 614], Oct. 21, 1998, 112 Stat. 2681–50, 2681–113.

Pub. L. 105–119, title VI, § 614, Nov. 26, 1997, 111 Stat. 2518.

Pub. L. 104–208, div. A, title I, § 101(a) [title VI, § 614], Sept. 30, 1996, 110 Stat. 3009, 3009–66.

REIMBURSEMENT FOR CERTAIN EXPENSES OUTSIDE OF FEDERAL INSTITUTIONS

Pub. L. 106–553, § 1(a)(2) [title I], Dec. 21, 2000, 114 Stat. 2762, 2762A–55, provided in part: ''That hereafter amounts appropriated for Federal Prisoner Detention shall be available to reimburse the Federal Bureau of Prisons for salaries and expenses of transporting, guarding and providing medical care outside of Federal penal and correctional institutions to prisoners awaiting trial or sentencing.''

GUIDELINES FOR STATES REGARDING INFECTIOUS DISEASES IN CORRECTIONAL INSTITUTIONS

Pub. L. 105–370, § 2(c), Nov. 12, 1998, 112 Stat. 3375, provided that: ''Not later than 1 year after the date of the enactment of this Act [Nov. 12, 1998], the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions.''

PRISONER ACCESS

Pub. L. 105–314, title VIII, § 801, Oct. 30, 1998, 112 Stat. 2990, provided that: ''Notwithstanding any other provision of law, no agency, officer, or employee of the United States shall implement, or provide any financial assistance to, any Federal program or Federal activity in which a Federal prisoner is allowed access to any electronic communication service or remote computing service without the supervision of an official of the Federal Government.''

APPLICATION TO PRISONERS TO WHICH PRIOR LAW APPLIES

Section 20404 of Pub. L. 103–322 provided that: ''In the case of a prisoner convicted of an offense committed prior to November 1, 1987, the reference to supervised release in section 4042(b) of title 18, United States Code, shall be deemed to be a reference to probation or parole.''

COST SAVINGS MEASURES

Pub. L. 101–647, title XXIX, § 2907, Nov. 29, 1990, 104 Stat. 4915, provided that: ''The Director of the Federal Bureau of Prisons (referred to as the 'Director') shall, to the extent practicable, take such measures as are appropriate to cut costs of construction. Such measures may include reducing expenditures for amenities including, for example, color television or pool tables.''

ADMINISTRATION OF CONFINEMENT FACILITIES LOCATED ON MILITARY INSTALLATIONS BY BUREAU OF PRISONS

Pub. L. 100–690, title VII, § 7302, Nov. 18, 1988, 102 Stat. 4463, provided that: ''In conjunction with the Department of Defense and the Commission on Alternative Utilization of Military Facilities as established in the National Defense Authorization Act of Fiscal Year 1989 [see section 2819 of Pub. L. 100–456, 104 Stat. 1820, formerly set out as a note under section 2391 of Title 10, Armed Forces], the Bureau of Prisons shall be responsible for—

''(1) administering Bureau of Prisons confinement facilities for civilian nonviolent prisoners located on military installations in cooperation with the Secretary of Defense, with an emphasis on placing women inmates in such facilities, or in similar minimum security confinement facilities not located on military installations, so that the percentage of eligible women equals the percentage of eligible men housed in such or similar minimum security confinement facilities (i.e., prison camps);

''(2) establishing and regulating drug treatment programs for inmates held in such facilities in coordination and cooperation with the National Institute on Drug Abuse; and

''(3) establishing and managing work programs in accordance with guidelines under the Bureau of Pris-

ons for persons held in such facilities and in cooperation with the installation commander.''

§ 4043. Acceptance of gifts and bequests to the Commissary Funds, Federal Prisons

The Attorney General may accept gifts or bequests of money for credit to the ''Commissary Funds, Federal Prisons''. A gift or bequest under this section is a gift or bequest to or for the use of the United States under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(Added Pub. L. 97–258, § 2(d)(4)(B), Sept. 13, 1982, 96 Stat. 1059; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4043	31:725s–4.	May 15, 1952, ch. 289, § 2, 66 Stat. 72; July 9, 1952, ch. 600, 66 Stat. 479.

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EXPENDITURES; INMATE TELEPHONE SYSTEM

Pub. L. 105–277, div. A, § 101(b) [title I, § 108], Oct. 21, 1998, 112 Stat. 2681–50, 2681–67, provided that: ''For fiscal year 1999 and thereafter, the Director of the Bureau of Prisons may make expenditures out of the Commissary Fund of the Federal Prison System, regardless of whether any such expenditure is security-related, for programs, goods, and services for the benefit of inmates (to the extent the provision of those programs, goods, or services to inmates is not otherwise prohibited by law), including—

''(1) the installation, operation, and maintenance of the Inmate Telephone System;

''(2) the payment of all the equipment purchased or leased in connection with the Inmate Telephone System; and

''(3) the salaries, benefits, and other expenses of personnel who install, operate, and maintain the Inmate Telephone System.''

DEPOSIT OR INVESTMENT OF EXCESS AMOUNTS IN FEDERAL PRISON COMMISSARY FUND

Section 108 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that: ''For fiscal year 1996 and each fiscal year thereafter, amounts in the Federal Prison System's Commissary Fund, Federal Prisons, which are not currently needed for operations, shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investment shall be deposited in the Commissary Fund.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–317, title I, § 107, Aug. 26, 1994, 108 Stat. 1735.

§ 4044. Donations on behalf of the Bureau of Prisons

The Attorney General may, in accordance with rules prescribed by the Attorney General, accept in the name of the Department of Justice any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries. The Attorney General may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey such property other than money.

(Added Pub. L. 99–646, § 67(a), Nov. 10, 1986, 100 Stat. 3616.)

§ 4045. Authority to conduct autopsies

A chief executive officer of a Federal penal or correctional facility may, pursuant to rules prescribed by the Director, order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death, when it is determined that such autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of State and local law protecting religious beliefs with respect to such autopsies shall be observed. Such officer may also order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility, with the written consent of a person authorized to permit such an autopsy or post-mortem operation under the law of the State in which the facility is located.

(Added Pub. L. 99–646, § 67(a), Nov. 10, 1986, 100 Stat. 3616.)

§ 4046. Shock incarceration program

(a) The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

(b) For such initial portion of the term of imprisonment as the Bureau of Prisons may determine, not to exceed 6 months, an inmate in the shock incarceration program shall be required to—

(1) adhere to a highly regimented schedule that provides the strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training; and

(2) participate in appropriate job training and educational programs (including literacy programs) and drug, alcohol, and other counseling programs.

(c) An inmate who in the judgment of the Director of the Bureau of Prisons has successfully completed the required period of shock incarceration shall remain in the custody of the Bureau for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate), and under such conditions, as the Bureau deems appropriate.

(Added Pub. L. 101–647, title XXX, § 3001(a), Nov. 29, 1990, 104 Stat. 4915.)

AUTHORIZATION OF APPROPRIATIONS

Section 3002 of Pub. L. 101–647 provided that: ''There are authorized to be appropriated for fiscal year 1990 and each fiscal year thereafter such sums as may be

necessary to carry out the shock incarceration program established under the amendments made by this Act [see Tables for classification]''.

§ 4047. Prison impact assessments

(a) Any submission of legislation by the Judicial or Executive branch which could increase or decrease the number of persons incarcerated in Federal penal institutions shall be accompanied by a prison impact statement (as defined in subsection (b)).

(b) The Attorney General shall, in consultation with the Sentencing Commission and the Administrative Office of the United States Courts, prepare and furnish prison impact assessments under subsection (c) of this section, and in response to requests from Congress for information relating to a pending measure or matter that might affect the number of defendants processed through the Federal criminal justice system. A prison impact assessment on pending legislation must be supplied within 21 days of any request. A prison impact assessment shall include—

(1) projections of the impact on prison, probation, and post prison supervision populations;

(2) an estimate of the fiscal impact of such population changes on Federal expenditures, including those for construction and operation of correctional facilities for the current fiscal year and 5 succeeding fiscal years;

(3) an analysis of any other significant factor affecting the cost of the measure and its impact on the operations of components of the criminal justice system; and

(4) a statement of the methodologies and assumptions utilized in preparing the assessment.

(c) The Attorney General shall prepare and transmit to the Congress, by March 1 of each year, a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year.

(Added Pub. L. 103–322, title II, § 20402(a), Sept. 13, 1994, 108 Stat. 1824.)

§ 4048. Fees for health care services for prisoners

(a) DEFINITIONS.—In this section—

(1) the term ''account'' means the trust fund account (or institutional equivalent) of a prisoner;

(2) the term ''Director'' means the Director of the Bureau of Prisons;

(3) the term ''health care provider'' means any person who is—

(A) authorized by the Director to provide health care services; and

(B) operating within the scope of such authorization;

(4) the term ''health care visit''—

(A) means a visit, as determined by the Director, by a prisoner to an institutional or noninstitutional health care provider; and

(B) does not include a visit initiated by a prisoner—

(i) pursuant to a staff referral; or

(ii) to obtain staff-approved follow-up treatment for a chronic condition; and

(5) the term ''prisoner'' means—

(A) any individual who is incarcerated in an institution under the jurisdiction of the Bureau of Prisons; or

(B) any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

(b) FEES FOR HEALTH CARE SERVICES.—

(1) IN GENERAL.—The Director, in accordance with this section and with such regulations as the Director shall promulgate to carry out this section, may assess and collect a fee for health care services provided in connection with each health care visit requested by a prisoner.

(2) EXCLUSION.—The Director may not assess or collect a fee under this section for preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment, as determined by the Director.

(c) PERSONS SUBJECT TO FEE.—Each fee assessed under this section shall be collected by the Director from the account of—

(1) the prisoner receiving health care services in connection with a health care visit described in subsection (b)(1); or

(2) in the case of health care services provided in connection with a health care visit described in subsection (b)(1) that results from an injury inflicted on a prisoner by another prisoner, the prisoner who inflicted the injury, as determined by the Director.

(d) AMOUNT OF FEE.—Any fee assessed and collected under this section shall be in an amount of not less than $1.

(e) NO CONSENT REQUIRED.—Notwithstanding any other provision of law, the consent of a prisoner shall not be required for the collection of a fee from the account of the prisoner under this section. However, each such prisoner shall be given a reasonable opportunity to dispute the amount of the fee or whether the prisoner qualifies under an exclusion under this section.

(f) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this section may be construed to permit any refusal of treatment to a prisoner on the basis that—

(1) the account of the prisoner is insolvent; or

(2) the prisoner is otherwise unable to pay a fee assessed under this section.

(g) USE OF AMOUNTS.—

(1) RESTITUTION OF SPECIFIC VICTIMS.—Amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pursuant to section 3663 or 3663A shall be paid to victims in accordance with the order of restitution.

(2) ALLOCATION OF OTHER AMOUNTS.—Of amounts collected by the Director under this section from prisoners not subject to an order of restitution issued pursuant to section 3663 or 3663A—

(A) 75 percent shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601); and

(B) 25 percent shall be available to the Attorney General for administrative expenses incurred in carrying out this section.

(h) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this section and the applicability of this section to the prisoner. Notwithstanding any other provision of this section, a fee under this section may not be assessed against, or collected from, such person—

(1) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

(2) for services provided before the expiration of such period.

(i) NOTICE TO PRISONERS OF REGULATIONS.—The regulations promulgated by the Director under subsection (b)(1), and any amendments to those regulations, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of those regulations (or amendments, as the case may be). A fee under this section may not be assessed against, or collected from, a prisoner pursuant to such regulations (or amendments, as the case may be) for services provided before the expiration of such period.

(j) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed regulation under this section is open to public comment, the Director shall provide written and oral notice of the provisions of that proposed regulation to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed regulation.

(k) REPORTS TO CONGRESS.—Not later than 1 year after the date of the enactment of the Federal Prisoner Health Care Copayment Act of 2000, and annually thereafter, the Director shall transmit to Congress a report, which shall include—

(1) a description of the amounts collected under this section during the preceding 12-month period;

(2) an analysis of the effects of the implementation of this section, if any, on the nature and extent of heath care visits by prisoners;

(3) an itemization of the cost of implementing and administering the program;

(4) a description of current inmate health status indicators as compared to the year prior to enactment; and

(5) a description of the quality of health care services provided to inmates during the preceding 12-month period, as compared with the quality of those services provided during the 12-month period ending on the date of the enactment of such Act.

(*l*) COMPREHENSIVE HIV/AIDS SERVICES REQUIRED.—The Bureau of Prisons shall provide comprehensive coverage for services relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) to each Federal prisoner in the custody of the Bureau of Prisons when medically appropriate. The Bureau of Prisons may not assess or collect a fee under this section for providing such coverage.

(Added Pub. L. 106–294, § 2(a), Oct. 12, 2000, 114 Stat. 1038.)

REFERENCES IN TEXT

The date of the enactment of the Federal Prisoner Health Care Copayment Act of 2000, referred to in subsec. (k), is the date of enactment of Pub. L. 106–294, which was approved Oct. 12, 2000.

CHAPTER 305—COMMITMENT AND TRANSFER

Sec.
4081. Classification and treatment of prisoners.
4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough.
4083. Penitentiary imprisonment; consent.
4084. Repealed.
4085. Repealed.
4086. Temporary safe-keeping of federal offenders by marshals.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 601(f)(14), Oct. 11, 1996, 110 Stat. 3500, substituted ''centers;'' for ''centers,'' in item 4082.

1984—Pub. L. 98–473, title II, § 218(e), Oct. 12, 1984, 98 Stat. 2027, substituted ''Repealed'' for ''Copy of commitment delivered with prisoner'' in item 4084, and ''Repealed'' for ''Transfer for state offense; expense'' in item 4085.

1965—Pub. L. 89–176, § 2, Sept. 10, 1965, 79 Stat. 675, substituted ''residential treatment centers, extension of limits of confinement; work furlough'' for ''transfer'' in item 4082.

§ 4081. Classification and treatment of prisoners

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

(June 25, 1948, ch. 645, 62 Stat. 850.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 907 (May 27, 1930, ch. 339, § 7, 46 Stat. 390).

Language of section is so changed as to make one policy for all institutions, thus clarifying the manifest intent of Congress.

Minor changes were made in phraseology.

§ 4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

(a) The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, shall be deemed an escape from the custody of the Attorney General punishable as provided in chapter 35 of this title.

(b)(1) The Attorney General shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to prisoners

who have been convicted of felony offenses against the United States and who are confined at a facility which is a residential community treatment center located in the geographical area in which such agency has jurisdiction, the following information maintained by the Bureau of Prisons (to the extent that the Bureau of Prisons maintains such information)—

(A) the names of such prisoners;

(B) the community treatment center addresses of such prisoners;

(C) the dates of birth of such prisoners;

(D) the Federal Bureau of Investigation numbers assigned to such prisoners;

(E) photographs and fingerprints of such prisoners; and

(F) the nature of the offenses against the United States of which each such prisoner has been convicted and the factual circumstances relating to such offenses.

(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.

(c) As used in this section—

the term ''facility'' shall include a residential community treatment center; and

the term ''relative'' shall mean a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(June 25, 1948, ch. 645, 62 Stat. 850; Pub. L. 89–176, § 1, Sept. 10, 1965, 79 Stat. 674; Pub. L. 93–209, Dec. 28, 1973, 87 Stat. 907; Pub. L. 98–473, title II, § 218(a), Oct. 12, 1984, 98 Stat. 2027; Pub. L. 99–646, § 57(a), Nov. 10, 1986, 100 Stat. 3611.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753f (May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Words ''by the juvenile court of the District of Columbia, as well as to those committed by any court of the United States,'' at end of section were omitted as unnecessary, and word ''all'' inserted before ''persons'', without change of meaning.

Provision against penitentiary imprisonment for a term of 1 year or less without consent of defendant was incorporated in section 4083 of this title.

The phrase ''if in his judgment it shall be for the well-being of the prisoner or relieve overcrowded or unhealthful conditions in the institution where such person is confined or for other reasons'', was omitted as unnecessary.

Changes were made in phraseology.

This section supersedes section 705 of title 18, U.S.C., 1940 ed., providing for execution of sentences in houses of correction or reformation; and section 748 of title 18, U.S.C., 1940 ed., providing for confinement of prisoners in United States Disciplinary Barracks.

AMENDMENTS

1986—Subsecs. (f), (g). Pub. L. 99–646 added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Pub. L. 98–473 struck out subsecs. (a) to (c) and (e) and redesignated subsecs. (d), (f), and (g) as (a), (b), and (c), respectively. Prior to amendment subsecs. (a) to (c) and (e) read as follows:

''(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

''(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another.

''(c) The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to—

''(1) visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with the public interest; or

''(2) work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed, provided that—

''(i) representatives of local union central bodies or similar labor union organizations are consulted;

''(ii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

''(iii) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts.

''(e) The authority conferred upon the Attorney General by this section shall extend to all persons committed to the National Training School for Boys.''

1973—Subsec. (c)(1). Pub. L. 93–209 provided for extension of limits to permit establishment or reestablishment of family and community ties and struck out ''only'' after ''may be granted''.

