(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

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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

[1] So in original. The period probably should be a semicolon.

[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.

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.
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 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. The compensation maximum amounts provided in this paragraph shall increase simultaneously by the same percentage, rounded to the nearest multiple of $100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted.

(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 or senior 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;

[1] See References in Text note below.

[2] So in original. Probably should be "United States magistrate judge".

(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 or senior 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 pro-

vided 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; Pub. L. 110–406, §§ 11–12(b), Oct. 13, 2008, 122 Stat. 4293, 4294.)

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

2008—Subsec. (d)(2). Pub. L. 110–406, § 11, inserted at end ''The compensation maximum amounts provided in this paragraph shall increase simultaneously by the same percentage, rounded to the nearest multiple of $100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted.''

Subsecs. (d)(3), (e)(3). Pub. L. 110–406, § 12(a), (b), inserted ''or senior'' after ''active'' in second sentence.

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.

Sec.
3045. Internal revenue violations.
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3055. Officers' powers to suppress Indian liquor traffic.
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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''.

[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.

§ 3041. Power of courts and magistrates

For any offense against the United States, the offender may, by any justice or judge of the 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 property), 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

[1] So in original. The words ''Special Agents'' probably should not be capitalized.

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 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).

(8) Former Vice Presidents, their spouses, and their children who are under 16 years of age, for a period of not more than six months after the date the former Vice President leaves office. 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 thereafter if the Secretary of Homeland Security or designee determines that information or conditions warrant such protection.

The protection authorized in paragraphs (2) through (8) 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

[1] See References in Text note below.

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; 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; Pub. L. 110–326, title I, § 102, Sept. 26, 2008, 122 Stat. 3560.)

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

2008—Subsec. (a). Pub. L. 110–326, § 102(2), substituted ''(8)'' for ''(7)'' in concluding provisions.

Subsec. (a)(8). Pub. L. 110–326, § 102(1), added par. (8).

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 2008 AMENDMENT

Pub. L. 110–326, title I, § 103, Sept. 26, 2008, 122 Stat. 3560, provided that: ''The amendments made by this Act [probably should be ''title'', meaning title I of Pub. L. 110–326, which amended this section and enacted provisions set out as a note under section 1 of this title] shall apply with respect to any Vice President holding office on or after the date of enactment of the Act [Sept. 26, 2008].''

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, as amended by Pub. L. 110–161, div. E, title V, § 517, Dec. 26, 2007, 121 Stat. 2073, provided that: ''For fiscal year 2008, and each fiscal year thereafter, the Director of the United States Secret Service may enter into an agreement to perform protection of a Federal official other than a person granted protection under section 3056(a) of title 18, United States Code, on a fully reimbursable basis.''

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 Oversight and 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 Oversight and 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 nongovernmental 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 provisions 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 indi-

viduals 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 fourteenth 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; Pub. L. 111–16, §3(9), May 7, 2009, 123 Stat. 1608.)

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–16 substituted ''fourteenth day'' for ''tenth day''.

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 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

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 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;

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

''(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

[1] Section repealed by Pub. L. 107–273 without corresponding amendment of chapter analysis.

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'.''

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.

[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;

(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).

[1] So in original. The closing parenthesis probably should follow ''section 2705''.

§ 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, custodian, 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 that—

(i) has jurisdiction over the offense being investigated;

(ii) is in or for a district in which the provider of a wire or electronic communication service is located;

(iii) is in or for a district in which a landlord, custodian, or other person subject to subsections (a) or (b) of section 3124 of this title is located; or

(iv) is acting on a request for foreign assistance pursuant to section 3512 of this title; 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; Pub. L. 111–79, § 2(3), Oct. 19, 2009, 123 Stat. 2087.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in par. (5), are set out in the Appendix to this title.

AMENDMENTS

2009—Par. (2)(A). Pub. L. 111–79 substituted ''that—'' and cls. (i) to (iv) for ''having jurisdiction over the offense being investigated; or''.

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.

Sec.
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.—(1) 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.

(2) 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—

(A) 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;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) 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 subparagraph (A), whichever is later.

