''(B) In the matter designated as paragraph (2) of subdivision (d), strike out 'in accordance with Rule 32.1(a)(1)'.''

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 26, 1976

Section 1 of Pub. L. 95–78, July 30, 1977, 91 Stat. 319, provided: ''That notwithstanding the first section of the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349, approved July 8, 1976) [90 Stat. 822] the amendments to rules 6(e), 23, 24, 40.1, and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts [set out in the Appendix to this title] which are embraced by the order entered by the United States Supreme Court on April 26, 1976, shall take effect only as provided in this Act [see section 4 of Pub. L. 95–78, set out below].''

EFFECTIVE DATE OF PUB. L. 95–78

Pub. L. 95–78, §4, July 30, 1977, 91 Stat. 322, provided that:

''(a) The first section of this Act [set out as a note above] shall take effect on the date of the enactment of this Act [July 30, 1977].

''(b) Sections 2 and 3 of this Act [which amended section 1446 of Title 28, Judiciary and Judicial Procedure, approved proposed amendment of rule 23 of the Federal Rules of Criminal Procedure, modified and approved proposed amendment of rules 6 and 41 of the Federal Rules of Criminal Procedure, and disapproved the proposed amendment of rule 24 of the Federal Rules of Criminal Procedure and the proposed addition of rule 40.1 of the Federal Rules of Criminal Procedure] shall take effect October 1, 1977.''

AMENDMENTS TO CRIMINAL RULES UNDER SUPREME COURT ORDER OF APRIL 26, 1976; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 94–349, §1, July 8, 1976, 90 Stat. 822, provided: ''That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code the amendments to rules 6(e), 23, 24, 40.1 and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. The remainder of the proposed amendments to the Federal Rules of Criminal Procedure [rules 6(f), 41(a), (c)(1), and 50(b)] shall become effective August 1, 1976, pursuant to law.''

AMENDMENTS TO CRIMINAL RULES UNDER SUPREME COURT ORDER OF APRIL 22, 1974; POSTPONEMENT OF EFFECTIVE DATE UNTIL AUGUST 1, 1975

Pub. L. 93–361, July 30, 1974, 88 Stat. 397, provided: ''That, notwithstanding the provisions of sections 3771 and 3772 of title 18 of the United States Code, the effective date of the proposed amendments to the Federal Rules of Criminal Procedure which are embraced by the order entered by the United States Supreme Court on April 22, 1974, and which were transmitted to the Congress by the Chief Justice on April 22, 1974, is postponed until August 1, 1975.''

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 22, 1974

Pub. L. 94–64, §2, July 31, 1975, 89 Stat. 370, provided that: ''The amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure [adding rules 12.1, 12.2, and 29.1 and amending rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43] which are embraced in the order of that Court on April 22, 1974, are approved except as otherwise provided in this Act [making further amendments to rules 4, 9(a), 11, 12, 12.1, 12.2, 15, 16, 17(f), 20, 32(a), (c), and (e), and 43] and shall take effect on December 1, 1975. Except with respect to the amendment to Rule 11, insofar as it adds Rule 11(e)(6), which shall take effect on August 1, 1975, the amendments made by section 3 of this Act shall also take effect on December 1, 1975.''

CONGRESSIONAL APPROVAL REQUIREMENT FOR PROPOSED RULES OF EVIDENCE FOR UNITED STATES COURTS AND AMENDMENTS TO FEDERAL RULES OF CIVIL PROCEDURE AND CRIMINAL PROCEDURE; SUSPENSION OF EFFECTIVENESS OF SUCH RULES

Pub. L. 93–12, Mar. 30, 1973, 87 Stat. 9, provided: ''That notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on Monday, November 20, 1972, and Monday, December 18, 1972, shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by Act of Congress.''

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED NOVEMBER 20, 1972, AND DECEMBER 18, 1972

Pub. L. 93–595, §3, Jan. 2, 1975, 88 Stat. 1949, provided: ''The Congress expressly approves the amendments to the Federal Rules of Civil Procedure [amending Rules 30(c), 32(c), 43, and 44.1], and the amendments to the Federal Rules of Criminal Procedure [amending Rules 26, 26.1, and 28] which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act [Jan. 2, 1975].''