1965—Subsec. (a). Pub. L. 89–176 designated as subsec. (a) first unnumbered par. and struck out ''or his authorized representative'' after ''Attorney General of the United States''.

Subsec. (b). Pub. L. 89–176 designated as subsec. (b) second and third unnumbered par., inserted ''or facility'' after ''appropriate institution'', substituted ''may at any time transfer a person from one place of confinement to another'' for ''may order any inmate transferred from one institution to another'', and made minor changes in language.

Subsecs. (c), (d). Pub. L. 89–176 added subsecs. (c) and (d).

Subsec. (e). Pub. L. 89–176 designated as subsec. (e) fourth and last unnumbered pars.

Subsec. (f). Pub. L. 89–176 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4083. Penitentiary imprisonment; consent

Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary.

A sentence for an offense punishable by imprisonment for one year or less shall not be served in a penitentiary without the consent of the defendant.

(June 25, 1948, ch. 645, 62 Stat. 850; Pub. L. 86–256, Sept. 14, 1959, 73 Stat. 518.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753f, 762 (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1896, ch. 400, § 1, 29 Stat. 380; May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Said section 762 was condensed and simplified and extended to all penitentiaries instead of to Leavenworth only, since the section is merely declaratory of existing law. (See section 1 of this title classifying offenses and notes thereunder.)

The second paragraph is derived from said section 753f of title 18, U.S.C., 1940 ed.

Minor changes of phraseology were made.

AMENDMENTS

1959—Pub. L. 86–256 substituted ''punishable by imprisonment for'' for ''and sentenced to terms of imprisonment of'' in first sentence.

[§§ 4084, 4085. Repealed. Pub. L. 98–473, title II, § 218(a)(3), Oct. 12, 1984, 98 Stat. 2027]

Section 4084, act June 25, 1948, ch. 645, 62 Stat. 850, related to delivery of prisoner with copy of commitment.

Section 4085, act June 25, 1948, ch. 645, 62 Stat. 850, related to authority, expense, etc., respecting transfer of Federal prisoner for State offense.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4086. Temporary safe-keeping of federal offenders by marshals

United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 691, 692, (R.S. §§ 5537, 5538).

Said section 691 of title 18, U.S.C., 1940 ed., is superseded by sections 753b and 753c of title 18, U.S.C., 1940 ed., which are incorporated in sections 4002, 4003 and 4042 of this title.

This section is rewritten to retain the intent of section 692 of title 18, U.S.C., 1940 ed., which was to insure a safekeeping of United States prisoners until their commitment or confinement in Federal penal institutions. The language conforms with that of said sections 692 and 753b.

Minor changes were made in phraseology.

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

Sec.
4100. Scope and limitation of chapter.
4101. Definitions.
4102. Authority of the Attorney General.
4103. Applicability of United States laws.
4104. Transfer of offenders on probation.
4105. Transfer of offenders serving sentence of imprisonment.
4106. Transfer of offenders on parole; parole of offenders transferred.
4106A. Transfer of offenders on parole; parole of offenders transferred.
4107. Verification of consent of offender to transfer from the United States.
4108. Verification of consent of offender to transfer to the United States.
4109. Right to counsel, appointment of counsel.
4110. Transfer of juveniles.
4111. Prosecution barred by foreign conviction.
4112. Loss of rights, disqualification.
4113. Status of alien offender transferred to a foreign country.
4114. Return of transferred offenders.
4115. Execution of sentences imposing an obligation to make restitution or reparations.

AMENDMENTS

1988—Pub. L. 100–690, title VII, § 7101(c), Nov. 18, 1988, 102 Stat. 4415, added item 4106A.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country. The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has

been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1212; amended Pub. L. 100–690, title VII, § 7101(e), Nov. 18, 1988, 102 Stat. 4416.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 inserted ", or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer," after "under eighteen years of age", ", guardian ad litem," after "guardian", and "The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title."

AUTHORIZATION OF APPROPRIATIONS

Section 5(a) of Pub. L. 95–144 provided that: "There is authorized to be appropriated such funds as may be required to carry out the purposes of this Act [which enacted this chapter and sections 955 of Title 10, Armed Forces, and 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title]".

PRISONER TRANSFER TREATIES

Pub. L. 104–208, div. C, title III, § 330, Sept. 30, 1996, 110 Stat. 3009–631, provided that:

"(a) NEGOTIATIONS WITH OTHER COUNTRIES.—(1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who—

"(A) is a national of a country that is party to such a treaty; and

"(B) has been convicted of a criminal offense under Federal or State law and who—

"(i) is not in lawful immigration status in the United States, or

"(ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

"(2) In entering into negotiations under paragraph (1), the President may consider providing for appropriate compensation, subject to the availability of appropriations, in cases where the United States is able to independently verify the adequacy of the sites where aliens will be imprisoned and the length of time the alien is actually incarcerated in the foreign country under such a treaty.

"(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

"(1) the focus of negotiations for such agreements should be—

"(A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,

"(B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,

"(C) to eliminate any requirement of prisoner consent to such a transfer, and

"(D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prisons [sic] sentences;

"(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States; and

"(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

"(c) PRISONER CONSENT.—Notwithstanding any other provision of law, except as required by treaty, the transfer of an alien from a Federal, State, or local incarceration facility under an agreement of the type referred to in subsection (a) shall not require consent of the alien.

"(d) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], and annually thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate stating whether each prisoner transfer treaty to which the United States is a party has been effective in the preceding 12 months in bringing about the return of deportable incarcerated aliens to the country of which they are nationals and in ensuring that they serve the balance of their sentences.

"(e) TRAINING FOREIGN LAW ENFORCEMENT PERSONNEL.—(1) Subject to paragraph (2), the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training an appropriate number of foreign law enforcement personnel, and shall make appointments of foreign law enforcement personnel to such academies, as necessary to further the following United States law enforcement goals:

"(A) Preventing of drug smuggling and other cross-border criminal activity.

"(B) Preventing illegal immigration.

"(C) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or the appropriate duty or tariff for which has not been paid).

"(2) The appointments described in paragraph (1) shall be made only to the extent there is capacity in such academies beyond what is required to train United States citizens needed in the Border Patrol and Customs Service, and only of personnel from a country with which the prisoner transfer treaty has been stated to be effective in the most recent report referred to in subsection (d).

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 4101. Definitions

As used in this chapter the term—

(a) "double criminality" means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the

federal laws or the laws of any state or province thereof;

(b) ''imprisonment'' means a penalty imposed by a court under which the individual is confined to an institution;

(c) ''juvenile'' means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) ''juvenile delinquency'' means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) ''offender'' means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) ''parole'' means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision, including a term of supervised release pursuant to section 3583;

(g) ''probation'' means any form of a sentence under which the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which a penalty of imprisonment may be ordered executed;

(h) ''sentence'' means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) ''transfer'' means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) ''treaty'' means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1213; amended Pub. L. 98–473, title II, § 223(m)(1), Oct. 12, 1984, 98 Stat. 2029.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–473 inserted ''including a term of supervised release pursuant to section 3583'' after ''supervision''.

Subsec. (g). Pub. L. 98–473 substituted ''under which'' for ''to a penalty of imprisonment the execution of which is suspended'' and ''a'' for ''the suspended'' before ''penalty''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country,

and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1214.)

CHANGE OF NAME

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

CERTIFICATION BY ATTORNEY GENERAL TO SECRETARY OF STATE FOR REIMBURSEMENT OF EXPENSES INCURRED UNDER TRANSFER TREATY

Section 5(b) of Pub. L. 95–144 provided that: ''The Attorney General shall certify to the Secretary of State the expenses of the United States related to the return of an offender to the foreign country of which the offender is a citizen or national for which the United States is entitled to seek reimbursement from that country under a treaty providing for transfer and reimbursement.''

§ 4103. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or this chapter provides otherwise.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4104. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with section 3565 of this title and the applicable provisions of the Federal Rules of Criminal Procedure. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) The provisions of sections 4105 and 4106 of this title shall be applicable following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215; amended Pub. L. 107–273, div. B, title IV, § 4002(e)(6), Nov. 2, 2002, 116 Stat. 1810.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–273 substituted ''section 3565 of this title and the applicable provisions of'' for ''section 3653 of this title and rule 32(f) of''.

§ 4105. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits toward service of sentence for satisfactory behavior, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 3624(b) of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 3624(a) of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 3624(b) of this title.

(3) Credit toward service of sentence may be withheld as provided in section 3624(b) of this title.

(4) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215; amended Pub. L. 98–473, title II, § 223(m)(2), Oct. 12, 1984, 98 Stat. 2029.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–473 substituted ''toward service of sentence for satisfactory behavior'' for ''for good time'', ''3624(b)'' for ''4161'', and ''3624(a)'' for ''4164''.

Subsec. (c)(2). Pub. L. 98–473 substituted ''3624(b)'' for ''4161''.

Subsec. (c)(3), (4). Pub. L. 98–473 redesignated par. (4) as (3) and amended it generally, and struck out former par. (3). Prior to redesignation and amendment, former pars. (3) and (4) read as follows:

''(3) A transferred offender may earn extra good time deductions, as authorized in section 4162 of this title, from the time of transfer.

''(4) All credits toward service of the sentence, other than the credit for time in custody before sentencing, may be forfeited as provided in section 4165 of this title and may be restored by the Attorney General as provided in section 4166 of this title.''

Subsec. (c)(5). Pub. L. 98–473 redesignated par. (5) as (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218[1] of this title shall be applicable.

(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

(d) This section shall apply only to offenses committed before November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1216; amended Pub. L. 98–473, title II, § 223(m)(3), Oct. 12, 1984, 98 Stat. 2029; Pub. L. 100–182, § 14, Dec. 7, 1987, 101 Stat. 1268; Pub. L. 100–690, title VII, § 7072(c), Nov. 18, 1988, 102 Stat. 4405.)

REFERENCES IN TEXT

Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218 of this title, referred to in subsec. (b), were repealed effective Nov. 1, 1987, by Pub. L. 98–473, title II, §§ 218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, subject to remaining effective for five years after Nov. 1, 1987, in certain circumstances.

[1] See References in Text note below.

Section 235 of the Comprehensive Crime Control Act of 1984, referred to in subsec. (d), is set out as an Effective Date note under section 3551 of this title.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 substituted ''4215'' for ''4216''.

1987—Pub. L. 100–182 amended section generally. Prior to amendment, section read as follows:

''(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Probation System for supervision.

''(b) An offender transferred to the United States to serve a sentence of imprisonment shall be released pursuant to section 3624(a) of this title after serving the period of time specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1). He shall be released to serve a term of supervised release for any term specified in the applicable guideline. The provisions of section 3742 of this title apply to a sentence to a term of imprisonment under this subsection, and the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States has jurisdiction to review the period of imprisonment as though it had been imposed by the United States district court.''

1984—Subsec. (a). Pub. L. 98–473 substituted ''Probation System'' for ''Parole Commission''.

Subsec. (b). Pub. L. 98–473 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4216; and 4218 of this title shall be applicable.''

Subsec. (c). Pub. L. 98–473 struck out subsec. (c) which read as follows: ''An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4106A. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b)(1)(A) The United States Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in a United States district court of a similar offense.

(B) In making such determination, the United States Parole Commission shall consider—

(i) any recommendation of the United States Probation Service, including any recommendation as to the applicable guideline range; and

(ii) any documents provided by the transferring country;

relating to that offender.

(C) The combined periods of imprisonment and supervised release that result from such determination shall not exceed the term of imprisonment imposed by the foreign court on that offender.

(D) The duties conferred on a United States probation officer with respect to a defendant by section 3552 of this title shall, with respect to an offender so transferred, be carried out by the United States Probation Service.

(2)(A) A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender is imprisoned at the time of the determination of such Commission. Notice of appeal must be filed not later than 45 days after receipt of notice of such determination.

(B) The court of appeals shall decide and dispose of the appeal in accordance with section 3742 of this title as though the determination appealed had been a sentence imposed by a United States district court.

(3) During the supervised release of an offender under this subsection, the United States district court for the district in which the offender resides shall supervise the offender.

(c) This section shall apply only to offenses committed on or after November 1, 1987.

(Added Pub. L. 100–690, title VII, § 7101(a), Nov. 18, 1988, 102 Stat. 4415; amended Pub. L. 101–647, title XXXV, §§ 3599B, 3599C, Nov. 29, 1990, 104 Stat. 4931, 4932.)

AMENDMENTS

1990—Pub. L. 101–647, § 3599B, inserted ''of'' before second reference to ''offenders'' in section catchline.

Subsec. (b)(1)(C). Pub. L. 101–647, § 3599C, inserted period at end.

§ 4107. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate judge or a judge as defined in section 451 of title 28, United States Code.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(2) the sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(3) if a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the United States for the purpose of completing the sentence if the United States requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1216; amended Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 4108. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof, shall be verified in the country in which the sentence was imposed by a United States magistrate judge, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28, United States Code. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(2) the sentence shall be carried out according to the laws of the United States and that those laws are subject to change;

(3) if a United States court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the United States, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and

given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1217; amended Pub. L. 98–473, title II, § 223(m)(4), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100–690, title VII, § 7101(b), Nov. 18, 1988, 102 Stat. 4415; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 struck out ''including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 944(a)(1),'' after ''consequences thereof,''.

1984—Subsec. (a). Pub. L. 98–473 inserted '', including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1),'' after ''consequences thereof''.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4109. Right to counsel, appointment of counsel

(a) In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with section 3006A of this title. Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;[1]

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 3006A of this title for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3324(a) and (b) of title 31, the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(b) Guardians ad litem appointed by the verifying officer under section 4100 of this title to represent offenders who are financially unable to provide for compensation and travel expenses of the guardian ad litem shall be compensated and reimbursed under subsection (a)(1) of this section.

(c) The offender shall have the right to advice of counsel in proceedings before the United States Parole Commission under section 4106A of this title and in an appeal from a determination of such Commission under such section. If the offender is financially unable to obtain counsel, counsel for such proceedings and appeal shall be appointed under section 3006A of this title.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218; amended Pub. L. 97–258, § 3(e)(2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 100–690, title VII, § 7101(d), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–647, title XXXV, § 3598, Nov. 29, 1990, 104 Stat. 4931.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 substituted ''section 3006A of this title'' for ''the Criminal Justice Act (18 U.S.C. 3006A)'' in par. (1) and for ''the Criminal Justice Act (18 U.S.C. 3006(a))'' in par. (2).

1988—Pub. L. 100–690 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1982—Par. (2). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes as amended (31 U.S.C. 529)''.

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sen-

[1] So in original. Probably should be ''section 3006A of this title;''. See 1990 Amendment note below.

tenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 240B of the Immigration and Nationality Act and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been removed from this country.

(c) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and removed from the United States.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1219; amended Pub. L. 104–208, div. C, title III, § 308(d)(4)(U), (e)(1)(Q), (2)(I), (g)(3)(B), (5)(A)(iv), Sept. 30, 1996, 110 Stat. 3009–619, 3009–620, 3009–622, 3009–623.)

REFERENCES IN TEXT

Section 240B of the Immigration and Nationality Act, referred to in subsec. (a), is classified to section 1229c of Title 8, Aliens and Nationality.

Section 240 of the Immigration and Nationality Act, referred to in subsecs. (b) and (c), is classified to section 1229a of Title 8.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 308(g)(5)(A)(iv)(I), substituted ''section 240B of the Immigration and Nationality Act'' for ''section 1252(b) or section 1254(e) of title 8, United States Code,''.

Subsec. (b). Pub. L. 104–208, § 308(g)(5)(A)(iv)(II), substituted ''section 240 of the Immigration and Nationality Act'' for ''section 1252 of title 8, United States Code,''.

Pub. L. 104–208, § 308(e)(1)(Q), (2)(I), substituted ''removal'' for ''deportation'' and ''removed'' for ''deported''.

Subsec. (c). Pub. L. 104–208, § 308(g)(3)(B), substituted ''240 of the Immigration and Nationality Act'' for ''1226 of title 8, United States Code''.

Pub. L. 104–208, § 308(d)(4)(U), (e)(2)(I), substituted ''removal'' for ''exclusion and deportation'' and ''removed'' for ''deported''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate judge within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate judge ordering the offender to appear or to be brought before the issuing authority. If the justice, judge, or magistrate judge finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the req-

uisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1219; amended Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in subsec. (b) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 4115. Execution of sentences imposing an obligation to make restitution or reparations

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the United States has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1220.)

CHAPTER 307—EMPLOYMENT

Sec.
4121. Federal Prison Industries; board of directors.
4122. Administration of Federal Prison Industries.
4123. New industries.
4124. Purchase of prison-made products by Federal departments.
4125. Public works; prison camps.
4126. Prison Industries Fund; use and settlement of accounts.
4127. Prison Industries report to Congress.
4128. Enforcement by Attorney General.
4129. Authority to borrow and invest.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3599A, Nov. 29, 1990, 104 Stat. 4931, substituted ''Fund'' for ''fund'' in item 4126.

1988—Pub. L. 100–690, title VII, § 7093(b), Nov. 18, 1988, 102 Stat. 4412, added item 4129.