(3) 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—

(A) 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;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) 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;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) 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, a violation of section 1591, 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 violation of section 1591, 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; Pub. L. 110–457, title II, §§ 222(a), 224(a), Dec. 23, 2008, 122 Stat. 5067, 5072.)

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

2008—Subsec. (e). Pub. L. 110–457, § 222(a)(1)–(4), designated first through third sentences as pars. (1) to (3), respectively, and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (2).

Subsec. (e)(2)(B), (C). Pub. L. 110–457, § 222(a)(5), substituted ''subparagraph (A)'' for ''paragraph (1) of this subsection''.

Subsec. (e)(3). Pub. L. 110–457, § 222(a)(6), substituted ''committed—'' for ''committed'', ''46;'' for ''46,'', ''title;'' for ''title, or'', and ''10 years or more is prescribed;'' for ''10 years or more is prescribed or'', inserted subpar. (A), (B), (C), and (E) designations, and added subpar. (D).

Subsecs. (f)(1)(A), (g)(1). Pub. L. 110–457, § 224(a), substituted ''violence, a violation of section 1591,'' for ''violence,''.

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 para-

graph, 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 appointed by the district court. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3602 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. 110–406, § 10, Oct. 13, 2008, 122 Stat. 4293.)

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

2008—Subsec. (c). Pub. L. 110–406 added subsec. (c) and struck out former subsec. (c) which related to supervision of pretrial services.

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.

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, and contract with any appropriate public or private agency or person, or expend funds, to monitor and provide treatment as well as nontreatment services to any such persons released in the community, including equipment and emergency housing, corrective and preventative guidance and training, and other services reasonably deemed necessary to protect the public and ensure that such persons appear in court as required.

(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; Pub. L. 110–406, §15(a), Oct. 13, 2008, 122 Stat. 4294.)

AMENDMENTS

2008—Par. (4). Pub. L. 110–406 inserted ", and contract with any appropriate public or private agency or person, or expend funds, to monitor and provide treatment as well as nontreatment services to any such persons released in the community, including equipment and emergency housing, corrective and preventative guidance and training, and other services reasonably deemed necessary to protect the public and ensure that such persons appear in court as required" before period at end.

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.
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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 trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) 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;

(E) 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;

(F) 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;

(G) 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

(H) 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) 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.

(6) 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.

(7)(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, 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.

(8) 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; Pub. L. 110–406, § 13, Oct. 13, 2008, 122 Stat. 4294.)

AMENDMENTS

2008—Subsec. (h)(1)(B) to (J). Pub. L. 110–406, § 13(1), redesignated subpars. (D) to (J) as (B) to (H), respectively, and struck out former subpars. (B) and (C) which read as follows:

''(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

''(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;''.

Subsec. (h)(5) to (9). Pub. L. 110–406, § 13(2), (3), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out former par. (5) which read as follows: ''Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.''

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 com-

mence 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 enact-

ment 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 pro-

vided 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.
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.
3188. Time of commitment pending extradition.
3189. Place and character of hearing.
3190. Evidence on hearing.
3191. Witnesses for indigent fugitives.

Sec.
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, as amended by Pub. L. 111–117, div. F, title VII, § 7034(t), Dec. 16, 2009, 123 Stat. 3364, 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, as amended.

''(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.''