PART III—PRISONS AND PRISONERS

Chap.		Sec.
301.	**General provisions**	**4001**
303.	**Bureau of Prisons**	**4041**
305.	**Commitment and transfer**	**4081**
306.	**Transfer to or from foreign countries**	**4100**
307.	**Employment**	**4121**
[309.	**Repealed.]**	
[311.	**Repealed.]**	
313.	**Offenders with mental disease or defect**	**4241**
[314.	**Repealed.]**	
315.	**Discharge and release payments**	**4281**
317.	**Institutions for women**	**4321**
319.	**National Institute of Corrections**	**4351**

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, §3597, Nov. 29, 1990, 104 Stat. 4931, added items 306 and 319.

1984—Pub. L. 98–473, title II, §218(d), Oct. 12, 1984, 98 Stat. 2027, in items 309, 311, and 314 substituted ''Repealed'' for ''Good time allowances'', ''Parole'', and ''Narcotic addicts'', respectively.

Pub. L. 98–473, title II, §403(b), Oct. 12, 1984, 98 Stat. 2067, substituted ''Offenders with mental disease or defect'' for ''Mental defectives'' in item 313.

1966—Pub. L. 89–793, title VI, §603, Nov. 8, 1966, 80 Stat. 1450, added item 314.

CHAPTER 301—GENERAL PROVISIONS

Sec.
4001. Limitation on detention; control of prisons.
4002. Federal prisoners in State institutions; employment.
4003. Federal institutions in States without appropriate facilities.
4004. Oaths and acknowledgments.

Sec.
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.

AMENDMENTS

1988—Pub. L. 100–690, title VII, § 7608(d)(2), Nov. 18, 1988, 102 Stat. 4517, added item 4013.

1984—Pub. L. 98–473, title II, § 1109(e), Oct. 12, 1984, 98 Stat. 2148, added item 4012.

1971—Pub. L. 92–128, § 1(c), Sept. 25, 1971, 85 Stat. 347, substituted ''Limitation on detention; control of prisons'' for ''Control by Attorney General'' in item 4001.

1966—Pub. L. 89–554, § 3(e), Sept. 6, 1966, 80 Stat. 610, added items 4010 and 4011.

§ 4001. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

(June 25, 1948, ch. 645, 62 Stat. 847; Sept. 25, 1971, Pub. L. 92–128, § 1(a), (b), 85 Stat. 347.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1934 ed., §§ 741 and 753e (Mar. 3, 1891, ch. 529, §§ 1, 4, 26 Stat. 839; May 14, 1930, ch. 274, § 6, 46 Stat. 326).

This section consolidates said sections 741 and 753e with such changes of language as were necessary to effect consolidation.

''The Classification Act, as amended,'' was inserted more clearly to express the existing procedure for appointment of officers and employees as noted in letter of the Director of Bureau of Prisons, June 19, 1944.

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (b)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Classification Act, as amended, referred to in subsec. (b)(1), originally was the Classification Act of 1923, Mar. 4, 1923, ch. 265, 42 Stat. 1488, as amended, which was repealed by section 1202 of the Classification Act of 1949, Oct. 28, 1949, ch. 782, 63 Stat. 972. Section 1106(a) of the 1949 Act provided that references in other laws to the Classification Act of 1923 shall be held and considered to mean the Classification Act of 1949. The Classification Act of 1949 was in turn repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 and subchapter III of chapter 53 of Title 5.

AMENDMENTS

1971—Pub. L. 92–128, § 1(b), substituted ''Limitation on detention; control of prisons'' for ''Control by Attorney General'' in section catchline.

Subsec. (a). Pub. L. 92–128, § 1(a), added subsec. (a).

Subsec. (b). Pub. L. 92–128, § 1(a), designated existing first and second pars. as pars. (1) and (2) of subsec. (b).