§ 4121. Federal Prison Industries; board of directors

''Federal Prison Industries'', a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 62, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744i, 744j (June 23, 1934, ch. 736, §§ 1, 2, 48 Stat. 1211).

Section consolidates sections 744i and 744j of title 18, U.S.C., 1940 ed. The former was rewritten omitting unnecessary recital as to policy and expressing the original language of the two sections more logically.

Changes were made in transportation and phraseology.

1949 ACT

This section [section 62] incorporates in section 4121 of title 18, U.S.C., with changes in phraseology, the provisions of section 3 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), which was enacted subsequent to the enactment of the revision of title 18 and which provided for appointment of an additional member of the board of directors of the Federal Prison Industries, as a representative of the Secretary of Defense.

AMENDMENTS

1949—Act May 24, 1949, made a representative of the Secretary of Defense a member of the board of directors.

TRANSFER OF FUNCTIONS

Federal Prison Industries, Inc. (together with its Board of Directors), and its functions transferred to Department of Justice to be administered under general direction and supervision of Attorney General, by Reorg. Plan No. II of 1939, § 3(a), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431, set out in the Appendix to Title 5, Government Organization and Employees. See, also, Reorg. Plan No. 2 of 1950, § 1, eff. May 1, 1950, 15 F.R. 3173, 64 Stat. 1261, and section 509 of Title 28, Judiciary and Judicial Procedure.

MANDATORY WORK REQUIREMENT FOR ALL PRISONERS

Pub. L. 101–647, title XXIX, § 2905, Nov. 29, 1990, 104 Stat. 4914, provided that:

''(a) IN GENERAL.—(1) It is the policy of the Federal Government that convicted inmates confined in Federal prisons, jails, and other detention facilities shall work. The type of work in which they will be involved shall be dictated by appropriate security considerations and by the health of the prisoner involved.

''(2) A Federal prisoner may be excused from the requirement to work only as necessitated by—

''(A) security considerations;

''(B) disciplinary action;

''(C) medical certification of disability such as would make it impracticable for prison officials to arrange useful work for the prisoner to perform; or

''(D) a need for the prisoner to work less than a full work schedule in order to participate in literacy training, drug rehabilitation, or similar programs in addition to the work program.''

CLOSURE OF MCNEIL ISLAND PENITENTIARY; REPORT ON STATUS OF FEDERAL PRISON INDUSTRIES

Pub. L. 95–624, § 10, Nov. 9, 1978, 92 Stat. 3463, provided that:

''(a) On or before September 1, 1979, the Attorney General shall submit to the Congress—

''(1) a plan to assure the closure of the United States Penitentiary on McNeil Island, Steilacoom, Washington, on or before January 1, 1982; and

''(2) a report on the status of the Federal Prison Industries.

''(b) The report made under this section shall include a long-range plan for the improvement of meaningful employment training, and the methods which could be undertaken to employ a greater number of United States prisoners in the program. Such report may include recommendations for legislation.''

§ 4122. Administration of Federal Prison Industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b)(1) Its board of directors shall provide employment for the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible, diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.

(2) Federal Prison Industries shall conduct its operations so as to produce products on an economic basis, but shall avoid capturing more than a reasonable share of the market among Federal departments, agencies, and institutions for any specific product. Federal Prison Industries shall concentrate on providing to the Federal Government only those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible.

(3) Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

(4) Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

(A) The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

(i) the number of vendors currently meeting the requirements of the Federal Government for the product;

(ii) the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

(iii) the size of the Federal Government and non-Federal Government markets for the product;

(iv) the projected growth in the Federal Government demand for the product; and

(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.

(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.

(D) The corporation shall provide to the board of directors—

(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

(ii) comments submitted to the corporation on the proposal, and

(iii) the corporation's recommendations for action on the proposal in light of such comments.

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.

(6) Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.

(c) Its board of directors may provide for the vocational training of qualified inmates without regard to their industrial or other assignments.

(d)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any department or agency comprising the Department of Defense, to the extent and under terms and conditions agreed upon by the Secretary of Defense, the Attorney General and the Board of Directors of Federal Prison Industries.

(2) Any department or agency of the Department of Defense may, without exchange of

funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under paragraph (1) of this subsection.

(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Commissioner of the District of Columbia to the extent and under terms and conditions agreed upon by the Commissioner, the Attorney General, and the Board of Directors of Federal Prison Industries.

(2) The Commissioner of the District of Columbia may, without exchange of funds, transfer to the Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled ''An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes.''

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 63, 63 Stat. 98; Oct. 31, 1951, ch. 655, § 31, 65 Stat. 722; Pub. L. 90–226, title VIII, § 802, Dec. 27, 1967, 81 Stat. 741; Pub. L. 100–690, title VII, § 7096, Nov. 18, 1988, 102 Stat. 4413.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744a, 744c, 744k (May 27, 1930, ch. 340, §§ 1, 3, 46 Stat. 391; June 23, 1934, ch. 736, § 3, 48 Stat. 1211).

Section consolidates sections 744a, part of 744c, and 744k of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

Provisions in section 744k of title 18, U.S.C., 1940 ed., for transfer of duties to the corporation was omitted as executed.

Other provisions of said section 744c of title 18, U.S.C., 1940 ed., form section 4123 of this title.

Changes were made in phraseology.

1949 ACT

Subsection (c) of section 4122 of title 18, U.S.C., as added by this amendment [see section 63], incorporates provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4126 of such title by another section of this bill.

Subsections (d) and (e) of such section 4122, added by this amendment [see section 63], incorporate, with changes in phraseology, the provisions of sections 1 and 2 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), extending the functions and duties of Federal Prisons Industries, Incorporated, to military disciplinary barracks. Section 3 of such act is incorporated in section 4121 of such title by another section of this bill, and section 4 of such act is classified to section 1621a of title 50, U.S.C., Appendix, War and National Defense.

REFERENCES IN TEXT

The Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled ''An Act to establish in the Treasury a correctional institution industries fund for the government of the District of Columbia, and for other purposes'', referred to in subsec. (e)(3), is Pub. L. 88–622, Oct. 3, 1964, 78 Stat. 1000.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible'' for ''all physically fit inmates in the United States penal and correctional institutions'', and added pars. (2) to (6).

1967—Subsec. (d). Pub. L. 90–226, § 802(1), (2), designated existing provisions of subsec. (d) as par. (1) thereof, designated existing provisions of subsec. (e) as par. (2) of subsec. (d), and substituted reference to par. (1) of this subsection for reference to subsec. (d) of this section.

Subsec. (e). Pub. L. 90–226, § 802(3), added subsec. (e). Former subsec. (e) redesignated (d)(2).

1951—Subsecs. (d), (e). Act Oct. 31, 1951, substituted ''Department of Defense'' for ''National Military Establishment''.

1949—Act May 24, 1949, designated existing first two pars. as subsecs. (a) and (b), respectively, and added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93–198.

UTILIZATION OF SURPLUS PROPERTY

Act June 29, 1948, ch. 719, § 4, 62 Stat. 1100, provided that: ''For its own use in the industrial employment and training of prisoners and not for transfer or disposition, transfers of surplus property under the Surplus Property Act of 1944 [former sections 1611 to 1646 of Appendix to Title 50, War and National Defense], may be made to Federal Prison Industries, Incorporated, without reimbursement or transfer of funds.''

§ 4123. New industries

Any industry established under this chapter shall be so operated as not to curtail the production of any existing arsenal, navy yard, or other Government workshop.

Such forms of employment shall be provided as will give the inmates of all Federal penal and correctional institutions a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release.

The industries may be either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744c (May 27, 1930, ch. 340, § 3, 46 Stat. 391).

A part of said section 744c of title 18, U.S.C., 1940 ed., is incorporated in section 4122 of this title.

References to the Attorney General were omitted because section 744k of title 18, U.S.C., 1940 ed., as originally enacted, provided for the transfer to Federal Prison Industries of the powers and duties then vested in the Attorney General.

References to ''this chapter'' were substituted for ''this section'' since the general authority to establish and supervise prison industries is contained in this chapter.

Minor changes of phraseology were made.

§ 4124. Purchase of prison-made products by Federal departments

(a) The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

(b) Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

(c) Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: ''Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period.''.

(d) Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.

(June 25, 1948, ch. 645, 62 Stat. 851; Oct. 31, 1951, ch. 655, § 32, 65 Stat. 723; Pub. L. 98–216, § 3(b)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 101–647, title XXIX, § 2901, Nov. 29, 1990, 104 Stat. 4912; Pub. L. 102–564, title III, § 303(b), Oct. 28, 1992, 106 Stat. 4262; Pub. L. 104–316, title I, § 109(b), Oct. 19, 1996, 110 Stat. 3832.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., § 744g (May 27, 1930, ch. 340, § 7, 46 Stat. 392).

The revised section substituted the Director of the Bureau of Federal Supply of the Treasury Department for the General Supply Committee, the functions of the latter having been transferred to the Procurement Division of the Treasury Department by Executive Order No. 6166, § 1, June 10, 1933, and the name of that unit having been changed to Bureau of Federal Supply by order of the Secretary of the Treasury effective January 1, 1947, 11 Federal Register No. 13,638. The Bureau of the Budget was substituted for the Bureau of Efficiency which was abolished by Act of March 3, 1933, ch. 212, § 17, 47 Stat. 1519, without transferring its functions elsewhere. However, the Bureau of the Budget performs similar duties and its Director logically should serve on the arbitration board.

Reference to authority for appropriations was omitted and words ''by this chapter'' substituted therefor.

The word ''agencies'' was substituted for ''independent establishments'' to avoid any possibility of ambiguity. See definition of ''agency'' in section 6 of this title.

References in Text

Section 6(d)(4) of the Office of Federal Procurement Policy Act, referred to in subsec. (c), is classified to section 405(d)(4) of Title 41, Public Contracts.

The date of the enactment of this subsection, referred to in subsec. (d), is the date of enactment of Pub. L. 101–647, which was approved Nov. 29, 1990.

Amendments

1996—Subsec. (b). Pub. L. 104–316 substituted ''Attorney General'' for ''Comptroller General of the United States''.

1992—Subsec. (c). Pub. L. 102–564 substituted ''acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions'' for ''to the General Services Administration all of its acquisitions of products and services from Federal Prison Industries, and that reported information shall be entered in the Federal Procurement Data System referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act''.

1990—Pub. L. 101–647 designated first and second pars. as subsecs. (a) and (b), respectively, and added subsecs. (c) and (d).

1984—Pub. L. 98–216 substituted ''President'' for ''Director of the Bureau of the Budget'' in second par.

1951—Act Oct. 31, 1951, substituted ''Administrator of General Services'' for ''Director of the Bureau of Federal Supply, Department of the Treasury'' in second par.

Agency Purchase of Federal Prison Industries Products or Services

Pub. L. 108–447, div. H, title VI, § 637, Dec. 8, 2004, 118 Stat. 3281, provided that: ''None of the funds made available under this or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making such purchase determines that such offered product or service provides the best value to the buying agency pursuant to governmentwide procurement regulations, issued pursuant to section 25(c)(1) of the Office of Federal Procurement Act (41 U.S.C. 421(c)(1)) that impose procedures, standards, and limitations of section 2410n of title 10, United States Code.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 108–199, div. F, title VI, § 637, Jan. 23, 2004, 118 Stat. 358.

Purchases by Central Intelligence Agency of Products of Federal Prison Industries

Pub. L. 108–177, title IV, § 404, Dec. 13, 2003, 117 Stat. 2632, as amended by Pub. L. 108–458, title I, § 1071(g)(3)(C), Dec. 17, 2004, 118 Stat. 3692, provided that: ''Notwithstanding section 4124 of title 18, United States Code, purchases by the Central Intelligence Agency from Federal Prison Industries shall be made only if the Director of the Central Intelligence Agency determines that the product or service to be purchased from Federal Prison Industries best meets the needs of the Agency.''

§ 4125. Public works; prison camps

(a) The Attorney General may make available to the heads of the several departments the services of United States prisoners under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building

levees, and constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated by Congress.

(b) The Attorney General may establish, equip, and maintain camps upon sites selected by him elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(c) The expenses of transferring and maintaining prisoners at such camps and of operating such camps shall be paid from the appropriation ''Support of United States prisoners'', which may, in the discretion of the Attorney General, be reimbursed for such expenses.

(d) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe.

(e) All other laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

(June 25, 1948, ch. 645, 62 Stat. 852.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§744b, 851, 853, 854, 855 (Feb. 26, 1929, ch. 336, §§1, 3, 4, 5, 45 Stat. 1318; May 27, 1930, ch. 340, §2, 46 Stat. 391).

Section consolidates section 744b of title 18, U.S.C., 1940 ed., with those portions of sections 851, 853–855 of title 18, U.S.C., 1940 ed., which may not have been superseded by section 744b of said title.

Section 851 of title 18, U.S.C., 1940 ed., was superseded except for the proviso which formed the basis for the added words ''elsewhere than upon Indian reservations''.

Section 855 of title 18, U.S.C., 1940 ed., was superseded by section 744b of title 18, U.S.C., 1940 ed., except as to the specific mention in section 855 of said title of expense for maintenance and operation of camps. Hence a reference to operation was added in subsection (c) of this section.

Section 854 of title 18, U.S.C., 1940 ed., was added as a part of subsection (c).

Section 853 of title 18, U.S.C., 1940 ed., was added as subsection (d) of this section, although its retention may be unnecessary.

The phrase ''the cost of which is borne exclusively by the United States'' which followed the words ''constructing or repairing roads'' was omitted as inconsistent with the later phrase ''constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated from the Treasury of the United States.''

The provision for transfer of prisoners was omitted as duplicitous of a similar provision in section 4082 of this title.

Other changes of phraseology were made.

§ 4126. Prison Industries Fund; use and settlement of accounts

(a) All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the Government Accountability Office.

(b) All valid claims and obligations payable out of said fund shall be assumed by the corporation.

(c) The corporation, in accordance with the laws generally applicable to the expenditures of the several departments, agencies, and establishments of the Government, is authorized to employ the fund, and any earnings that may accrue to the corporation—

(1) as operating capital in performing the duties imposed by this chapter;

(2) in the lease, purchase, other acquisition, repair, alteration, erection, and maintenance of industrial buildings and equipment;

(3) in the vocational training of inmates without regard to their industrial or other assignments;

(4) in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution in which the inmates are confined.

In no event may compensation for such injuries be paid in an amount greater than that provided in chapter 81 of title 5.

(d) Accounts of all receipts and disbursements of the corporation shall be rendered to the Government Accountability Office for settlement and adjustment, as required by the Comptroller General.

(e) Such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

(f) Funds available to the corporation may be used for the lease, purchase, other acquisition, repair, alteration, erection, or maintenance of facilities only to the extent such facilities are necessary for the industrial operations of the corporation under this chapter. Such funds may not be used for the construction or acquisition of penal or correctional institutions, including camps described in section 4125.

(June 25, 1948, ch. 645, 62 Stat. 852; May 24, 1949, ch. 139, §64, 63 Stat. 99; Pub. L. 87–317, Sept. 26, 1961, 75 Stat. 681; Pub. L. 100–690, title VII, §7094, Nov. 18, 1988, 102 Stat. 4412; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§744d, 744e, 744f, 744*l* (May 27, 1930, ch. 340, §§4–6, 46 Stat. 391, 392; June 23, 1934, ch. 736, §4, 48 Stat. 1211).

This section is a restatement of section 744*l* of title 18, U.S.C., 1940 ed., with which sections 744d and 744f and the first sentence of section 744e of title 18, U.S.C., 1940 ed., are consolidated, in view of the fact that those provisions have been superseded by section 744*l* of title 18, U.S.C., 1940 ed., in connection with other provisions of the act of June 23, 1934, ch. 736, 48 Stat. 1211.

The first sentence of section 744*l* of title 18, U.S.C., 1940 ed., authorizing replacement of the prison industries working capital fund by the prison industries fund was omitted, as executed. That provision superseded section 744d of title 18, U.S.C., 1940 ed., which author-

ized creation of the prison industries working capital fund and the first sentence of section 744e of title 18, U.S.C., 1940 ed., directing that certain funds should be credited to the consolidated prison industries working capital fund.

The phrase ''or received from the sale of the products or by-products of such Industries, or for the services of Federal prisoners,'' was inserted to make the first paragraph of this section complete, and required the Federal Prison Industries to account for all moneys under its control.

The words ''in the repair, alteration, erection and maintenance of industrial buildings and equipment'' and ''under rules and regulations promulgated by the Attorney General in paying compensation to inmates employed in any industry, or performing outstanding services in industrial operations'' were inserted in part to conform to administrative construction, and in part to provide greater flexibility in the operation of Prison Industries. Much friction was caused by the inability of Prison Industries to compensate inmates whose services in operating the utilities of the institution were most necessary but which were uncompensated while those prisoners who worked in the Industries received compensation. This inequitable situation is corrected by the revised section.

The words ''in performing the duties imposed by this chapter'' were substituted for the words ''for the purposes enumerated in sections 744a–744h of this title,'' since the provisions with regard to prison industries now appear in this chapter. The general provisions as to use of the fund supersede the more specific provisions of section 744f of said title (enacted earlier).