EXTRADITION AGREEMENTS

The United States currently has bilateral extradition agreements 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	TIAS.
Argentina	June 10, 1997	June 15, 2000	TIAS 12866.
Australia	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
	May 14, 1974	May 8, 1976	27 UST 957.
	Sept. 4, 1990	Dec. 21, 1992	1736 UNTS 344.
Austria	Jan. 8, 1998	Jan. 1, 2000	TIAS 12916.
Bahamas	Mar. 9, 1990	Sept. 22, 1994	TIAS.
Barbados	Feb. 28, 1996	Mar. 3, 2000	TIAS.
Belgium	Apr. 27, 1987	Sept. 1, 1997	TIAS.
Belize	Mar. 30, 2000	Mar. 27, 2001	TIAS.
Bolivia	June 27, 1995	Nov. 21, 1996	TIAS.
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.
	Sept. 19, 2007	May 21, 2009	
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 (Brazzaville).	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.
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	TIAS.
Czech Republic[1].	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	TIAS.
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.
	Feb. 8, 2006	Apr. 7, 2009	
Fiji	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	July 14, 1972, Aug. 17, 1973.	Aug. 17, 1973	24 UST 1965.
Finland	June 11, 1976	May 11, 1980	31 UST 944.
France	Apr. 23, 1996	Feb. 1, 2002	TIAS.
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	TIAS.
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	TIAS.
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	TIAS.
Hungary	Dec. 1, 1994	Mar. 18, 1997	TIAS.
Iceland	Jan. 6, 1902	May 16, 1902	32 Stat. 1096.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	June 25, 1997	July 21, 1999	TIAS 12873.
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.[2]
	July 6, 2005	Jan. 10, 2007	
Italy	Oct. 13, 1983	Sept. 24, 1984	35 UST 3023.
Jamaica	June 14, 1983	July 7, 1991	TIAS.
Japan	Mar. 3, 1978	Mar. 26, 1980	31 UST 892.
Jordan	Mar. 28, 1995	July 29, 1995	TIAS.
Kenya	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	May 14, Aug. 19, 1965.	Aug. 19, 1965	16 UST 1866.
Kiribati	June 8, 1972	Jan. 21, 1977	28 UST 227.
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935	49 Stat. 3131.
	Dec. 7, 2005	Apr. 15, 2009	
Lesotho	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939	54 Stat. 1733.

Country	Date signed	Entered into force	Citation
Liechtenstein.	May 20, 1936	June 28, 1937	50 Stat. 1337.
Lithuania	Oct. 23, 2001	Mar. 31, 2003	TIAS 13166.
Luxembourg	Oct. 1, 1996	Feb. 1, 2002	TIAS 12804.
Malawi	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	Dec. 17, 1966, Jan. 6, Apr. 4, 1967.	Apr. 4, 1967	18 UST 1822.
Malaysia	Aug. 3, 1995	June 2, 1997	TIAS.
Malta	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	May 18, 2006	July 1, 2009	
Marshall Islands.	Apr. 30, 2003	May 1, 2004	
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	TIAS 12897.
Micronesia, Federated States of.	May 14, 2003	June 25, 2004	
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	35 UST 1334.
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.
	Feb. 2, 23, 1988	Feb. 23, 1988	TIAS.
Paraguay	Nov. 9, 1998	Mar. 9, 2001	TIAS 12995.
Peru	July 26, 2001	Aug. 25, 2003	
Philippines	Nov. 13, 1994	Nov. 22, 1996	TIAS.
Poland	July 10, 1996	Sept. 17, 1999	TIAS.
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.
	Sept. 10, 2007	May 8, 2009	
Saint Kitts and Nevis.	Sept. 18, 1996	Feb. 23, 2000	TIAS 12805.
Saint Lucia	Apr. 18, 1996	Feb. 2, 2000	TIAS.
Saint Vincent and the Grenadines.	Aug. 15, 1996	Sept. 8, 1999	TIAS.
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.
	Apr. 23, June 10, 1969.	June 10, 1969	20 UST 2764.
Slovakia[1]	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	TIAS.
South Korea	June 9, 1998	Dec. 20, 1999	TIAS 12962.
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	TIAS.
	Mar. 12, 1996	July 25, 1999	TIAS.
Sri Lanka	Sept. 30, 1999	Jan. 12, 2001	TIAS.
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.
	May 13, July 28, 1970.	July 28, 1970	21 UST 1930.
Sweden	Oct. 24, 1961	Dec. 3, 1963	14 UST 1845.
	Mar. 14, 1983	Sept. 24, 1984	35 UST 2501.
Switzerland	Nov. 14, 1990	Sept. 10, 1997	TIAS.
Tanzania	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	Nov. 30, Dec. 6, 1965.	Dec. 6, 1965	16 UST 2066.
Thailand	Dec. 14, 1983	May 17, 1991	TIAS.
Tonga	Dec. 22, 1931	Aug. 1, 1966	47 Stat. 2122.
	Mar. 14, Apr. 13, 1977.	Apr. 13, 1977	28 UST 5290.
Trinidad and Tobago.	Mar. 4, 1996	Nov. 29, 1999	TIAS.
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.	Mar. 31, 2003	Apr. 26, 2007	
Uruguay	Apr. 6, 1973	Apr. 11, 1984	35 UST 3197.
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] Status of agreements with successor states of Czechoslovakia and Yugoslavia is under review; inquire of the Treaty Office of the United States Department of State.