FEE TO RECOVER COST OF INCARCERATION

Pub. L. 102–395, title I, § 111(a), Oct. 6, 1992, 106 Stat. 1842, provided that:

''(1) For fiscal year 1993 and thereafter the Attorney General shall establish and collect a fee to cover the costs of confinement from any person convicted in a United States District Court and committed to the Attorney General's custody.

''(2) Such fee shall be equivalent to the average cost of one year of incarceration, and the Attorney General shall credit or rebate a prorated portion of the fee with respect to any such person incarcerated for 334 days or fewer in a given fiscal year.

''(3) The calculation of the number of days of incarceration in a given fiscal year for the purpose of such fee shall include time served prior to conviction.

''(4) The Attorney General shall not collect such fee from any person with respect to whom a fine was imposed or waived by a judge of a United States District Court pursuant to section 5E1.2(f) and (i) of the United States Sentencing Guidelines, or any successor provisions.

''(5) In cases in which the Attorney General has authority to collect the fee, the Attorney General shall have discretion to waive the fee or impose a lesser fee if the person under confinement establishes that (1) he or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or (2) imposition of a fine would unduly burden the defendant's dependents.

''(6) For fiscal year 1993 only, fees collected in accordance with this section shall be deposited as offsetting receipts to the Treasury.

''(7) For fiscal year 1994 and thereafter, fees collected in accordance with this section shall be deposited as offsetting collections to the appropriation Federal Prison System, 'Salaries and expenses', and shall be available, inter alia, to enhance alcohol and drug abuse prevention programs.''

USE OF INACTIVE DEPARTMENT OF DEFENSE FACILITIES AS PRISONS

Pub. L. 95–624, § 9, Nov. 9, 1978, 92 Stat. 3463, provided that: ''The Attorney General shall consult with the Secretary of Defense in order to develop a plan to assure that such suitable facilities as the Department of Defense operates which are not in active use shall be made available for operation by the Department of Justice for the confinement of United States prisoners. Such plan shall provide for the return to the management of the Department of Defense of any such facility upon a finding by the Secretary of Defense that such return is necessary to the operation of the Department.''

§ 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public

works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

(June 25, 1948, ch. 645, 62 Stat. 847; Nov. 9, 1978, Pub. L. 95–624, § 8, 92 Stat. 3463.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753b, (May 14, 1930, ch. 274, § 3, 46 Stat. 325).

Changes were made in phraseology. The first sentence was incorporated in section 4042 of this title.

AMENDMENTS

1978—Pub. L. 95–624 substituted ''Attorney General'' for ''Director of the Bureau of Prisons''.

CROSS REFERENCES

Bureau of Prisons, see section 4041 et seq. of this title.

Employment in Federal prisons, see section 4121 et seq. of this title.

§ 4003. Federal institutions in States without appropriate facilities

If by reason of the refusal or inability of the authorities having control of any jail, workhouse, penal, correctional, or other suitable institution of any State or Territory, or political subdivision thereof, to enter into a contract for the imprisonment, subsistence, care, or proper employment of United States prisoners, or if there are no suitable or sufficient facilities available at reasonable cost, the Attorney General may select a site either within or convenient to the State, Territory, or judicial district concerned and cause to be erected thereon a house of detention, workhouse, jail, prison-industries project, or camp, or other place of confinement, which shall be used for the detention of persons held under authority of any Act of Congress, and of such other persons as in the opinion of the Attorney General are proper subjects for confinement in such institutions.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753c (May 14, 1930, ch. 274, § 4, 46 Stat. 326).

Words ''with or without hard labor'' were omitted as unnecessary in view of omission of ''hard labor'' as part of the punishment. (See reviser's note under section 1 of this title.)

The phrase ''held under authority of any Act of Congress,'' was substituted for the following ''held as material witnesses, persons awaiting trial, persons sentenced to imprisonment and awaiting transfer to other institutions, persons held for violation of the immigration laws or awaiting deportation, and for the confinement of persons convicted of offenses against the United States and sentenced to imprisonment''.