A reference to the Federal Employees' Compensation Act as appeared in the 1934 act was substituted for the reference to specific sections of title 5. The word ''law'' was substituted for the reference to sections in title 31 since translation of the reference in the 1934 act was not practicable.

Remaining provisions of said section 744e of title 18, U.S.C., 1940 ed., relating to authorization of appropriations, were omitted as unnecessary.

Other changes in phraseology were made.

1949 ACT

This section [section 64] incorporates in section 4126 of title 18, U.S.C., provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4122 of such title by another section of this bill.

AMENDMENTS

2004—Subsecs. (a), (d). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1988—Subsecs. (a), (b). Pub. L. 100–690, § 7094(1), designated first and second pars. as subsecs. (a) and (b), respectively.

Subsec. (c). Pub. L. 100–690, § 7094(1), (2), designated third par. as subsec. (c) and amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the corporation, as operating capital in performing the duties imposed by this chapter; in the repair, alteration, erection and maintenance of industrial buildings and equipment; in the vocational training of inmates without regard to their industrial or other assignments; in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act.''

Subsecs. (d), (e). Pub. L. 100–690, § 7094(1), designated fourth and fifth pars. as subsecs. (d) and (e), respectively.

Subsec. (f). Pub. L. 100–690, § 7094(3), added subsec. (f).

1961—Pub. L. 87–317 authorized compensation for injuries to inmates incurred while working in connection with the maintenance or operation of the institution where confined.

1949—Act May 24, 1949, inserted ''in the vocational training of inmates without regard to their industrial or other assignments;'' after second semicolon in third par.

§ 4127. Prison Industries report to Congress

The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.

(June 25, 1948, ch. 645, 62 Stat. 852; Pub. L. 100–690, title VII, § 7095, Nov. 18, 1988, 102 Stat. 4413.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744m (June 23, 1934, ch. 736, § 5, 48 Stat. 1212).

Words ''of Federal Prison Industries'' were inserted after ''board of directors''.

Minor changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100–690 amended section generally. Prior to amendment, section read as follows: ''The board of directors of Federal Prison Industries shall make annual reports to Congress on the conduct of the business of the corporation and on the condition of its funds.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 117 of House Document No. 103–7.

§ 4128. Enforcement by Attorney General

In the event of any failure of Federal Prison Industries to act, the Attorney General shall not be limited in carrying out the duties conferred upon him by law.

(June 25, 1948, ch. 645, 62 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744n (June 23, 1934, ch. 736, § 6, 48 Stat. 1212).

Phrase relating to section being ''supplemental'' to sections 744i–744h of title 18, U.S.C., 1940 ed., is omitted as unnecessary.

Retention of remainder of section is essential to insure authority of Attorney General to require performance of duties of Prison Industries. (See sections 4001 and 4003 of this title.) This is also consistent with 1939 Reorganization Plan No. II, § 3(a), transferring the corporation to the Department of Justice ''under the general direction and supervision of the Attorney General''. (See section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

Words ''Federal Prison Industries'' were substituted for ''the corporation''.

§ 4129. Authority to borrow and invest

(a)(1) As approved by the board of directors, Federal Prison Industries, to such extent and in such amounts as are provided in appropriations Acts, is authorized to issue its obligations to the Secretary of the Treasury, and the Secretary of the Treasury, in the Secretary's discretion, may purchase or agree to purchase any such obligations, except that the aggregate amount of obligations issued by Federal Prison Industries under this paragraph that are outstanding at any time may not exceed 25 percent of the net worth of the corporation. For purchases of such obligations by the Secretary of the Treasury, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31 after the date of the enactment of this section, and the purposes for which securities may be issued under that chapter are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. For purposes of the first sentence of this paragraph, the net worth of Federal Prison Industries is the amount by which its assets (including capital) exceed its liabilities.

(2) The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(b) Federal Prison Industries may request the Secretary of the Treasury to invest excess moneys from the Prison Industries Fund. Such investments shall be in public debt securities with maturities suitable to the needs of the corporation as determined by the board of directors, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(Added Pub. L. 100–690, title VII, § 7093(a), Nov. 18, 1988, 102 Stat. 4411.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 100–690 which was approved Nov. 18, 1988.

[CHAPTER 309—REPEALED]

[§§ 4161 to 4166. Repealed. Pub. L. 98–473, title II, § 218(a)(4), Oct. 12, 1984, 98 Stat. 2027]

Section 4161, acts June 25, 1948, ch. 645, 62 Stat. 853; Sept. 14, 1959, Pub. L. 86–259, 73 Stat. 546, related to computation of reduction of time of sentence generally.

Section 4162, act June 25, 1948, ch. 645, 62 Stat. 853, related to deduction from sentence for industrial good time.

Section 4163, acts June 25, 1948, ch. 645, 62 Stat. 853; Sept. 19, 1962, Pub. L. 87–665, 76 Stat. 552, related to discharge of prisoner.

Section 4164, acts June 25, 1948, ch. 645, 62 Stat. 853; June 29, 1951, ch. 176, 65 Stat. 98, related to released prisoner as parolee.

Section 4165, act June 25, 1948, ch. 645, 62 Stat. 854, related to forfeiture of good time for offense.

Section 4166, act June 25, 1948, ch. 645, 62 Stat. 854, related to restoration of forfeited commutation.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, with sections to remain in effect for five years as to an individual who committed as offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(B) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

[CHAPTER 311—REPEALED]

CODIFICATION

A prior chapter 311, consisting of sections 4201–4210, act June 25, 1948, ch. 645, 62 Stat. 854, 855, as amended, was repealed by section 2 of Pub. L. 94–233 as part of the general revision of this chapter by Pub. L. 94–233.

[§§ 4201 to 4218. Repealed. Pub. L. 98–473, title II, § 218(a)(5), Oct. 12, 1984, 98 Stat. 2027]

EFFECTIVE DATE OF REPEAL; CHAPTER TO REMAIN IN EFFECT FOR TWENTY-ONE YEARS AFTER NOV. 1, 1987

Pub. L. 98–473, title II, § 235(a)(1), Oct. 12, 1984, 98 Stat. 2031, set out as an Effective Date note under section 3551 of this title, provided that the repeal of this chapter is effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. Pub. L. 98–473, title II, § 235(b)(1)(A), Oct. 12, 1984, 98 Stat. 2032, provided that the provisions of this chapter in effect before Nov. 1, 1987, shall remain in effect for five years after Nov. 1, 1987, as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473. Pub. L. 101–650, title III, § 316, Dec. 1, 1990, 104 Stat. 5115, extended the period that this chapter remains in effect after Nov. 1, 1987, from five years to ten years. Pub. L. 104–232, § 2(a), Oct. 2, 1996, 110 Stat. 3055, extended the period that this chapter remains in effect after Nov. 1, 1987, from ten years to fifteen years. Pub. L. 107–273, div. C, title I, § 11017(a), Nov. 2, 2002, 116 Stat. 1824, extended the period that this chapter remains in effect after Nov. 1, 1987, from fifteen years to eighteen years. Pub. L. 109–76, § 2, Sept. 29, 2005, 119 Stat. 2035, extended the period that this chapter remains in effect after Nov. 1, 1987, from eighteen years to twenty-one years. The provisions of this chapter as in effect prior to repeal, and as amended subsequent to repeal, read as follows:

§ 4201. Definitions

As used in this chapter—

(1) ''Commission'' means the United States Parole Commission;

(2) ''Commissioner'' means any member of the United States Parole Commission;

(3) ''Director'' means the Director of the Bureau of Prisons;

(4) ''Eligible prisoner'' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

(5) ''Parolee'' means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205(f); and

(6) ''Rules and regulations'' means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 219.)

§ 4202. Parole Commission created

There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the Commissioners one to serve as Chairman. The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a Commissioner, the Commissioner shall continue to act until a successor has been appointed and qualified, except that no Commissioner may serve in excess of twelve years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 219.)

UNITED STATES PAROLE COMMISSION EXTENSION

Pub. L. 107–273, div. C, title I, § 11017, Nov. 2, 2002, 116 Stat. 1824, provided that:

''(a) EXTENSION OF THE PAROLE COMMISSION.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out as a note under section 3551 of this title] (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to 'fifteen years' or 'fifteen-year period' shall be deemed to be a reference to 'eighteen years' or 'eighteen-year period', respectively.

''(b) STUDY BY ATTORNEY GENERAL.—The Attorney General, not later than 60 days after the enactment of this Act [Nov. 2, 2002], should establish a committee within the Department of Justice to evaluate the merits and feasibility of transferring the United States Parole Commission's functions regarding the supervised release of District of Columbia offenders to another entity or entities outside the Department of Justice. This committee should consult with the District of Columbia Superior Court and the District of Columbia Court Services and Offender Supervision Agency, and should report its findings and recommendations to the Attorney General. The Attorney General, in turn, should submit to Congress, not later than 18 months after the enactment of this Act, a long-term plan for the most effective and cost-efficient assignment of responsibilities relating to the supervised release of District of Columbia offenders.

''(c) SERVICE AS COMMISSIONER.—Notwithstanding subsection (a), the final clause of the fourth sentence of section 4202 of title 18, United States Code, which begins 'except that', shall not apply to a person serving as a Commissioner of the United States Parole Commission when this Act takes effect [Nov. 2, 2002].''

PAROLE COMMISSION PHASEOUT

Pub. L. 104–232, §§ 1–3, Oct. 2, 1996, 110 Stat. 3055, 3056, as amended by Pub. L. 105–33, title XI, § 11231(d), Aug. 5, 1997, 111 Stat. 745, provided that:

''SECTION 1. SHORT TITLE.

''This Act [enacting and amending provisions set out as notes under section 3551 of this title] may be cited as the 'Parole Commission Phaseout Act of 1996'.

''SEC. 2. EXTENSION OF PAROLE COMMISSION.

''(a) IN GENERAL.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out as a note under section 3551 of this title] (98 Stat. 2032) as it related to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to 'ten years' or 'ten-year period' shall be deemed to be a reference to 'fifteen years' or 'fifteen-year period', respectively.

''(b) POWERS AND DUTIES OF PAROLE COMMISSION.—Notwithstanding section 4203 of title 18, United States Code, the United States Parole Commission may perform its functions with any quorum of Commissioners, or Commissioner, as the Commission may prescribe by regulation.

''(c) The United States Parole Commission shall have no more than five members.

''SEC. 3. REPORTS BY THE ATTORNEY GENERAL.

''(a) IN GENERAL.—Beginning in the year 1998, the Attorney General shall report to the Congress not later than May 1 of each year through the year 2002 on the status of the United States Parole Commission. Unless the Attorney General, in such report, certifies that the continuation of the Commission is the most effective and cost-efficient manner for carrying out the Commission's functions, the Attorney General shall include in such report an alternative plan for a transfer of the Commission's functions to another entity.

''(b) TRANSFER WITHIN THE DEPARTMENT OF JUSTICE.—

''(1) EFFECT OF PLAN.—If the Attorney General includes such a plan in the report, and that plan provides for the transfer of the Commission's functions and powers to another entity within the Department of Justice, such plan shall take effect according to its terms on November 1 of that year in which the report is made, unless Congress by law provides otherwise. In the event such plan takes effect, all laws pertaining to the authority and jurisdiction of the Commission with respect to individual offenders shall remain in effect notwithstanding the expiration of the period specified in section 2 of this Act.

''(2) CONDITIONAL REPEAL.—Effective on the date such plan takes effect, paragraphs (3) and (4) of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out as a note under section 3551 of this title] (98 Stat. 2032) are repealed.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXTENSION OF TERM OF COMMISSIONER

Section 235(b)(2) of Pub. L. 98–473, which provided that notwithstanding the provisions of section 4202 of this title as in effect on the day before Nov. 1, 1987 [set out above], the term of office of a Commissioner who is in office on Nov. 1, 1987, is extended to the end of the five-year period after Nov. 1, 1987, was repealed by Pub. L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056. Pub. L. 101–650, title III, § 316, Dec. 1, 1990, 104 Stat. 5115, further extended the term of office of a Commissioner to a ten-year period after Nov. 1, 1987.

§ 4203. Powers and duties of the Commission

(a) The Commission shall meet at least quarterly, and by majority vote shall—

(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

(2) create such regions as are necessary to carry out the provisions of this chapter; and

(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

(1) grant or deny an application or recommendation to parole any eligible prisoner;

(2) impose reasonable conditions on an order granting parole;

(3) modify or revoke an order paroling any eligible prisoner; and

(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations, or agencies shall bear excessive caseloads.

(c) The Commission, by majority vote, and pursuant to rules and regulations—

(1) may delegate to any Commissioner or commissioners powers enumerated in subsection (b) of this section;

(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

(3) may delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

(4) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each Commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

(e)(1) The Commission shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to individuals who are under the jurisdiction of the Commission, who have been convicted of felony offenses against the United States, and who reside, are employed, or are supervised in the geographical area in which such agency has jurisdiction, the following information maintained by the Commission (to the extent that the Commission maintains such information)—

(A) the names of such individuals;

(B) the addresses of such individuals;

(C) the dates of birth of such individuals;

(D) the Federal Bureau of Investigation numbers assigned to such individuals;

(E) photographs and fingerprints of such individuals; and

(F) the nature of the offenses against the United States of which each such individual has been convicted and the factual circumstances relating to such offense.

(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.

(Added Pub. L. 94–233, §2, Mar. 15, 1976, 90 Stat. 220; amended Pub. L. 99–646, §57(b), (c), Nov. 10, 1986, 100 Stat. 3611, 3612.)

§4204. Powers and duties of the Chairman

(a) The Chairman shall—

(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

(B) regional Commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

(5) designate not fewer than three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one Commissioner to serve as regional Commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President, or his designee;

(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

(b) The Chairman shall have the power to—

(1) without regard to section 3324(a) and (b) of title 31, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

(6) publish data concerning the parole process;

(7) devise and conduct, in various geographical locations, seminars, workshops and training programs

providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local, and private agencies with their consent.

(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 221; amended Pub. L. 97–258, § 3(e)(3), (4), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 99–646, § 58(a), Nov. 10, 1986, 100 Stat. 3612.)

EX. ORD. NO. 11919. DELEGATION OF PRESIDENTIAL AUTHORITY TO CONCUR IN DESIGNATIONS OF COMMISSIONERS

Ex. Ord. No. 11919, June 9, 1976, 41 F.R. 23663, provided:

By virtue of the authority vested in me by section 301 of title 3, United States Code, and section 4204(a)(5) of title 18, United States Code, as enacted by the Parole Commission and Reorganization Act (Public Law 94–233), and as President of the United States of America, it is hereby ordered that the Attorney General shall serve as the President's designee for purposes of concurring in designations of Commissioners of the United States Parole Commission to serve on the National Appeals Board, as vice chairman of the Commission, and as regional Commissioner.

GERALD R. FORD.

§ 4205. Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 222.)

§ 4206. Parole determination criteria

(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) that release would not jeopardize the public welfare;

subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing: *Provided*, That the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: *Provided, however*, That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or

that there is a reasonable probability that he will commit any Federal, State, or local crime.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 223.)

§ 4207. Information considered

In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge;

(5) a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim; and

(5)[(6)] reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 224; amended Pub. L. 98–473, title II, § 1408(a), Oct. 12, 1984, 98 Stat. 2177.)

§ 4208. Parole determination proceeding; time

(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b)(1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b)(2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a Federal institution, as the case may be. An eligible prisoner may knowingly and intelligently waive any proceeding.

(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

(c) Subparagraph (2) of subsection (b) shall not apply to—

(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

(d)(1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and a representative of the Commission at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 224; amended Pub. L. 99–646, § 58(b), Nov. 10, 1986, 100 Stat. 3612.)

§ 4209. Conditions of parole

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime, that the parolee not possess illegal controlled substances.[sic] and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. In every case, the Commission shall impose as a condition of parole for a person required to register under the Sex Offender Registration and Notification Act that the person comply with the requirements of that Act. In every case, the Commission shall impose as a condition of parole that the parolee cooperate in the collection of a DNA sample from the parolee, if the collection of such a sample is authorized pursuant to section 3 or section 4 of the DNA Analysis Backlog Elimination Act of 2000 or section 1565 of title 10. In every case, the Commission shall also impose as a condition of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the Commission for any individual parolee if it determines that there is good cause for doing so. The results of a drug test administered in accordance with the provisions of the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The Commission shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in ac-

cordance with United States Sentencing Commission guidelines from the rule of section 4214(f) when considering any action against a defendant who fails a drug test. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

(1) the nature and circumstances of the offense; and

(2) the history and characteristics of the parolee;

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

(c) Release on parole or release as if on parole (or probation, or supervised release where applicable) may as a condition of such release require—

(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole; or

(2) a parolee to remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration.

A parolee residing in a residential community treatment center pursuant to paragraph (1) of this subsection may be required to pay such costs incident to such residence as the Commission deems appropriate.

(d)(1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a United States probation officer supervising a parolee: *Provided*, That the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten-day period, the Commission shall have twenty-one days, exclusive of holidays, to act upon such motion or application. Notwithstanding any other provision of this paragraph, the Commission may modify conditions of parole, without regard to such ten-day period, on any such motion if the Commission determines that the immediate modification of conditions of parole is required to prevent harm to the parolee or to the public.