[2] Typographical error corrected by diplomatic notes exchanged Apr. 4 and 11, 1967. See 18 UST 382, 383.

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 ac-

tually 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 citi-

zens 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 commission, 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.
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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]
3300. Recruitment or use of child soldiers.

AMENDMENTS

2008—Pub. L. 110–340, § 2(a)(3)(B), Oct. 3, 2008, 122 Stat. 3736, added item 3300.

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 informa-

[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.

tion 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.

(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) ap-

plied 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 in-

formation 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.)

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 or Congress has enacted a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)), 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 directly connected with or related to the authorized use of the Armed Forces, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until 5 years after the termination of hostilities as proclaimed by a Presidential proclamation, with notice to Congress, 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. For purposes of applying such definitions in this section, the term ''war'' includes a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)).

(June 25, 1948, ch. 645, 62 Stat. 828; Pub. L. 110–329, div. C, title VIII, § 8117, Sept. 30, 2008, 122 Stat. 3647; Pub. L. 110–417, [div. A], title VIII, § 855, Oct. 14, 2008, 122 Stat. 4545; Pub. L. 111–84, div. A, title X, § 1073(c)(7), Oct. 28, 2009, 123 Stat. 2475.)

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.

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

Changes were made in phraseology.

AMENDMENTS

2009—Pub. L. 111–84 repealed Pub. L. 110–417, § 855. See 2008 Amendment note below.

2008—Pub. L. 110–417, § 855, which amended this section identically to amendment by Pub. L. 110–329, was repealed by Pub. L. 111–84. See 2008 Amendment note below.

Pub. L. 110–329, in first par., inserted ''or Congress has enacted a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)),'' after ''is at war'' and ''or directly connected with or related to the authorized use of the Armed Forces'' after ''prosecution of the war'' and substituted ''5 years'' for ''three years'' and ''proclaimed by a Presidential proclamation, with notice to Congress,'' for ''proclaimed by the President'', and, in second par., inserted last sentence.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided in part that the amendment made by section 1073(c)(7) of Pub. L. 111–84 is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

§ 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.)

§ 3300. Recruitment or use of child soldiers

No person may be prosecuted, tried, or punished for a violation of section 2442 unless the indictment or the information is filed not later than 10 years after the commission of the offense.

(Added Pub. L. 110–340, § 2(a)(2), Oct. 3, 2008, 122 Stat. 3736.)

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.)

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''.

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

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.
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 be-

fore 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 provisions 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.)

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

[1] Section catchline was not amended to conform to change made in text by Pub. L. 100–702.

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, excluding intermediate weekends and holidays, 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; Pub. L. 111–16, § 3(10), May 7, 2009, 123 Stat. 1608.)

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

2009—Pub. L. 111–16 inserted '', excluding intermediate weekends and holidays,'' after ''commencement of trial''.

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''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

§ 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

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AMENDMENTS

2009—Pub. L. 111–79, §2(5), Oct. 19, 2009, 123 Stat. 2089, added item 3512.

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.

[1] So in original. Probably should be section ''3056(a),''.

(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, 1591, 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

(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.

[2] So in original.

(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; Pub. L. 110–457, title II, § 224(b), Dec. 23, 2008, 122 Stat. 5072.)

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

2008—Subsec. (a)(1)(D). Pub. L. 110–457 inserted ''1591,'' after ''1201,''.

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 ap-

plication 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 Govern-

ment 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 7 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; Pub. L. 111–16, § 3(11), May 7, 2009, 123 Stat. 1608.)