Minor changes in arrangement and phraseology were made.

CROSS REFERENCES

Appropriations for sites and buildings, see section 4009 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4009 of this title.

§ 4004. Oaths and acknowledgments

The wardens and superintendents, associate wardens and superintendents, chief clerks, and record clerks, of Federal penal or correctional institutions, may administer oaths to and take acknowledgments of officers, employees, and inmates of such institutions, but shall not demand or accept any fee or compensation therefor.

(June 25, 1948, ch. 645, 62 Stat. 848; July 7, 1955, ch. 282, 69 Stat. 282; Oct. 12, 1984, Pub. L. 98–473, title II, § 223(*l*), 98 Stat. 2029.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 754 (Feb. 11, 1938, ch. 24, §§ 1, 2, 52 Stat. 28).

Section was extended to include superintendents and associate superintendents.

Minor changes were made in phraseology. Words ''the authority conferred by'' were omitted as surplusage.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''and record clerks'' for ''record clerks, and parole officers''.

1955—Act July 7, 1955, permitted chief clerks, record clerks, and parole officers to administer oaths and take acknowledgments.

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 4005. Medical relief; expenses

(a) Upon request of the Attorney General and to the extent consistent with the Assisted Suicide Funding Restriction Act of 1997, the Federal Security Administrator shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal penal and correctional institutions.

(b) The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the Attorney General may make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, for payment of compensation, allowances, and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service.

(June 25, 1948, ch. 645, 62 Stat. 848; Apr. 30, 1997, Pub. L. 105–12, § 9(k), 111 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 751, 752 (May 13, 1930, ch. 256, §§ 1, 2, 46 Stat. 273; Reorg. Plan No. I, §§ 201, 205, 4 F.R. 2728, 2729, 53 Stat. 1424, 1425).

Section consolidates sections 751 and 752 of title 18, U.S.C., 1940 ed., as subsections (a) and (b), respectively.

''Federal Security Administrator'' was substituted for ''Federal Security Agency.''

Functions of the Secretary of the Treasury were transferred to the Federal Security Administrator by Reorg. Plan No. I, § 205, 4 F.R. 2729, 53 Stat. 1425. (See note under section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

The first part of said section 751, which read ''Authorized medical relief under the Department of Justice in Federal penal and correctional institutions shall be supervised and furnished by personnel of the Public Health Service, and'' was omitted as surplusage, considering the remainder of the text.

Minor changes of phraseology were made.

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–12 inserted ''and to the extent consistent with the Assisted Suicide Funding Restriction Act of 1997'' after ''Upon request of the Attorney General''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare, and office of Federal Security Administrator abolished by sections 5 and 8 of Reorg. Plan No. 1 of 1953, as amended, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5.

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 250.

§ 4006. Subsistence for prisoners

The Attorney General shall allow and pay only the reasonable and actual cost of the subsistence of prisoners in the custody of any marshal of the United States, and shall prescribe such regulations for the government of the marshals as will enable him to determine the actual and reasonable expenses incurred.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 703 (R.S. § 5545; Mar. 2, 1911, ch. 192, 36 Stat. 1003).

The provisions relating to the Washington Asylum and Jail are now included in the District of Columbia Code. (See D.C. Code, 1940 ed., § 24–421.)

Changes of phraseology were made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4013 of this title.

§ 4007. Expenses of prisoners

The expenses attendant upon the confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 848.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 701 (R.S. § 5536).

Provision authorizing expenses for transportation was omitted as covered by similar provision in section 4008 of this title.

Minor changes of phraseology were made.

PAYMENT OF COSTS OF INCARCERATION BY FEDERAL PRISONERS

Pub. L. 100–690, title VII, § 7301, Nov. 18, 1988, 102 Stat. 4463, provided that: ''Not later than 1 year after the date of enactment of this section [Nov. 18, 1988], the United States Sentencing Commission shall study the feasibility of requiring prisoners incarcerated in Federal correctional institutions to pay some or all of the costs incident to the prisoner's confinement, including, but not limited to, the costs of food, housing, and shelter. The study shall review measures which would allow prisoners unable to pay such costs to work at paid employment within the community, during incarceration or after release, in order to pay the costs incident to the prisoner's confinement.''