(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 225; amended Pub. L. 98–473, title II, §§ 235(a)(1), 238(e), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98–596, §§ 7, 12(a)(5), (9), (b), Oct. 30, 1984, 98 Stat. 3138, 3139, 3140; Pub. L. 99–646, § 58(c), Nov. 10, 1986, 100 Stat. 3612; Pub. L. 100–690, title VII, §§ 7303(c)(1), (2), 7305(c), Nov. 18, 1988, 102 Stat. 4464, 4466; Pub. L. 103–322, title II, § 20414(d), Sept. 13, 1994, 108 Stat. 1832; Pub. L. 105–119, title I, § 115(a)(8)(B)(v), Nov. 26, 1997, 111 Stat. 2466; Pub. L. 106–546, § 7(c), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 109–248, title I, § 141(j), July 27, 2006, 120 Stat. 604.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (a), is title I of Pub. L. 109–248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

Sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (a), are classified to sections 14135a and 14135b, respectively, of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 98–473, §§ 235(a)(1), 238(e), (i), and Pub. L. 98–596, § 12(a)(5), (9), (b), amended section as follows: Section 238(e) of Pub. L. 98–473 amended provisions of subsec. (a) preceding par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98–473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(5) of Pub. L. 98–596 amended provisions of subsec. (a) preceding par. (1) to read as they had before amendment by Pub. L. 98–473, applicable pursuant to section 12(b) of Pub. L. 98–596 on and after the date of enactment of Pub. L. 98–473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98–473 which repealed section 238 of Pub. L. 98–473 on the same date established by section 235(a)(1) of Pub. L. 98–473 was repealed by section 12(a)(9) of Pub. L. 98–596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(c)(1), (2) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

§ 4210. Jurisdiction of Commission

(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that—

(1) such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

(2) in the case of a parolee who has been convicted of any criminal offense committed subsequent to his release on parole, and such offense is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214(b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(e) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 226; amended Pub. L. 99–646, § 58(d), (e), Nov. 10, 1986, 100 Stat. 3612.)

§ 4211. Early termination of parole

(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over

a parolee prior to the termination of jurisdiction under section 4210.

(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(c)(1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engaged in conduct violating any criminal law.

(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

(3) In calculating the five-year period referred to in subparagraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4212. Aliens

When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4213. Summons to appear or warrant for retaking of parolee

(a) If any parolee is alleged to have violated his parole, the Commission may—

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4214. Revocation of parole

(a)(1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

(i) continuation of revocation proceedings is not warranted; or

(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

(iii) the parolee is not likely to fail to appear for further proceedings; and

(iv) the parolee does not constitute a danger to himself or others.

(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

(b)(1) Conviction for any criminal offense committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such an offense and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an oppor-

tunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section to assist him in the preparation of such application.

(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section.

(3) Following the disposition review, the Commission may:

(A) let the detainer stand; or

(B) withdraw the detainer.

(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a)(1)(A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a)(2)(B) of this section.

(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

(1) restore the parolee to supervision;

(2) reprimand the parolee;

(3) modify the parolee's conditions of the parole;

(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

(f) Notwithstanding any other provision of this section, a parolee who is found by the Commission to be in possession of a controlled substance shall have his parole revoked.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 228; amended Pub. L. 98–473, title II, §§ 235(a)(1), 238(f), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98–596, § 12(a)(6), (9), (b), Oct. 30, 1984, 98 Stat. 3139, 3140; Pub. L. 99–646, § 58(f), Nov. 10, 1986, 100 Stat. 3612; Pub. L. 100–690, title VII, § 7303(c)(3), Nov. 18, 1988, 102 Stat. 4464.)

CODIFICATION

Pub. L. 98–473, §§ 235(a)(1), 238(f), (i), and Pub. L. 98–596, § 12(a)(6), (9), (b), amended section as follows: Section 238(f) of Pub. L. 98–473 amended par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98–473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(6) of Pub. L. 98–596 amended par. (1) to read as it had before amendment by Pub. L. 98–473, applicable pursuant to section 12(b) of Pub. L. 98–596 on and after the date of enactment of Pub. L. 98–473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98–473 which repealed section 238 of Pub. L. 98–473 on the same date established by section 235(a)(1) of Pub. L. 98–473 was repealed by section 12(a)(9) of Pub. L. 98–596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(c)(3) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

§ 4215. Appeal

(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211(c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may appeal such decision by submitting a written application to the National Appeal [Appeals] Board not later than thirty days following the date on which the decision is rendered.

(b) The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 230; amended Pub. L. 98–473, title II, § 1408(c), Oct. 12, 1984, 98 Stat. 2178.)

[§ 4216. Repealed. Pub. L. 99–646, § 3(a), Nov. 10, 1986, 100 Stat. 3592]

[§ 4217. Repealed. Pub. L. 99–646, § 58(g)(1), Nov. 10, 1986, 100 Stat. 3612, as amended by Pub. L. 100–690, title VII, § 7014, Nov. 18, 1988, 102 Stat. 4395]

§ 4218. Applicability of Administrative Procedure Act

(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557, the Commission is an ''agency'' as defined in such chapter.

(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rulemaking, shall be deemed not to include the phrase ''general statements of policy''.

(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

(d) Actions of the Commission pursuant to paragraphs (1), (2), and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 231.)

CHAPTER 313—OFFENDERS WITH MENTAL DISEASE OR DEFECT

Sec.
4241. Determination of mental competency to stand trial or to undergo postrelease proceedings.[1]

[1] So in original. Does not conform to section catchline.

Sec.
4242. Determination of the existence of insanity at the time of the offense.
4243. Hospitalization of a person found not guilty only by reason of insanity.
4244. Hospitalization of a convicted person suffering from mental disease or defect.
4245. Hospitalization of an imprisoned person suffering from mental disease or defect.
4246. Hospitalization of a person due for release but suffering from mental disease or defect.
4247. General provisions for chapter.
4248. Civil commitment of a sexually dangerous person[2]

AMENDMENTS

2006—Pub. L. 109–248, title III, § 302(1), July 27, 2006, 120 Stat. 619, inserted ''or to undergo postrelease proceedings'' after ''trial'' in item 4241 and added item 4248.

1984—Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057, substituted ''OFFENDERS WITH MENTAL DISEASE OR DEFECT'' for ''MENTAL DEFECTIVES'' in chapter heading, ''Determination of mental competency to stand trial'' for ''Examination and transfer to hospital'' in item 4241, ''Determination of the existence of insanity at the time of the offense'' for ''Retransfer upon recovery'' in item 4242, ''Hospitalization of a person found not guilty only by reason of insanity'' for ''Delivery to state authorities on expiration of sentence'' in item 4243, ''Hospitalization of a convicted person suffering from mental disease or defect'' for ''Mental competency after arrest and before trial'' in item 4244, ''Hospitalization of an imprisoned person suffering from mental disease or defect'' for ''Mental incompetency undisclosed at trial'' in item 4245, ''Hospitalization of a person due for release but suffering from mental disease or defect'' for ''Procedure upon finding of mental incompetency'' in item 4246, and ''General provisions for chapter'' for ''Alternate procedure on expiration of sentence'' in item 4247, and struck out item 4248 ''Termination of custody by release or transfer''.

1951—Act Oct. 31, 1951, ch. 655, § 33, 65 Stat. 723, inserted ''on expiration of sentence'' in item 4243.

1949—Act Sept. 7, 1949, ch. 535, § 2, 63 Stat. 688, added items 4244 to 4248.

§ 4241. Determination of mental competency to stand trial to undergo postrelease proceedings[1]

(a) MOTION TO DETERMINE COMPETENCY OF DEFENDANT.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) DISCHARGE.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) ADMISSIBILITY OF FINDING OF COMPETENCY.—A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged,

[2] So in original. Probably should be followed by a period.

[1] So in original. Probably should be ''stand trial or to undergo postrelease proceedings''.

and shall not be admissible as evidence in a trial for the offense charged.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057; Pub. L. 109–248, title III, § 302(2), July 27, 2006, 120 Stat. 619.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 876 (May 13, 1930, ch. 254, § 6, 46 Stat. 271).

Changes were made in phraseology and surplusage omitted.

AMENDMENTS

2006—Pub. L. 109–248, § 302(2)(A), inserted ''to undergo postrelease proceedings'' after ''trial'' in section catchline.

Subsec. (a). Pub. L. 109–248, § 302(2)(B), inserted ''or at any time after the commencement of probation or supervised release and prior to the completion of the sentence,'' after ''sentencing of the defendant,''.

Subsec. (d). Pub. L. 109–248, § 302(2)(C), substituted ''proceedings to go forward'' for ''trial to proceed'' wherever appearing and ''sections 4246 and 4248'' for ''section 4246'' in concluding provisions.

Subsec. (e). Pub. L. 109–248, § 302(2)(D), inserted ''or other proceedings'' after ''trial'' and substituted ''chapters 207 and 227'' for ''chapter 207''.

1984—Pub. L. 98–473 amended section generally, substituting ''Determination of mental competency to stand trial'' for ''Examination and transfer to hospital'' in section catchline, and substituting provisions relating to motion, report, hearing, etc., for determination of competency of defendant, for provisions relating to boards of examiners for examination of inmates of Federal penal and correctional institutions and transfer of such inmates to hospitals.

SHORT TITLE OF 1984 AMENDMENT

Section 401 of chapter IV (§§ 401–406) of title II of Pub. L. 98–473 provided that: ''This chapter [enacting section 20 of this title and amending this chapter, section 3006A of this title, and rule 12.2 of the Federal Rules of Criminal Procedure and rule 704 of the Federal Rules of Evidence set out in the Appendix to this title] may be sited [cited] as the 'Insanity Defense Reform Act of 1984'.''

§ 4242. Determination of the existence of insanity at the time of the offense

(a) MOTION FOR PRETRIAL PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find the defendant—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of insanity.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 877 (May 13, 1930, ch. 254, § 7, 46 Stat. 272).

Minor change was made in phraseology.

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Determination of the existence of insanity at the time of the offense'' for ''Retransfer upon recovery'' in section catchline, and substituting provisions relating to motion for pretrial psychiatric or psychological examination, and special verdict, for provisions relating to retransfer to a penal or correctional institution upon recovery of an inmate of the United States hospital for defective delinquents.

§ 4243. Hospitalization of a person found not guilty only by reason of insanity

(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—A hearing shall be conducted pursuant to the provisions of section 4247(d) and shall take place not later than forty days following the special verdict.

(d) BURDEN OF PROOF.—In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) DETERMINATION AND DISPOSITION.—If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release

under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) DISCHARGE.—When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(g) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(h) LIMITATIONS ON FURLOUGHS.—An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only—

(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

(2) in an emergency; or

(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title).

(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

(2) APPLICATION.—

(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under

this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

(D) EFFECT.—Nothing in this paragraph shall be construed to—

(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2059; Pub. L. 100–690, title VII, § 7043, Nov. 18, 1988, 102 Stat. 4400; Pub. L. 104–294, title III, § 301(a), Oct. 11, 1996, 110 Stat. 3494.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 878 (May 13, 1930, ch. 254, § 8, 46 Stat. 272).

Changes were made in translations and phraseology, and unnecessary words omitted.

AMENDMENTS

1996—Subsec. (i). Pub. L. 104–294 added subsec. (i).

1988—Subsec. (h). Pub. L. 100–690 added subsec. (h).

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a person found not guilty only by reason of insanity'' for ''Delivery to state authorities on expiration of sentence'' in section catchline, and substituting provisions relating to determination of present mental condition of acquitted person, examination and report, hearing, etc., for provisions relating to duties of the superintendent of the United States hospital for defective delinquents regarding delivery to state authorities on expiration of sentence of any insane person.

SEVERABILITY

Section 301(d) of Pub. L. 104–294 provided that: ''If any provision of this section [amending this section and enacting provisions set out as notes below], an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.''

TRANSFER OF RECORDS

Section 301(b) of Pub. L. 104–294 provided that: ''Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

''(1) not later than 30 days after the date of enactment of this Act [Oct. 11, 1996], shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

''(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

''(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

''(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.''

CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES

Section 301(c) of Pub. L. 104–294 provided that: ''The amendments made by this section [amending this section and enacting provisions set out as notes above] shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.''

§ 4244. Hospitalization of a convicted person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c). In addition to the information required to be included in the psychiatric or psychological report pursuant to the provisions of section 4247(c), if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.

(e) DISCHARGE.—When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing and may modify the provisional sentence.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686; amended Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2061.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a convicted person suffering from mental disease or defect'' for ''Mental incompetency after arrest and before trial'' in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of convicted defendant, for provisions relating to motion, examination, etc., to determine the mental competency of a person after arrest and before trial.

SEPARABILITY

Section 4 of act Sept. 7, 1949, provided that: ''If any provision of Title 18, United States Code, sections 4244 to 4248, inclusive, or the application thereof to any person or circumstance shall be held invalid, the remainder of the said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.''

USE OF APPROPRIATIONS

Section 3 of act Sept. 7, 1949, provided that: ''The Attorney General may authorize the use of any unexpended balance of the appropriation for 'Support of United States prisoners' for carrying out the purposes of Title 18, United States Code, sections 4244 to 4248, inclusive, or in payment of any expenses incidental thereto and not provided for by other specific appropriations.''

§ 4245. Hospitalization of an imprisoned person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF IMPRISONED PERSON.—If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the person may be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier.

(e) DISCHARGE.—When the director of the facility in which the person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the person has not expired, the court shall order that the person be reimprisoned until the expiration of his sentence of imprisonment.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2062.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of an imprisoned person suffering from mental disease or defect'' for ''Mental incompetency undisclosed at trial'' in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of imprisoned person, for provisions relating to procedures and authorities regarding mental incompetency undisclosed at trial.

§ 4246. Hospitalization of a person due for release but suffering from mental disease or defect

(a) INSTITUTION OF PROCEEDING.—If the director of a facility in which a person is hospitalized

certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(e) DISCHARGE.—When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a medical facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of a facility in which a person is hospitalized pursuant to this chapter

certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than ten days after certification by the director of the facility.

(h) DEFINITION.—As used in this chapter the term ''State'' includes the District of Columbia.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2062; Pub. L. 101–647, title XXXV, § 3599D, Nov. 29, 1990, 104 Stat. 4932; Pub. L. 105–33, title XI, § 11204(1), Aug. 5, 1997, 111 Stat. 739.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 11204(1)(A), inserted ''in the custody of the Bureau of Prisons'' after ''certifies that a person''.

Subsec. (h). Pub. L. 105–33, § 11204(1)(B), added subsec. (h).

1990—Subsec. (g). Pub. L. 101–647 substituted ''chapter'' for ''subchapter''.

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a person due for release but suffering from mental disease or defect'' for ''Procedure upon finding of mental incompetency'' in section catchline, and substituting provisions relating to proceedings, examination and report, hearing, etc., regarding hospitalization of a person due for release but suffering from mental disease or defect, for provisions relating to powers of the trial court with respect to finding of mental incompetency of accused.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 11721 of title XI of Pub. L. 105–33 provided that: ''Except as otherwise provided in this title [enacting section 138 of former Title 40, Public Buildings, Property, and Works, amending this section, section 4247 of this title, section 1063 of Title 20, Education, section 225b of Title 24, Hospitals and Asylums, sections 6103 and 7213 of Title 26, Internal Revenue Code, sections 715 and 6501 of Title 31, Money and Finance, sections 71f and 138 of former Title 40, and sections 13723 and 14407 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under section 6103 of Title 26, and amending provisions set out as a note under section 4201 of this title], the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [Pub. L. 104–8, 109 Stat. 108], as amended by this title [so certified Sept. 8, 1997].''

§ 4247. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) ''rehabilitation program'' includes—

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and

(D) organized physical sports and recreation programs;

(2) ''suitable facility'' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant;

(3) ''State'' includes the District of Columbia;

(4) ''bodily injury'' includes sexual abuse;

(5) ''sexually dangerous person'' means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

(6) ''sexually dangerous to others'' with respect[1] a person, means that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245, 4246, or 4248, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, 4246, or 4248, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243, 4246, or 4248, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) PSYCHIATRIC OR PSYCHOLOGICAL REPORTS.—A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the

[1] So in original. Probably should be followed by ''to''.

counsel for the person examined and to the attorney for the Government, and shall include—

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and—

(A) if the examination is ordered under section 4241, whether the person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

(B) if the examination is ordered under section 4242, whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246, whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4248, whether the person is a sexually dangerous person;

(E) if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(F) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(d) HEARING.—At a hearing ordered pursuant to this chapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS.—(1) The director of the facility in which a person is committed pursuant to—

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, 4246, or 4248 shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued commitment. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person committed after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.

(2) The director of the facility in which a person is committed pursuant to section 4241, 4243, 4244, 4245, 4246, or 4248 shall inform such person of any rehabilitation programs that are available for persons committed in that facility.

(f) VIDEOTAPE RECORD.—Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 4243, 4246, or 4248 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) DISCHARGE.—Regardless of whether the director of the facility in which a person is committed has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245, 4246, or 4248, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be committed. A copy of the motion shall be sent to the director of the facility in which the person is committed and to the attorney for the Government.