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

2009—Subsec. (b)(1)(A). Pub. L. 111–16 substituted ''7 days'' for ''5 days''.

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 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

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 defendant 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).''

§ 3512. Foreign requests for assistance in criminal investigations and prosecutions

(a) EXECUTION OF REQUEST FOR ASSISTANCE.—

(1) IN GENERAL.—Upon application, duly authorized by an appropriate official of the Department of Justice, of an attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

(2) SCOPE OF ORDERS.—Any order issued by a Federal judge pursuant to paragraph (1) may include the issuance of—

(A) a search warrant, as provided under Rule 41 of the Federal Rules of Criminal Procedure;

(B) a warrant or order for contents of stored wire or electronic communications or for records related thereto, as provided under section 2703 of this title;

(C) an order for a pen register or trap and trace device as provided under section 3123 of this title; or

(D) an order requiring the appearance of a person for the purpose of providing testimony or a statement, or requiring the production of documents or other things, or both.

(b) APPOINTMENT OF PERSONS TO TAKE TESTIMONY OR STATEMENTS.—

(1) IN GENERAL.—In response to an application for execution of a request from a foreign authority as described under subsection (a), a Federal judge may also issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.

(2) AUTHORITY OF APPOINTED PERSON.—Any person appointed under an order issued pursuant to paragraph (1) may—

(A) issue orders requiring the appearance of a person, or the production of documents or other things, or both;

(B) administer any necessary oath; and

(C) take testimony or statements and receive documents or other things.

(c) FILING OF REQUESTS.—Except as provided under subsection (d), an application for execution of a request from a foreign authority under this section may be filed—

(1) in the district in which a person who may be required to appear resides or is located or in which the documents or things to be produced are located;

(2) in cases in which the request seeks the appearance of persons or production of documents or things that may be located in multiple districts, in any one of the districts in which such a person, documents, or things may be located; or

(3) in any case, the district in which a related Federal criminal investigation or prosecution is being conducted, or in the District of Columbia.

(d) SEARCH WARRANT LIMITATION.—An application for execution of a request for a search warrant from a foreign authority under this section, other than an application for a warrant issued as provided under section 2703 of this title, shall be filed in the district in which the place or person to be searched is located.

(e) SEARCH WARRANT STANDARD.—A Federal judge may issue a search warrant under this section only if the foreign offense for which the evidence is sought involves conduct that, if committed in the United States, would be considered an offense punishable by imprisonment for more than one year under Federal or State law.

(f) SERVICE OF ORDER OR WARRANT.—Except as provided under subsection (d), an order or warrant issued pursuant to this section may be served or executed in any place in the United States.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude any foreign authority or an interested person from obtaining assistance in a criminal investigation or prosecution pursuant to section 1782 of title 28, United States Code.

(h) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) FEDERAL JUDGE.—The terms ''Federal judge'' and ''attorney for the Government''

have the meaning given such terms for the purposes of the Federal Rules of Criminal Procedure.

(2) FOREIGN AUTHORITY.—The term ''foreign authority'' means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.

(Added Pub. L. 111–79, § 2(4), Oct. 19, 2009, 123 Stat. 2087.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a)(2)(A) and (h)(1), are set out in the Appendix to this title.

CHAPTER 224—PROTECTION OF WITNESSES

Sec.
3521. Witness relocation and protection.
3522. Probationers and parolees.
3523. Civil judgments.
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3526. Cooperation of other Federal agencies and State governments; reimbursement of expenses.
3527. Additional authority of Attorney General.
3528. Definition.

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

[1] See References in Text note below.

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 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 pro-

vided 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.

§ 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

[1] See References in Text note below.

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.

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

[1] Editorially supplied.

[1] So in original. Probably should not appear.

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,''.

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. 110–312, § 2, Aug. 12, 2008, 122 Stat. 3013, provided that: ''For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 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 '21 years' or '21-year period' shall be deemed a reference to '24 years' or '24-year period', respectively.'']