§ 4008. Transportation expenses

Prisoners shall be transported by agents designated by the Attorney General or his authorized representative.

The reasonable expense of transportation, necessary subsistence, and hire and transportation of guards and agents shall be paid by the Attorney General from such appropriation for the Department of Justice as he shall direct.

Upon conviction by a consular court or court martial the prisoner shall be transported from the court to the place of confinement by agents of the Department of State, the Army, Navy, or Air Force, as the case may be, the expense to be paid out of the Treasury of the United States in the manner provided by law.

(June 25, 1948, ch. 645, 62 Stat. 849; May 24, 1949, ch. 139, § 61, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 753g (May 14, 1930, ch. 274, § 8, 46 Stat. 327).

The second paragraph was originally a proviso.

Minor changes of phraseology were made.

1949 ACT

This section [section 61] corrects the third paragraph of section 4008 of title 18, U.S.C., by redesignating the

''War Department'' as the ''Department of the Army'', to conform to such redesignation by act of July 26, 1947 (ch. 343, title II, § 205(a), 61 Stat. 501), and by inserting a reference to the Department of the Air Force, in view of the creation of such Department by the same act.

AMENDMENTS

1949—Act May 24, 1949, substituted ''the Army, Navy, or Air Force'' for ''War, or the Navy''.

CROSS REFERENCES

Expense of transferring prisoners to prison camps, see section 4125 of this title.

§ 4009. Appropriations for sites and buildings

The Attorney General may authorize the use of a sum not to exceed $100,000 in each instance, payable from any unexpended balance of the appropriation ''Support of United States prisoners'' for the purpose of leasing or acquiring a site, preparation of plans, and erection of necessary buildings under section 4003 of this title.

If in any instance it shall be impossible or impracticable to secure a proper site and erect the necessary buildings within the above limitation the Attorney General may authorize the use of a sum not to exceed $10,000 in each instance, payable from any unexpended balance of the appropriation ''Support of United States prisoners'' for the purpose of securing options and making preliminary surveys or sketches.

Upon selection of an appropriate site the Attorney General shall submit to Congress an estimate of the cost of purchasing same and of remodeling, constructing, and equipping the necessary buildings thereon.

(June 25, 1948, ch. 645, 62 Stat. 849.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753d (May 14, 1930, ch. 274, § 5, 46 Stat. 326).

Minor changes of phraseology were made.

§ 4010. Acquisition of additional land

The Attorney General may, when authorized by law, acquire land adjacent to or in the vicinity of a Federal penal or correctional institution if he considers the additional land essential to the protection of the health or safety of the inmates of the institution.

(Added Pub. L. 89–554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341f.	July 28, 1950, ch. 503, § 7, 64 Stat. 381. Sept. 16, 1959, Pub. L. 86–286, 73 Stat. 567.

The reference to an appropriation law is omitted as covered by the words ''when authorized by law''.

§ 4011. Disposition of cash collections for meals, laundry, etc.

Collections in cash for meals, laundry, barber service, uniform equipment, and other items for which payment is made originally from appropriations for the maintenance and operation of Federal penal and correctional institutions, may be deposited in the Treasury to the credit of the appropriation currently available for those items when the collection is made.

(Added Pub. L. 89–554, § 3(f), Sept. 6, 1966, 80 Stat. 610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341g.	July 28, 1950, ch. 503, § 8, 64 Stat. 381.

§ 4012. Summary seizure and forfeiture of prison contraband

An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director of the Bureau of Prisons, summarily seize any object introduced into a Federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation or order promulgated by the Director, and such object shall be forfeited to the United States.

(Added Pub. L. 98–473, title II, § 1109(d), Oct. 12, 1984, 98 Stat. 2148.)