(i) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—The Attorney General—

(A) may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter;

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243, 4246, or 4248;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, 4246, or 4248, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter and in the establishment of standards for facilities used in the implementation of this chapter.

(j) Sections 4241, 4242, 4243, and 4244 do not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2065; Pub. L. 100–690, title VII, §§ 7044, 7047(a), Nov. 18, 1988, 102 Stat. 4400, 4401; Pub. L. 103–322, title XXXIII, § 330003(d), Sept. 13,

1994, 108 Stat. 2141; Pub. L. 105–33, title XI, § 11204(2), (3), Aug. 5, 1997, 111 Stat. 739; Pub. L. 109–248, title III, § 302(3), July 27, 2006, 120 Stat. 619.)

REFERENCES IN TEXT

Acts of Congress applicable exclusively to the District of Columbia, referred to in subsec. (j), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (j), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

2006—Pub. L. 109–248, § 302(3)(A), substituted ''‚ 4246, or 4248'' for ''‚ or 4246'' wherever appearing.

Subsec. (a)(1)(C). Pub. L. 109–248, § 302(3)(C)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and''.

Subsec. (a)(4) to (6). Pub. L. 109–248, § 302(3)(C)(ii)–(iv), added pars. (4) to (6).

Subsec. (b). Pub. L. 109–248, § 302(3)(D), substituted ''4245, 4246, or 4248'' for ''4245 or 4246''.

Subsec. (c)(4)(D) to (F). Pub. L. 109–248, § 302(3)(E), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e). Pub. L. 109–248, § 302(3)(F), substituted ''committed'' for ''hospitalized'' wherever appearing and ''continued commitment'' for ''continued hospitalization'' in par. (1)(B).

Subsec. (g). Pub. L. 109–248, § 302(3)(B), substituted ''4243, 4246, or 4248'' for ''4243 or 4246''.

Subsec. (h). Pub. L. 109–248, § 302(3)(F), substituted ''committed'' for ''hospitalized'' wherever appearing and ''person's commitment'' for ''person's hospitalization''.

Subsec. (i)(B). Pub. L. 109–248, § 302(3)(B), substituted ''4243, 4246, or 4248'' for ''4243 or 4246''.

1997—Subsec. (a)(3). Pub. L. 105–33, § 11024(2)(C), added par. (3).

Subsec. (j). Pub. L. 105–33, § 11024(3), substituted ''Sections 4241, 4242, 4243, and 4244 do'' for ''This chapter does''.

1994—Subsec. (h). Pub. L. 103–322 substituted ''subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243,'' for ''subsection (e) of section 4241, 4243, 4244, 4245, or 4246,''.

1988—Subsec. (b). Pub. L. 100–690, § 7047(a), substituted ''psychologist'' for ''clinical psychologist'' in first sentence.

Subsec. (e)(1)(B). Pub. L. 100–690, § 7044, inserted at end ''A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.''

1984—Pub. L. 98–473 amended section generally, substituting ''General provisions for chapter'' for ''Alternate procedure of expiration of sentence'' in section catchline, and substituting provisions relating to definitions, examinations, reports, etc., as applicable to chapter, for provisions relating to powers and duties regarding alternate procedure on expiration of sentence of prisoner.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4248. Civil commitment of a sexually dangerous person

(a) INSTITUTION OF PROCEEDINGS.—In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until—

(1) such a State will assume such responsibility; or

(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier.

(e) DISCHARGE.—When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dan-

gerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that—

(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.

(Added Pub. L. 109–248, title III, § 302(4), July 27, 2006, 120 Stat. 620.)

PRIOR PROVISIONS

A prior section 4248, act Sept. 7, 1949, ch. 535, § 1, 63 Stat. 688, related to the termination of custody by release or transfer, prior to its omission in the general amendment of this chapter by Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057.

[CHAPTER 314—REPEALED]

[§§ 4251 to 4255. Repealed. Pub. L. 98–473, title II, § 218(a)(6), Oct. 12, 1984, 98 Stat. 2027]

Section 4251, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1442; amended Pub. L. 91–513, title III, § 1102(s), Oct. 27, 1970, 84 Stat. 1294; Pub. L. 92–420, § 3, Sept. 16, 1972, 86 Stat. 677, defined terms for purposes of this chapter.

Section 4252, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to examination to determine if offender is an addict and likely to be rehabilitated through treatment.

Section 4253, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to commitment for treatment.

Section 4254, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to conditional release.

Section 4255, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443; amended Pub. L. 95–537, § 3, Oct. 27, 1978, 92 Stat. 2038; Pub. L. 99–570, § 1861(c), Oct. 27, 1986, 100 Stat. 3207–53; Pub. L. 99–646, § 19, Nov. 10, 1986, 100 Stat. 3596, related to supervision in the community.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, with sections to remain in effect for five years as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(C) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

Sec.
4281. Repealed.
4282. Arrested but unconvicted persons.
4283. Repealed.
4284. Repealed.
4285. Persons released pending further judicial proceedings.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 218(f), Oct. 12, 1984, 98 Stat. 2027, in items 4281, 4283, and 4284, substituted ''Repealed'' for ''Discharge from prison'', ''Probation'', and ''Advances for rehabilitation'', respectively.

1978—Pub. L. 95–503, § 2, Oct. 24, 1978, 92 Stat. 1704, added item 4285.

1952—Act May 15, 1952, ch. 289, § 3, 66 Stat. 73, added item 4284.

[§ 4281. Repealed. Pub. L. 98–473, title II, § 218(a)(7), Oct. 12, 1984, 98 Stat. 2027]

Section, acts June 25, 1948, ch. 645, 62 Stat. 856; Sept. 19, 1962, Pub. L. 87–672, 76 Stat. 557, related to discharge from prison of a convicted person.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4282. Arrested but unconvicted persons

On the release from custody of a person arrested on a charge of violating any law of the United States or of the Territory of Alaska, but not indicted nor informed against, or indicted or informed against but not convicted, and detained pursuant to chapter 207, or a person held as a material witness, the court in its discretion may direct the United States marshal for the district wherein he is released, pursuant to regulations promulgated by the Attorney General, to furnish the person so released with transportation and subsistence to the place of his arrest, or, at his election, to the place of his bona fide residence if such cost is not greater than to the place of arrest.

(June 25, 1948, ch. 645, 62 Stat. 856; Pub. L. 98–473, title II, § 207, Oct. 12, 1984, 98 Stat. 1986.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 746a (July 3, 1926, ch. 795, § 2, as added June 21, 1941, ch. 212, 55 Stat. 254).

The phrase ''informed against'' was inserted in two places in view of the fact that under the Federal Rules of Criminal Procedure the use of informations may be expected to increase. See Rule 7(b).

The section was extended to cover a person held as a material witness and unable to make bail. His predicament obviously calls for the relief afforded by the revised section.

Changes were made in phraseology and surplusage omitted.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''and detained pursuant to chapter 207'' for ''and not admitted to bail'' and struck out ''and unable to make bail'' after ''held as a material witness''.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

[§§ 4283, 4284. Repealed. Pub. L. 98–473, title II, § 218(a)(7), Oct. 12, 1984, 98 Stat. 2027]

Section 4283, act June 25, 1948, ch. 645, 62 Stat. 856, related to furnishing transportation when placing a defendant on probation.

Section 4284, added May 15, 1952, ch. 289, § 1, 66 Stat. 72; amended Sept. 13, 1982, Pub. L. 97–258, § 3(e)(5), 96 Stat. 1064, related to advances for rehabilitation.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4285. Persons released pending further judicial proceedings

Any judge or magistrate judge of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate judge is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.

(Added Pub. L. 95–503, § 1, Oct. 24, 1978, 92 Stat. 1704; amended Pub. L. 101–647, title XXXV, § 3599E, Nov. 29, 1990, 104 Stat. 4932; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1990—Pub. L. 101–647 substituted ''exceed'' for ''exced'' after ''not to''.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 3 of Pub. L. 95–503 provided that: ''The amendments made by this Act [enacting this section] shall take effect on October 1, 1978.''

CHAPTER 317—INSTITUTIONS FOR WOMEN

Sec.
4321. Board of Advisers.

§ 4321. Board of Advisers

Four citizens of the United States of prominence and distinction, appointed by the President to serve without compensation, for terms of four years, together with the Attorney General of the United States, the Director of the Bureau of Prisons and the warden of the Federal Reformatory for Women, shall constitute a Board of Advisers of said Federal Reformatory for Women, which shall recommend ways and means for the discipline and training of the inmates, to fit them for suitable employment upon their discharge.

Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the citizen whom he shall succeed.

(June 25, 1948, ch. 645, 62 Stat. 856; Pub. L. 98–473, title II, § 223(n), Oct. 12, 1984, 98 Stat. 2030.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 816 (June 7, 1924, ch. 287, § 7, 43 Stat. 474; May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The provisions relating to the appointment of the board in the first instance were omitted as executed.

''Warden'' was substituted for ''superintendent'' and ''Federal Reformatory for Women'' for ''United States Industrial Institution for Women'' to conform to existing administrative usage.

Minor changes were made in translation, phraseology, and arrangement.

AMENDMENTS

1984—Pub. L. 98–473 struck out ''parole or'' before ''discharge'' at end of first par.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

Sec.
4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers.[1]
4352. Authority of Institute; time; records of recipients; access; scope of section.[1]

AMENDMENTS

1974—Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139, added chapter heading.

§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers [1]

(a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Director of the Bureau of Justice Assistance or his designee, Chairman of the United States Sentencing Commission or his designee, the Director of the Federal Judicial Center or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention [2] or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

(c) The remaining ten members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole.

(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the Institute with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the

[1] Editorially supplied. Sections 4351 and 4352 added by Pub. L. 93–415 without corresponding enactment of chapter analysis.

[1] Section catchline editorially supplied.

[2] See References in Text note below.

power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

(Added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139; amended Pub. L. 95–115, § 8(a), Oct. 3, 1977, 91 Stat. 1060; Pub. L. 98–473, title II, § 223(*o*), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 103–322, title XXXIII, § 330001(i), Sept. 13, 1994, 108 Stat. 2140.)

REFERENCES IN TEXT

The Office of Juvenile Justice and Delinquency Prevention, referred to in subsec. (b), was created by section 5611 of Title 42, The Public Health and Welfare, headed by an Associate Administrator. However, section 5611 of Title 42, as amended by Pub. L. 98–473, establishes the Office of Juvenile Justice and Delinquency Prevention and headed by an Administrator.

The civil service laws, referred to in subsecs. (f) and (h), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (h), are classified generally to chapter 51 and subchapter III of chapter 53 of Title 5.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''Director of the Bureau of Justice Assistance'' for ''Administrator of the Law Enforcement Assistance Administration''.

1984—Subsec. (b). Pub. L. 98–473 substituted ''Sentencing Commission'' for ''Parole Board''.

1977—Subsec. (b). Pub. L. 95–115 substituted ''Associate'' for ''Deputy Assistant'' and ''Office of'' for ''National Institute for''.

CHANGE OF NAME

Department of Health, Education, and Welfare redesignated Department of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) through (6) of Title 42, The Public Health and Welfare, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of Title 42.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS TO MEMBERSHIP REQUIREMENTS DURING FIVE-YEAR PERIOD

For exceptions to the membership requirements set forth in this section, which exceptions are applicable for five-year period following Nov. 1, 1987, see section 235(b)(5) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4352. Authority of Institute; time; records of recipients; access; scope of section [1]

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the sev-

[1] Section catchline editorially supplied.

eral States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5 of the United States Code.

[(b) Repealed. Pub. L. 97–375, title I, § 109(a), Dec. 21, 1982, 96 Stat. 1820.]

(c) Each recipient of assistance under this chapter shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) The provision of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

(Added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1140; amended Pub. L. 97–375, title I, § 109(a), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 101–647, title XXXV, § 3599F, Nov. 29, 1990, 104 Stat. 4932.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–647 substituted ''this chapter shall'' for ''this shall''.

1982—Subsec. (b). Pub. L. 97–375 struck out subsec. (b) which directed the Institute to submit an annual report to the President and Congress, including a comprehensive and detailed report of the Institute's operations, activities, financial condition and accomplishments under this title, and which might include such recommendations related to corrections as the Institute deemed appropriate.

INCLUSION OF NATIONAL INSTITUTE OF CORRECTIONS IN FEDERAL PRISON SYSTEM SALARIES AND EXPENSES BUDGET

Pub. L. 104–208, div. A, title I, § 101(a), [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–11, provided in part: ''That the National Institute of Corrections hereafter shall be included in the FPS Salaries and Expenses budget, in the Contract Confinement program and shall continue to perform its current functions under 18 U.S.C. 4351, et seq., with the exception of its grant program and shall collect reimbursement for services whenever possible''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

NATIONAL TRAINING CENTER FOR PRISON DRUG REHABILITATION PROGRAM PERSONNEL

Pub. L. 100–690, title VI, § 6292, Nov. 18, 1988, 102 Stat. 4369, provided that:

''(a) IN GENERAL.—The Director of the National Institute of Corrections, in consultation with persons with expertise in the field of community-based drug rehabilitation, shall establish and operate, at any suitable location, a national training center (hereinafter in this section referred to as the 'center') for training Federal, State, and local prison or jail officials to conduct drug rehabilitation programs for criminals convicted of drug-related crimes and for drug-dependent criminals. Programs conducted at the center shall include training for correctional officers, administrative staff, and correctional mental health professionals (including subcontracting agency personnel).

''(b) DESIGN AND CONSTRUCTION OF FACILITIES.—The Director of the National Institute of Corrections shall design and construct facilities for the center.

''(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated with respect to the National Institute of Corrections, there are authorized to be appropriated to the Director of the National Institute of Corrections—

''(1) for establishment and operation of the center, for curriculum development for the center, and for salaries and expenses of personnel at the center, not more than $4,000,000 for each of fiscal years 1989, 1990, and 1991; and

''(2) for design and construction of facilities for the center, not more than $10,000,000 for fiscal years 1989, 1990, and 1991.''

[§ 4353. Repealed. Pub. L. 107–273, div. A, title III, § 301(a), Nov. 2, 2002, 116 Stat. 1780]

Section, added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1141, authorized appropriations to carry out purposes of this chapter.

PART IV—CORRECTION OF YOUTHFUL OFFENDERS

Chap.		Sec.
401.	**General provisions**	**5001**
402.	**Repealed**	
403.	**Juvenile delinquency**	**5031**

AMENDMENTS

1984—Pub. L. 98–473, title II, § 218(g), Oct. 12, 1984, 98 Stat. 2027, in item for chapter 402 substituted ''Repealed'' for ''Federal Youth Corrections Act''.

1950—Act Sept. 30, 1950, ch. 1115, § 5(a), 64 Stat. 1090, added item for chapter 402.

CHAPTER 401—GENERAL PROVISIONS

Sec.
5001. Surrender to State authorities; expenses.
[5002. Repealed.]
5003. Custody of State offenders.

AMENDMENTS

1996—Pub. L. 104–134, title I, § 101[(a)] [title VI, § 614(a)(2)], Apr. 26, 1996, 110 Stat. 1321, 1321–65; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, struck out item 5002 ''Advisory Corrections Council''.

1952—Act May 9, 1952, ch. 253, § 2, 66 Stat. 68, added item 5003.

1950—Act Sept. 30, 1950, ch. 1115, § 5(b), 64 Stat. 1090, added item 5002.

§ 5001. Surrender to State authorities; expenses

Whenever any person under twenty-one years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State or of the District of Columbia, and that it will be to the best interest of the United States and of the juvenile offender, the United States attorney of the district in which such person has been arrested may forego his prosecution and surrender him as herein provided, unless such surrender is precluded under section 5032 of this title.

The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver him into the custody of the proper authority thereof.

Before any person is conveyed from one State to another or from or to the District of Columbia under this section, he shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of such State or the District of Columbia, to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 3182 of this title.

The expense incident to the transportation of any such person, as herein authorized, shall be paid from the appropriation ''Salaries, Fees, and Expenses, United States Marshals.''

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 100–690, title VI, § 6467(b), Nov. 18, 1988, 102 Stat. 4376.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662a (June 11, 1932, ch. 243, 47 Stat. 301).

Language preceding ''Whenever'' was omitted as unnecessary, and ''the District of Columbia'' was inserted after ''State''.

Changes were made in phraseology and surplusage eliminated.

AMENDMENTS

1988—Pub. L. 100–690 inserted '', unless such surrender is precluded under section 5032 of this title'' before period at end of first par.

[§ 5002. Repealed. Pub. L. 104–134, title I, § 101[(a)] [title VI, § 614(a)(1)], Apr. 26, 1996, 110 Stat. 1321, 1321–65; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327]

Section, added act Sept. 30, 1950, ch. 1115, § 4, 64 Stat. 1090; amended Oct. 12, 1984, Pub. L. 98–473, title II, § 223(p), 98 Stat. 2030, provided for creation of Advisory Corrections Council.