[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 2008 AMENDMENT

Pub. L. 110–312, § 1, Aug. 12, 2008, 122 Stat. 3013, provided that: ''This Act [enacting provisions set out as a note under this section] may be cited as the 'United States Parole Commission Extension Act of 2008'.''

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 indi-

vidual 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;

[1] So in original. The period probably should be a semicolon.

[2] So in original. No subpar. (B) has been enacted.

(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 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;

[3] So in original.

(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, substituted ''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 downward 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).

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.

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

[1] So in original. Probably should not appear.

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.

(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) or (b)(12), unless the court has imposed a fine under this chapter, or 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 or supervised release;

(11) reside at, or participate in the program of, a community corrections facility (including 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 defend-

[1] So in original. Probably should be "; or".

ant'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; Pub. L. 110–406, § 14(a), (c), Oct. 13, 2008, 122 Stat. 4294.)

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 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

2008—Subsec. (a)(2). Pub. L. 110–406, § 14(a), substituted "(b)(2) or (b)(12), unless the court has imposed a fine under this chapter, or" for "(b)(2), (b)(3), or (b)(13),".

Subsec. (b)(10). Pub. L. 110–406, § 14(c), inserted "or supervised release" after "probation".

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 sec-

tion] 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 reason-

[1] See References in Text note below.

ably 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 section, 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 organi-

[1] So in original. Probably should not appear.

zation 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;

(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, 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.

[1] So in original. Probably should not appear.

(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 sub-

[1] See References in Text note below.

ject 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) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. 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 previously 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; Pub. L. 110–406, § 14(b), Oct. 13, 2008, 122 Stat. 4294.)

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 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. (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.

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), (2), (3), are set out in the Appendix to this title.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–406 substituted ''section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available.'' for ''section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate.'' in concluding provisions.

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.

Sec.
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, re-

gardless 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 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.

[1] See References in Text note below.

(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 offense 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 ade-

quacy 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, 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 or senior 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; amended Pub. L. 110–406, § 12(c), Oct. 13, 2008, 122 Stat. 4294.)

AMENDMENTS

2008—Subsec. (g)(2). Pub. L. 110–406 inserted ''or senior'' after ''active'' in second sentence.

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 pros-

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

[2] So in original. Probably should be ''this''.

[3] So in original. Probably should be ''5303''.

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

ecution 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.

(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 ef-

fect 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.

[1] Editorially supplied.

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 coordinated 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;

[1] So in original. Probably should not appear.

''(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 subsist-

ence 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 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

[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.

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 determined 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 ''Disposition 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 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.

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

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

[1] So in original. Probably should not appear.

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. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.

(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.

(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 and treatment, lasting at least 6 months, in residential treatment facilities set apart from the general prison population (which may include the use of pharmocotherapies,[1] where appropriate, that may extend beyond the 6-month 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 sums as may be necessary to carry out this subsection.

(g) CONTINUED ACCESS TO MEDICAL CARE.—

(1) IN GENERAL.—In order to ensure a minimum standard of health and habitability, the Bureau of Prisons should ensure that each prisoner in a community confinement facility has access to necessary medical care, mental health care, and medicine through partnerships with local health service providers and transition planning.

(2) DEFINITION.—In this subsection, the term ''community confinement'' has the meaning given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual, as in effect on the date of the enactment of the Second Chance Act of 2007.

(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; Pub. L. 110–199, title II, §§ 231(f), 251(b), 252, Apr. 9, 2008, 122 Stat. 687, 693.)

REFERENCES IN TEXT

The date of the enactment of the Second Chance Act of 2007, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 110–199, which was approved Apr. 9, 2008.

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

2008—Subsec. (b). Pub. L. 110–199, § 251(b), inserted ''Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.'' at end of concluding provisions.

Subsec. (e)(5)(A). Pub. L. 110–199, § 252, substituted ''means a course of individual and group activities and treatment, lasting at least 6 months, in residential treatment facilities set apart from the general prison population (which may include the use of pharmocotherapies, where appropriate, that may extend beyond the 6-month period);'' for ''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, if appropriate, that may extend beyond the treatment period;''.