§ 4013. Support of United States prisoners in non-Federal institutions

(a) The Attorney General, in support of United States prisoners in non-Federal institutions, is authorized to make payments from funds appropriated for the support of United States prisoners for—

(1) necessary clothing;

(2) medical care and necessary guard hire;

(3) the housing, care, and security of persons held in custody of a United States marshal pursuant to Federal law under agreements with State or local units of government or contracts with private entities; and

(4) entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any State or local jurisdiction which agrees to provide guaranteed bed space for Federal detainees within that correctional system, in accordance with regulations which are issued by the Attorney General and are comparable to the regulations issued under section 4006 of this title, except that—

(A) amounts made available for purposes of this paragraph shall not exceed the average per-inmate cost of constructing similar confinement facilities for the Federal prison population,

(B) the availability of such federally assisted facility shall be assured for housing Federal prisoners, and

(C) the per diem rate charged for housing such Federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement.

(b)(1) The United States Marshals Service may designate districts that need additional support from private detention entities under subsection (a)(3) based on—

(A) the number of Federal detainees in the district; and

(B) the availability of appropriate Federal, State, and local government detention facilities.

(2) In order to be eligible for a contract for the housing, care, and security of persons held in custody of the United States Marshals pursuant to Federal law and funding under subsection (a)(3), a private entity shall—

(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

(B) meet the standards of the American Correctional Association;

(C) comply with all applicable State and local laws and regulations;

(D) have approved fire, security, escape, and riot plans; and

(E) comply with any other regulations that the Marshals Service deems appropriate.

(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).

(Added Pub. L. 100–690, title VII, § 7608(d)(1), Nov. 18, 1988, 102 Stat. 4516; amended Pub. L. 101–647, title XVII, § 1701, title XXXV, § 3599, Nov. 29, 1990, 104 Stat. 4843, 4931; Pub. L. 103–322, title XXXIII, § 330011(*o*), Sept. 13, 1994, 108 Stat. 2145.)

AMENDMENTS

1994—Pub. L. 103–322, § 330011(*o*), repealed Pub. L. 101–647, § 3599. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–647, § 3599, which struck out "(a)" at beginning of text, was repealed by Pub. L. 103–322, § 330011(*o*).

Subsec. (b). Pub. L. 101–647, § 1701, added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 13711.

CHAPTER 303—BUREAU OF PRISONS

Sec.
4041. Bureau of Prisons; director and employees.
4042. Duties of Bureau of Prisons.
4043. Acceptance of gifts and bequests to the Commissary Funds, Federal Prisons.
4044. Donations on behalf of the Bureau of Prisons.
4045. Authority to conduct autopsies.
4046. Shock incarceration program.
4047. Prison impact assessments.

AMENDMENTS

1994—Pub. L. 103–322, title II, § 20402(b), Sept. 13, 1994, 108 Stat. 1825, added item 4047.

1990—Pub. L. 101–647, title XXX, § 3001(b), Nov. 29, 1990, 104 Stat. 4915, added item 4046.

1986—Pub. L. 99–646, § 67(b), Nov. 10, 1986, 100 Stat. 3616, added items 4044 and 4045.

1982—Pub. L. 97–258, § 2(d)(4)(A), Sept. 13, 1982, 96 Stat. 1059, added item 4043.

§ 4041. Bureau of Prisons; director and employees

The Bureau of Prisons shall be in charge of a director appointed by and serving directly under the Attorney General at a salary of $10,000 a year. The Attorney General may appoint such additional officers and employees as he deems necessary.

(June 25, 1948, ch. 645, 62 Stat. 849.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753 (May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The entire second sentence was omitted as executed. All powers and authority originally vested in the former Superintendent of Prisons are now possessed by the Bureau of Prisons.

Minor changes of phraseology were made.

COMPENSATION OF DIRECTOR

Compensation of Director, see section 5315 of Title 5, Government Organization and Employees.

§ 4042. Duties of Bureau of Prisons

(a) IN GENERAL.—The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local governments in the improvement of their correctional systems; and

(5) provide notice of release of prisoners in accordance with subsections (b) and (c).