EFFECTIVE DATE OF REPEAL

Section 101[(a)] [title VI, § 614(b)] of Pub. L. 104–134 provided that: ''This section [repealing this section] shall take effect 30 days after the date of the enactment of this Act [Apr. 26, 1996].''

§ 5003. Custody of State offenders

(a)(1) The Director of the Bureau of Prisons when proper and adequate facilities and personnel are available may contract with proper officials of a State or territory, for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or territory.

(2) Any such contract shall provide—

(A) for reimbursing the United States in full for all costs or expenses involved;

(B) for receiving in exchange persons convicted of criminal offenses in the courts of the United States, to serve their sentence in appropriate institutions or facilities of the State or territory by designation as provided in section 4082(b)[1] of this title, this exchange to be made according to formulas or conditions which may be negotiated in the contract; or

(C) for compensating the United States by means of a combination of monetary payment and of receipt of persons convicted of criminal offenses in the courts of the United States, according to formulas or conditions which may be negotiated in the contract.

(3) No such contract shall provide for the receipt of more State or territory prisoners by the United States than are transferred to that State or territory by such contract.

(b) Funds received under such contract may be deposited in the Treasury to the credit of the appropriation or appropriations from which the payments for such service were originally made.

(c) Unless otherwise specifically provided in the contract, a person committed to the Attorney General hereunder shall be subject to all the provisions of law and regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed.

[1] See References in Text note below.

(d) The term ''State'' as used in this section includes any State, territory, or possession of the United States, and the Canal Zone.

(Added May 9, 1952, ch. 253, §1, 66 Stat. 68; amended Pub. L. 89–267, §1, Oct. 19, 1965, 79 Stat. 990; Pub. L. 99–646, §66, Nov. 10, 1986, 100 Stat. 3615.)

REFERENCES IN TEXT

Section 4082(b) of this title, referred to in subsec. (a)(2)(B), was repealed, and section 4082(f) was redesignated section 4082(b), by Pub. L. 98–473, title II, §218(a), Oct. 12, 1984, 98 Stat. 2027.

For definition of Canal Zone, referred to in subsec. (d), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–646 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Attorney General, when the Director shall certify that proper and adequate treatment facilities and personnel are available, is hereby authorized to contract with the proper officials of a State or Territory for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or Territory: *Provided*, That any such contract shall provide for reimbursing the United States in full for all costs or other expenses involved.''

1965—Subsec. (d). Pub. L. 89–267 added subsec. (d).

[CHAPTER 402—REPEALED]

[§§ 5005, 5006. Repealed. Pub. L. 98–473, title II, §218(a)(8), Oct. 12, 1984, 98 Stat. 2027]

Section 5005, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1086; amended Mar. 15, 1976, Pub. L. 94–233, §3, 90 Stat. 231, related to the making of youth correction decisions by United States Parole Commission.

Section 5006, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1086; amended Mar. 15, 1976, Pub. L. 94–233, §4, 90 Stat. 231, defined terms for the purpose of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 235(a)(1)(A) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

[§§ 5007 to 5009. Repealed Pub. L. 94–233, §5, Mar. 15, 1976, 90 Stat. 231]

Section 5007, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1086, provided for meetings and duties of members of Youth Correction Division.

Section 5008, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1086, provided for appointment of officers and employees by Attorney General.

Section 5009, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1086, provided for adoption and promulgation of rules governing procedure by Youth Correction Division.

EFFECTIVE DATE OF REPEAL

Repeal effective on 60th day following Mar. 15, 1976, see section 16(b) of Pub. L. 94–233, set out as an Effective Date note under section 4201 of this title.

[§§ 5010 to 5026. Repealed. Pub. L. 98–473, title II, §218(a)(8), Oct. 12, 1984, 98 Stat. 2027]

Section 5010, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1087; amended Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, provided for imposition of a suspended sentence or sentence to custody of the Attorney General in the case of youth offenders.

Section 5011, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1087, provided for treatment of youth offenders.

Section 5012, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1087, provided for Director's certification of the availability of proper and adequate treatment facilities for youth offenders.

Section 1513, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1087, authorized Director of Bureau of Prisons to contract for maintenance of youth offenders.

Section 5014, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1087; amended July 17, 1970, Pub. L. 91–339, §1, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94–233, §6, 90 Stat. 231, related to classification studies and reports.

Section 5015, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1088; amended Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, related to powers of Director as to placement of youth offenders.

Section 5016, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1088; amended Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, related to periodic reports which the Director was required to make on all committed youth offenders.

Section 5017, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1088; amended Mar. 15, 1976, Pub. L. 94–233, §7, 9, 90 Stat. 232, related to release of youth offenders.

Section 5018, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, related to revocation of Commission orders.

Section 5019, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, related to supervision of released youth offenders.

Section 5020, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended July 17, 1970, Pub. L. 91–339, §2, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94–233, §8, 90 Stat. 232, related to apprehension of released youth offenders.

Section 5021, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended Oct. 3, 1961, Pub. L. 87–336, 75 Stat. 750; Mar. 15, 1976, Pub. L. 94–233, §9, 90 Stat. 232, related to issuance of certificates setting aside convictions of youth offenders.

Section 5022, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089, provided that this chapter would not apply to offenses committed before its enactment (Sept. 30, 1950).

Section 5023, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended Apr. 8, 1952, ch. 163, §1, 66 Stat. 45, related to relationship between this chapter and Probation and Juvenile Delinquency Acts.

Section 5024, added act Sept. 30, 1950, ch. 1115, §2, 64 Stat. 1089; amended Apr. 8, 1952, ch. 163, §2, 66 Stat. 45; June 25, 1959, Pub. L. 86–70, §17(a), 73 Stat. 144; July 12, 1960, Pub. L. 86–624, §13(b), 74 Stat. 413; Dec. 27, 1967, Pub. L. 90–226, title VIII, §801(a), 81 Stat. 741, provided that this chapter was applicable to States of the United States and to District of Columbia.

Section 5025, added act Apr. 8, 1952, ch. 163, §3(a), 66 Stat. 46; amended Dec. 27, 1967, Pub. L. 90–226, title VIII, §801(b), 81 Stat. 741, related to applicability of this chapter to District of Columbia.

Section 5026, added act Apr. 8, 1952, ch. 163, §3(a), 66 Stat. 46, provided that this chapter did not affect parole of other offenders.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, with sections 5017 to 5020 to remain in effect for five years as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1)(A), (b)(1)(E) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 403—JUVENILE DELINQUENCY

Sec.
5031. Definitions.
5032. Delinquency proceedings in district courts; transfer for criminal prosecution.
5033. Custody prior to appearance before magistrate judge.

Sec.
5034. Duties of magistrate judge.
5035. Detention prior to disposition.
5036. Speedy trial.
5037. Dispositional hearing.
5038. Use of juvenile records.
5039. Commitment.
5040. Support.
5041. Repealed.
5042. Revocation of probation.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3599H, Nov. 29, 1990, 104 Stat. 4932, substituted ''probation'' for ''Probation'' in item 5042.

1984—Pub. L. 98–473, title II, § 214(d), Oct. 12, 1984, 98 Stat. 2014, substituted ''Repealed'' for ''Parole'' in item 5041, and ''Revocation of Probation'' for ''Revocation of parole or probation'' in item 5042.

1974—Pub. L. 93–415, title V, § 513, Sept. 7, 1974, 88 Stat. 1138, substituted ''Delinquency proceedings in district courts; transfer for criminal prosecution.'' for ''Proceeding against juvenile delinquent.'' in item 5032; ''Custody prior to appearance before magistrate.'' for ''Jurisdiction; written consent; jury trial precluded.'' in item 5033; ''Duties of magistrate.'' for ''Probation; commitment to custody of Attorney General; support.'' in item 5034; ''Detention prior to disposition.'' for ''Arrest, detention and bail.'' in item 5035; ''Speedy trial.'' for ''Contracts for support; payment.'' in item 5036; ''Dispositional hearing.'' for ''Parole.'' in item 5037; and added items 5038 to 5042.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in items 5033 and 5034 pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 5031. Definitions

For the purposes of this chapter, a ''juvenile'' is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and ''juvenile delinquency'' is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation by such a person of section 922(x).

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93–415, title V, § 501, Sept. 7, 1974, 88 Stat. 1133; Pub. L. 103–322, title XI, § 110201(c)(1), Sept. 13, 1994, 108 Stat. 2012.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 921 (June 16, 1938, ch. 486, § 1, 52 Stat. 764).

The phrase ''who has not attained his eighteenth birthday'' was substituted for ''seventeen years of age or under'' as more clearly reflecting congressional intent and administrative construction. The necessity of a definite fixing of the age of the juvenile was emphasized by Hon. Arthur J. Tuttle, United States district judge, Detroit, Mich., in a letter to the Committee on Revision of the Laws dated June 24, 1944. Words ''an offense against the'' was changed to ''the violation of a'' without change of substance.

Minor change was made in translation of section references to ''this chapter''.

CODIFICATION

Another section 501 of title V of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894, is set out as a note under section 5601 of Title 42, The Public Health and Welfare.

Another section 501 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was set out as a note under section 5601 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1994—Pub. L. 103–322 inserted before period at end ''or a violation by such a person of section 922(x)''.

1974—Pub. L. 93–415 amended section generally, inserting ''or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday'' after ''eighteenth birthday,'' and substituting ''committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult'', for ''committed by a juvenile and not punishable by death or life imprisonment.''

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that,

with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), ''thirteen'' shall be substituted for ''fifteen'' and ''thirteenth'' shall be substituted for ''fifteenth''. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93–415, title V, § 502, Sept. 7, 1974, 88 Stat. 1134; Pub. L. 98–473, title II, § 1201, Oct. 12, 1984, 98 Stat. 2149; Pub. L. 100–690, title VI, § 6467(a), Nov. 18, 1988, 102 Stat. 4375; Pub. L. 101–647, title XII, § 1205(n), title XXXV, § 3599G, Nov. 29, 1990, 104 Stat. 4831, 4932; Pub. L. 103–322, title XI, § 110201(c)(2), title XIV, §§ 140001, 140002, title XV, § 150002, Sept. 13, 1994, 108 Stat. 2012, 2031, 2035; Pub. L. 104–294, title VI, § 601(c)(1), (g)(1), Oct. 11, 1996, 110 Stat. 3499, 3500.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 922 (June 16, 1938, ch. 486, § 2, 52 Stat. 765).

The final sentence of said section 922 of title 18, U.S.C., 1940 ed., was incorporated in section 5033 of this title.

Changes were made in arrangement and phraseology.

CODIFICATION

Another section 502 of title V of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov.

2, 2002, 116 Stat. 1894, is classified to section 5781 of Title 42, The Public Health and Welfare.

Another section 502 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was classified to section 5781 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1996—Pub. L. 104–294, in first par., inserted ''section 922(x)'' before ''or section 924(b)'' and struck out ''or (x)'' after ''or (h)'', and in third par., inserted ''or as authorized under section 3401(g) of this title'' after ''shall proceed by information''.

1994—Pub. L. 103–322, § 150002(1), substituted ''924(b), (g), or (h)'' for ''922(p)'' in first par.

Pub. L. 103–322, § 110201(c)(2)(A), inserted ''or (x)'' after ''922(p)'' in first par.

Pub. L. 103–322, § 140001, in fourth par., substituted ''. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), 'thirteen' shall be substituted for 'fifteen' and 'thirteenth' shall be substituted for 'fifteenth'. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However'' for ''; however''.

Pub. L. 103–322, §§ 110201(c)(2)(B), 150002(2), inserted ''or section 922(x) of this title, or in section 924(b), (g), or (h) of this title,'' before ''criminal prosecution on the basis'' in fourth par.

Pub. L. 103–322, § 150002(3), inserted at end of fifth par. ''In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.''

Pub. L. 103–322, § 140002, substituted ''A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until'' for ''Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until'' in tenth par.

1990—Pub. L. 101–647 inserted definition of ''State'' at end of second par., struck out ''or the District of Columbia'' after ''to the authorities of a State'' in third par., and substituted ''offenses set forth in this paragraph'' for ''offenses set forth in this subsection'' in fourth par.

1988—Pub. L. 100–690, § 6467(a)(1), substituted ''section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), or section 922(p) of this title,'' for ''section 841, 952(a), 955, or 959 of title 21,'' in first par.

Pub. L. 100–690, § 6467(a)(2), substituted ''section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959),'' for ''section 841, 952(a), 955, or 959 of title 21,'' and inserted ''subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)),'' after ''2275 of this title,'' in fourth par.

1984—Pub. L. 98–473, § 1201(a), amended first par. generally, inserting '', other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months,'' before ''shall not be proceeded'', inserting ''(1)'' before ''the juvenile court'', striking out ''(1)'' before ''does not have'', inserting ''the State'' after ''(2)'', and inserting '', or (3) the offense charged is a crime of violence that is a felony, or an offense described in section 841, 952(a), 955, or 959 of title 21, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.''

Pub. L. 98–473, § 1201(b)(1), which directed the amendment of fourth par. by substituting ''that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21'' for ''punishable by a maximum penalty of ten years imprisonment or more, life imprisonment or death'' was executed by substituting the quoted wording for ''punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death'' as the probable intent of Congress.

Pub. L. 98–473, § 1201(b)(2), substituted ''fifteen'' for ''sixteen'' and ''fifteenth'' for ''sixteenth'' in fourth par.

Pub. L. 98–473, § 1201(b)(3), inserted provision at end of fourth par., relating to transfer of a juvenile who is alleged to have committed certain acts after his sixteenth birthday to the appropriate district court of the United States for criminal prosecution.

Pub. L. 98–473, § 1201(c), added three pars. at end of section relating to juveniles not convicted of crimes in district court, reception of prior juveniles court records by the court, and description of the specific act of delinquency for the record.

1974—Pub. L. 93–415 amended section generally, substituting ''Delinquency proceedings in district courts; transfer for criminal prosecution'', for ''Proceedings against juvenile delinquent'' in section catchline, inserting provisions relating to certification to, and procedures in, district courts, transfer upon motion by Attorney General with respect to a juvenile sixteen years and older, factors considered in transfer, notice of transfer, barring of subsequent criminal or juvenile delinquency proceedings upon entering plea of guilty or upon taking of evidence, and admissibility of statements by a juvenile in subsequent criminal prosecution, and substituting provision relating to consent upon advice of counsel for treatment as an adult, for provision requiring consent for treatment as a juvenile.

§ 5033. Custody prior to appearance before magistrate judge

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate judge forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate judge.

(June 25, 1948, ch. 645, 62 Stat. 857; Pub. L. 93–415, title V, § 503, Sept. 7, 1974, 88 Stat. 1135; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 922, 923 (June 16, 1938, ch. 486, §§ 2, 3, 52 Stat. 765).

This section consolidates said section 923, and the final sentence of said section 922, of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

This revised section and section 5032 of this title were rewritten to make clear the legislative intent that a juvenile delinquency proceeding shall result in the adjudication of a status rather than the conviction of a crime.

The other provisions of said section 922 are incorporated in section 5032 of this title.

CODIFICATION

Another section 503 of title V of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894, is classified to section 5782 of Title 42, The Public Health and Welfare.

Another section 503 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was classified to section 5782 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1974—Pub. L. 93–415 amended section generally, substituting ''Custody prior to appearance before magistrate'', for ''Jurisdiction; written consent; jury trial precluded'' in section catchline, and substituting provisions relating to advice of rights by arresting officer, notification of Attorney General, parents, guardian or custodian, and appearance before magistrate, for provisions relating to jurisdiction of district courts, jury, consent by juvenile, and apprisal of rights by Judge of District Court.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in catchline and wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 5034. Duties of magistrate judge

The magistrate judge shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate judge may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate judge may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate judge has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate judge, the magistrate judge shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility) upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate judge determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 87–428, Mar. 31, 1962, 76 Stat. 52; Pub. L. 93–415, title V, § 504, Sept. 7, 1974, 88 Stat. 1135; Pub. L. 100–690, title VII, § 7045, Nov. 18, 1988, 102 Stat. 4400; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 924 (June 16, 1938, ch. 486, § 4, 52 Stat. 765).

The words ''foster homes'' were inserted to remove any doubt as to the authority to commit to such foster homes in accordance with past and present administrative practice.

The reference to particular sections dealing with probation was omitted as unnecessary.

Changes were made in phraseology and arrangement.

CODIFICATION

Another section 504 of title V of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1895, is classified to section 5783 of Title 42, The Public Health and Welfare.

Another section 504 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, was classified to section 5783 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''facility) upon'' for ''facility upon'' in last par.

1974—Pub. L. 93–415 amended section generally, substituting ''Duties of magistrate'', for ''Probation; commitment to custody of Attorney General; support'' in section catchline, and substituting provisions relating to procedure before, and duties of, magistrate, for provisions relating to probation, commitment to custody of Attorney General, duties of Attorney General, and procedures aiding court in determining whether to place juvenile on probation or commit him to custody of Attorney General.

1962—Pub. L. 87–428 added fourth par. authorizing commitment of a juvenile delinquent to the custody of the Attorney General for observation and study.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' in catchline and wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 5035. Detention prior to disposition

A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93–415, title V, § 505, Sept. 7, 1974, 88 Stat. 1135.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 925 (June 16, 1938, ch. 486, § 5, 52, Stat. 765).