Subsec. (g). Pub. L. 110–199, § 231(f), added subsec. (g).

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;

[1] So in original. Probably should be ''pharmacotherapies,''.

''(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.

CONSTRUCTION OF 2008 AMENDMENT

For construction of amendments by Pub. L. 110–199 and requirements for grants made under such amendments, see section 17504 of Title 42, The Public Health and Welfare.

§ 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.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) PRERELEASE CUSTODY.—

(1) IN GENERAL.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

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

(2) HOME CONFINEMENT AUTHORITY.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.

(3) ASSISTANCE.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) REPORTING.—Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) ISSUANCE OF REGULATIONS.—The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Act of 2007, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—

(A) conducted in a manner consistent with section 3621(b) of this title;

(B) determined on an individual basis; and

(C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

(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. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(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; Pub. L. 110–177, title V, § 505,

Jan. 7, 2008, 121 Stat. 2542; Pub. L. 110–199, title II, § 251(a), Apr. 9, 2008, 122 Stat. 692.)

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 the Second Chance Act of 2007, referred to in subsec. (c)(5), (6), is the date of enactment of Pub. L. 110–199, which was approved Apr. 9, 2008.

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

2008—Subsec. (c). Pub. L. 110–199 amended subsec. (c) generally. Prior to amendment, text read as follows: ''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 reentry 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.''

Subsec. (e). Pub. L. 110–177 substituted ''Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.'' for ''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.''

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 sec-

tion] 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.

CONSTRUCTION OF 2008 AMENDMENT

For construction of amendments by Pub. L. 110–199 and requirements for grants made under such amendments, see section 17504 of Title 42, The Public Health and Welfare.

§ 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 construction 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;

(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; and

(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(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.

(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; Pub. L. 110–326, title II, § 202, Sept. 26, 2008, 122 Stat. 3561.)

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.

[1] So in original. Probably should be ''(ii)),''.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–326 added par. (6).

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 sec-

tion] 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 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, 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 contracts identified in this paragraph without regard to section 3709 of the Revised Statutes of the United States. He also shall have the authority to expend funds or to contract with any appropriate public or private agency or person to monitor and provide services to any offender in the community authorized by this Act, including treatment, equipment and emergency housing, corrective and preventative guidance and training, and other rehabilitative services designed to protect the public and promote the successful reentry of the offender into the community.

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; Pub. L. 110–199, title II, § 253, Apr. 9, 2008, 122 Stat. 693; Pub. L. 110–406, § 15(b), Oct. 13, 2008, 122 Stat. 4294.)

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.

This Act, referred to in the seventh undesignated par., probably means Pub. L. 110–199, Apr. 9, 2008, 122 Stat. 657, known as the Second Chance Act of 2007: Community Safety Through Recidivism Prevention and also as the Second Chance Act of 2007. For complete classification of this Act to the Code, see Short Title note set out under section 17501 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2008—Pub. L. 110–406, § 15(b)(2), which directed insertion of ''to expend funds or'' after ''He shall also have the authority'' in fourth sentence of seventh undesignated par., was executed by making the insertion after ''He also shall have the authority'' to reflect the probable intent of Congress.

Pub. L. 110–406, § 15(b)(1), substituted ''negotiate and award contracts identified in this paragraph'' for ''negotiate and award such contracts'' in third sentence of seventh undesignated par.

Pub. L. 110–199 inserted last sentence of seventh undesignated par.

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].''

CONSTRUCTION OF 2008 AMENDMENT

For construction of amendments by Pub. L. 110–199 and requirements for grants made under such amendments, see section 17504 of Title 42, The Public Health and Welfare.

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, 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.

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 deci-

sion 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 covered 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 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] See References in Text note below.

(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 sen-

tencing 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 14 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 representatives 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; Pub. L. 111–16, § 3(12), May 7, 2009, 123 Stat. 1608.)

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

2009—Subsec. (d)(5)(B). Pub. L. 111–16 substituted ''14 days'' for ''10 days''.

2006—Subsec. (b). Pub. L. 109–248 designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

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**
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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.
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.