Minor changes were made in arrangement and phraseology.

CODIFICATION

Another section 505 of Pub. L. 93–415, as added by Pub. L. 107–273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1896, is classified to section 5784 of Title 42, The Public Health and Welfare.

Another section 505 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5028, was classified to section 5784 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1974—Pub. L. 93–415 amended section generally, substituting ''Detention prior to disposition'', for ''Arrest, detention and bail'' in section catchline, striking out provisions relating to discretionary power of arresting officer or marshal to confine juvenile in jail, provisions relating to bail and default of bail, and inserting provisions relating to mandatory separation of juvenile from adjudicated delinquents, and provisions relating to the physical conditions of confining facility.

§ 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93–415, title V, § 506, Sept. 7, 1974, 88 Stat. 1136.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 926 (June 16, 1938, ch. 486, § 6, 52 Stat. 766).

The words ''foster homes'' were inserted to remove any doubt as to the authority to commit to such foster homes in accordance with past and present administrative practice.

CODIFICATION

Another section 506 of title V of Pub. L. 93–415, as added by Pub. L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5029, was classified to section 5785 of Title 42, The Public Health and Welfare, prior to the general amendment of that title V by Pub. L. 107–273.

AMENDMENTS

1974—Pub. L. 93–415 amended section generally, substituting ''Speedy trial'' for ''Contracts for support; payment'' in section catchline, and substituting provisions relating to dismissal of information due to delay, for provisions relating to contracts with public or private agencies for custody and care of juvenile delinquents.

§ 5037. Dispositional hearing

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, place him on probation, or commit him to official detention which may include a term of juvenile delinquent supervision to follow detention. In addition, the court may enter an order of restitution pursuant to section 3556. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old, beyond the lesser of—

(A) three years; or

(B) the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on probation. If the juvenile violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 28, revoke the term of probation and order a term of official detention. The term of official detention authorized upon revocation of probation shall not exceed the terms authorized in section 5037(c)(2)(A) and (B). The application of sections 5037(c)(2)(A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday. A term of official detention may include a term of juvenile delinquent supervision.

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old;

(B) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(C) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond the lesser of—

(i) five years; or

(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(B) in any other case beyond the lesser of—

(i) three years;

(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(iii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.

Section 3624 is applicable to an order placing a juvenile under detention.

(d)(1) The court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention.

(2) The term of juvenile delinquent supervision that may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(A) in the case of a juvenile who is less than 18 years old, a term that extends beyond the date when the juvenile becomes 21 years old; or

(B) in the case of a juvenile who is between 18 and 21 years old, a term that extends beyond the maximum term of official detention set forth in section 5037(c)(2)(A) and (B), less the term of official detention ordered.

(3) The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on juvenile delinquent supervision.

(4) The court may modify, reduce, or enlarge the conditions of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision after a dispositional hearing and after consideration of the provisions of section 3563 regarding the initial setting of the conditions of probation.

(5) If the juvenile violates a condition of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to section 994 of title 18,[1] revoke the term of supervision and order a term of official detention. The term of official detention which is authorized upon revocation of juvenile delinquent supervision shall not exceed the term authorized in section 5037(c)(2)(A) and (B), less any term of official detention previously ordered. The application of sections 5037(c)(2)(A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years old shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday.

(6) When a term of juvenile delinquent supervision is revoked and the juvenile is committed to official detention, the court may include a requirement that the juvenile be placed on a term of juvenile delinquent supervision. Any term of juvenile delinquent supervision ordered following revocation for a juvenile who is over the age of 21 years old at the time of the revocation proceeding shall be in accordance with the provisions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday.

(e) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an out-patient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.

[1] So in original. Probably should be ''title 28,''.

(June 25, 1948, ch. 645, 62 Stat. 858; Pub. L. 93–415, title V, § 507, Sept. 7, 1974, 88 Stat. 1136; Pub. L. 98–473, title II, § 214(a), Oct. 12, 1984, 98 Stat. 2013; Pub. L. 99–646, § 21(a), Nov. 10, 1986, 100 Stat. 3596; Pub. L. 104–294, title VI, § 604(b)(40), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 107–273, div. C, title II, § 12301, Nov. 2, 2002, 116 Stat. 1896.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 927 (June 16, 1938, ch. 486, § 7, 52 Stat. 766).

Reference to section establishing the Board of Parole was omitted as unnecessary.

Minor changes were made in phraseology.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–273, § 12301(1), in second sentence, struck out ''enter an order of restitution pursuant to section 3556,'' after ''findings of juvenile delinquency,'' and inserted ''which may include a term of juvenile delinquent supervision to follow detention'' after ''official detention'', and inserted after second sentence ''In addition, the court may enter an order of restitution pursuant to section 3556.''

Subsec. (b). Pub. L. 107–273, § 12301(2), added concluding provisions and struck out former concluding provisions which read as follows: ''The provisions dealing with probation set forth in sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.''

Subsec. (c)(1)(B), (C). Pub. L. 107–273, § 12301(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(A). Pub. L. 107–273, § 12301(4), substituted ''the lesser of—

''(i) five years; or

''(ii) the maximum of the guideline range, pursuant to section 994 of title 28, applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or''

for ''five years; or''.

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 107–273, § 12301(5), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (d), (e). Pub. L. 107–273, § 12301(6), (7), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (b)(1)(B), (2)(B). Pub. L. 104–294 substituted ''section 3561(c)'' for ''section 3561(b)''.

1986—Subsec. (a). Pub. L. 99–646, § 21(a)(1), substituted ''subsection (d)'' for ''subsection (e)''.

Subsec. (c). Pub. L. 99–646, § 21(a)(2)–(4), struck out ''by section 3581(b)'' after ''would be authorized'' in pars. (1)(B) and (2)(B)(ii), and inserted provision that section 3624 is applicable to an order placing a juvenile under detention.

1984—Pub. L. 98–473 substituted subsecs. (a) to (c) for former subsecs. (a) and (b) and redesignated former subsec. (c) as (d). Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty court days after trial unless the court has ordered further study in accordance with subsection (c). Copies of the presentence report shall be provided to the attorneys for both the juvenile and the Government a reasonable time in advance of the hearing.

''(b) The court may suspend the adjudication of delinquency or the disposition of the delinquent on such conditions as it deems proper, place him on probation, or commit him to the custody of the Attorney General. Probation, commitment, or commitment in accordance with subsection (c) shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner, unless the juvenile has attained his nineteenth birthday at the time of disposition, in which case probation, commitment, or commitment in accordance with subsection (c) shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.''

1974—Pub. L. 93–415 amended section generally, substituting ''Dispositional hearing'' for ''Parole'' in section catchline and striking out provisions relating to parole.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 21(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect on the date the amendments made by such section 214 [of Pub. L. 98–473] take effect [Nov. 1, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 5038. Use of juvenile records

(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of

any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, or whenever a juvenile has been found guilty of committing an act after his 13th birthday which if committed by an adult would be an offense described in the second sentence of the fourth paragraph of section 5032 of this title, the court shall transmit to the Federal Bureau of Investigation the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

(Added Pub. L. 93–415, title V, § 508, Sept. 7, 1974, 88 Stat. 1137; amended Pub. L. 95–115, § 8(b), Oct. 3, 1977, 91 Stat. 1060; Pub. L. 98–473, title II, § 1202, Oct. 12, 1984, 98 Stat. 2150; Pub. L. 103–322, title XIV, § 140005, Sept. 13, 1994, 108 Stat. 2032; Pub. L. 104–294, title VI, § 601(f)(16), (*o*), Oct. 11, 1996, 110 Stat. 3500, 3502.)

REFERENCES IN TEXT

Section 401 of the Controlled Substances Act, referred to in subsecs. (d) and (f), is classified to section 841 of Title 21, Food and Drugs.

Sections 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, referred to in subsecs. (d) and (f), are classified to sections 951(a), 955, and 959, respectively, of Title 21.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–294, § 601(f)(16), substituted ''section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act'' for ''section 841, 952(a), 955, or 959 of title 21''.

Subsec. (f). Pub. L. 104–294 substituted ''section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act'' for ''section 841, 952(a), 955, or 959 of title 21'', ''juvenile has been found guilty'' for ''juvenille has been found guilty'', and ''the Federal Bureau of Investigation'' for ''the Federal Bureau of Investigation, Identification Division,''.

1994—Subsec. (f). Pub. L. 103–322 inserted ''or whenever a juvenille has been found guilty of committing an act after his 13th birthday which if committed by an adult would be an offense described in the second sentence of the fourth paragraph of section 5032 of this title,'' after ''title 21,''.

1984—Pub. L. 98–473 amended section generally, striking out in subsec. (a) provisions that, upon completion of any delinquency proceedings the court shall order the entire record and file to be sealed, substituting a new subsec. (d) for a former subsec. (d) which provided that unless a juvenile is prosecuted as an adult neither fingerprints nor photographs shall be taken without the consent of the judge and the juveniles name and picture shall not be made available to any public medium of communication and adding subsecs. (e) and (f).

1977—Subsec. (a)(6). Pub. L. 95–115 added par. (6).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

§ 5039. Commitment

No juvenile committed, whether pursuant to an adjudication of delinquency or conviction for an offense, to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

(Added Pub. L. 93–415, title V, § 509, Sept. 7, 1974, 88 Stat. 1138; amended Pub. L. 103–322, title XIV, § 140003, Sept. 13, 1994, 108 Stat. 2032.)

AMENDMENTS

1994—Pub. L. 103–322 inserted '', whether pursuant to an adjudication of delinquency or conviction for an offense,'' after ''committed'' in first par.

§ 5040. Support

The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for ''support of United States prisoners'' or such other appropriations as he may designate.

(Added Pub. L. 93–415, title V, § 510, Sept. 7, 1974, 88 Stat. 1138.)

[§ 5041. Repealed. Pub. L. 98–473, title II, § 214(b), Oct. 12, 1984, 98 Stat. 2014]

Section, added Pub. L. 93–415, title V, § 511, Sept. 7, 1974, 88 Stat. 1138; amended Pub. L. 94–233, § 11, Mar. 15, 1976, 90 Stat. 233, related to parole for juvenile delinquents.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, with section to remain in effect for five years as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(D) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 5042. Revocation of probation

Any juvenile probationer shall be accorded notice and a hearing with counsel before his probation can be revoked.

(Added Pub. L. 93–415, title V, § 512, Sept. 7, 1974, 88 Stat. 1138; amended Pub. L. 98–473, title II, § 214(c), Oct. 12, 1984, 98 Stat. 2014.)

AMENDMENTS

1984—Pub. L. 98–473 struck out ''parole or'' before ''probation'' in section catchline and text, and struck out ''parolee or'' before ''probationer'' in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, with section as in effect prior to such amendment to remain in effect for five years as and individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(D) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

PART V—IMMUNITY OF WITNESSES

CHAPTER 601—IMMUNITY OF WITNESSES

Sec.
6001. Definitions.
6002. Immunity generally.
6003. Court and grand jury proceedings.
6004. Certain administrative proceedings.
6005. Congressional proceedings.

AMENDMENTS

1994—Pub. L. 103–322, title XXXIII, § 330013(1), Sept. 13, 1994, 108 Stat. 2146, added heading for chapter 601.

1970—Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 926, added part V and items 6001 to 6005.

§ 6001. Definitions

As used in this chapter—

(1) ''agency of the United States'' means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Nuclear Regulatory Commission, the Board of Governors of the Federal Reserve System, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Surface Transportation Board, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) ''other information'' includes any book, paper, document, record, recording, or other material;

(3) ''proceeding before an agency of the United States'' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

(4) ''court of the United States'' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, a United States bankruptcy court established under chapter 6, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, the Tax Court of the United States, the Court of International Trade, and the Court of Appeals for the Armed Forces.

(Added Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 926; amended Pub. L. 95–405, § 25, Sept. 30, 1978, 92 Stat. 877; Pub. L. 95–598, title III, § 314(*l*), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96–417, title VI, § 601(1), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 97–164, title I, § 164(1), Apr. 2, 1982, 96 Stat. 50; Pub. L. 102–550, title XV, § 1543, Oct. 28, 1992, 106 Stat. 4069; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–272, § 4(d), July 5, 1994, 108 Stat. 1361; Pub. L. 103–322, title XXXIII, § 330013(2), (3), Sept. 13, 1994, 108 Stat. 2146; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 104–88, title III, § 303(2), Dec. 29, 1995, 109 Stat. 943.)

AMENDMENTS

1995—Par. (1). Pub. L. 104–88 substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission''.

1994—Pub. L. 103–322, § 330013(3), substituted ''chapter'' for ''part'' in introductory provisions.

Par. (1). Pub. L. 103–322, § 330013(2), substituted ''Nuclear Regulatory Commission'' for ''Atomic Energy Commission'' and struck out ''the Subversive Activities Control Board,'' after ''Securities and Exchange Commission,''.

Pub. L. 103–272 struck out ''the Civil Aeronautics Board,'' before ''the Commodity Futures''.

Par. (4). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Par. (1). Pub. L. 102–550 inserted ''the Board of Governors of the Federal Reserve System,'' after ''the Atomic Energy Commission,''.

Par. (4). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Par. (4). Pub. L. 97–164 substituted ''the United States Claims Court'' for ''the United States Court of Claims, the United States Court of Customs and Patent Appeals''.

1980—Par. (4). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Par. (1). Pub. L. 95–405 inserted ''the Commodity Futures Trading Commission,'' after ''Civil Aeronautics Board,''.

Par. (4). Pub. L. 95–598 inserted ''a United States bankruptcy court established under chapter 6, title 28,

United States Code,'' after ''title 28, United States Code,''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of Title 7, Agriculture.

EFFECTIVE DATE; SAVINGS PROVISION

Section 260 of Pub. L. 91–452 provided that: ''The provisions of part V of title 18, United States Code, added by title II of this Act [this part], and the amendments and repeals made by title II of this Act [sections 835, 895, 1406, 1954, 2424, 2514 and 3486 of this title, sections 15, 87f(f), 135c, 499m(f), and 2115 of Title 7, Agriculture, section 25 of former Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 32, 33, 49, 77v, 78u(d), 79r(e), 80a–41, 80b–9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, sections 4874 and 7493 of Title 26, Internal Revenue Code, section 161(3) of Title 29, Labor, section 506 of Title 33, Navigation and Navigable waters, sections 405(f) and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, sections 827 and 1124 of former Title 46, Shipping, section 409(*l*) of Title 47, Telegraphs, Telephones, and Radiotelegraphs, sections 9, 43, 46, 47, 48, 916, 1017, and 1484 of former Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and 2155(b) of Title 50, Appendix], shall take effect on the sixtieth day following the date of the enactment of this Act [Oct. 15, 1970]. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.''

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95–598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

AMENDMENT OR REPEAL OF INCONSISTENT PROVISIONS

Section 259 of Pub. L. 91–452 provided that: ''In addition to the provisions of law specifically amended or specifically repealed by this title [see Effective Date note above], any other provision of law inconsistent with the provisions of part V of title 18, United States Code (adding by title II of this Act) [this part], is to that extent amended or repealed.''

TERMINATION OF FEDERAL POWER COMMISSION

The Federal Power Commission, referred to in par. (1) was terminated and the functions, personnel, property, funds, etc., thereof were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(Added Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927; amended Pub. L. 103–322, title XXXIII, § 330013(4), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''under this title'' for ''under this part'' in concluding provisions.

§ 6003. Court and grand jury proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General or Deputy Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Added Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927; amended Pub. L. 100–690, title VII, § 7020(e), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title XXXIII, § 330013(4), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''title'' for ''part'' before period at end.

1988—Subsec. (b). Pub. L. 100–690 inserted '', the Associate Attorney General'' after ''Deputy Attorney General'', and ''or Deputy Assistant Attorney General'' after ''Assistant Attorney General''.

§ 6004. Certain administrative proceedings

(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Added Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 927; amended Pub. L. 103–322, title XXXIII, § 330013(4), Sept. 13, 1994, 108 Stat. 2146.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted ''title'' for ''part'' before period at end.

§ 6005. Congressional proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

(1) in the case of a proceeding before or ancillary to either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

(2) in the case of a proceeding before or ancillary to a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

(Added Pub. L. 91–452, title II, § 201(a), Oct. 15, 1970, 84 Stat. 928; amended Pub. L. 103–322, title XXXIII, § 330013(4), Sept. 13, 1994, 108 Stat. 2146; Pub. L. 104–292, § 5, Oct. 11, 1996, 110 Stat. 3460; Pub. L. 104–294, title VI, § 605(*o*), Oct. 11, 1996, 110 Stat. 3510.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–292, § 5(1), inserted ''or ancillary to'' after ''any proceeding before''.

Subsec. (b)(1), (2). Pub. L. 104–292, § 5(2)(A), inserted ''or ancillary to'' after ''a proceeding before''.

Subsec. (b)(3). Pub. L. 104–292, § 5(2)(B), and Pub. L. 104–294, amended par. (3) identically, inserting period at end.

1994—Subsec. (a). Pub. L. 103–322 substituted ''title'' for ''part'' before period at end.