(b) NOTICE OF RELEASE OF PRISONERS.—(1) At least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, written notice of the release or change of residence shall be provided to the chief law enforcement officer of the State and of the local jurisdiction in which the prisoner will reside. Notice prior to release shall be provided by the Director of the Bureau of Prisons. Notice concerning a change of residence following release shall be provided by the probation officer responsible for the supervision of the released prisoner, or in a manner specified by the Director of the Administrative Office of the United States Courts. The notice requirements under this subsection do not apply in relation to a prisoner being protected under chapter 224.

(2) A notice under paragraph (1) shall disclose—

(A) the prisoner's name;

(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

(3) A prisoner is described in this paragraph if the prisoner was convicted of—

(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

(B) a crime of violence (as defined in section 924(c)(3)).

(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph (4) who is released from prison or sentenced to probation, notice shall be provided to—

(A) the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and

(B) a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall be subject to a registration requirement as a sex offender. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (4) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

(3) The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts.

(4) A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):

(A) An offense under section 1201 involving a minor victim.

(B) An offense under chapter 109A.

(C) An offense under chapter 110.

(D) An offense under chapter 117.

(E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection.

(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).

(d) APPLICATION OF SECTION.—This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

(June 25, 1948, ch. 645, 62 Stat. 849; July 1, 1968, Pub. L. 90–371, 82 Stat. 280; Sept. 13, 1994, Pub. L. 103–322, title II, § 20417, 108 Stat. 1834; Nov. 26, 1997, Pub. L. 105–119, title I, § 115(a)(8)(A), 111 Stat. 2464.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753a, 753b, (May 14, 1930, ch. 274, §§ 2, 3, 46 Stat. 325).

Because of similarity in the provisions, the first sentence of section 753b of title 18, U.S.C., 1940 ed., was consolidated with section 753a of title 18, U.S.C., 1940 ed., to form this section.

Minor changes were made in phraseology.

The remainder of said section 753b of title 18, U.S.C., 1940 ed., is incorporated in section 4002 of this title.

REFERENCES IN TEXT

Section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (c)(3), is classified to section 14071(a)(3) of Title 42, The Public Health and Welfare.

AMENDMENTS

1997—Subsec. (a)(5). Pub. L. 105–119, § 115(a)(8)(A)(i), substituted ''subsections (b) and (c)'' for ''subsection (b)''.

Subsec. (b)(4). Pub. L. 105–119, § 115(a)(8)(A)(ii), struck out par. (4) which read as follows: ''The notice provided under this section shall be used solely for law enforcement purposes.''

Subsecs. (c), (d). Pub. L. 105–119, § 115(a)(8)(A)(iv), added subsec. (c) and redesignated former subsec. (c) as (d).

1994—Pub. L. 103–322 designated first par. of existing provisions as subsec. (a) and inserted heading, substituted ''provide'' for ''Provide'' and ''; and'' for period at end of par. (4), added par. (5) and subsec. (b), and designated second sentence of existing provisions as subsec. (c) and inserted heading.

1968—Pub. L. 90–371 added cl. (4).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

APPLICATION TO PRISONERS TO WHICH PRIOR LAW APPLIES

Section 20404 of Pub. L. 103–322 provided that: ''In the case of a prisoner convicted of an offense committed prior to November 1, 1987, the reference to supervised release in section 4042(b) of title 18, United States Code, shall be deemed to be a reference to probation or parole.''

COST SAVINGS MEASURES

Pub. L. 101–647, title XXIX, § 2907, Nov. 29, 1990, 104 Stat. 4915, provided that: ''The Director of the Federal Bureau of Prisons (referred to as the 'Director') shall, to the extent practicable, take such measures as are appropriate to cut costs of construction. Such measures may include reducing expenditures for amenities including, for example, color television or pool tables.''

ADMINISTRATION OF CONFINEMENT FACILITIES LOCATED ON MILITARY INSTALLATIONS BY BUREAU OF PRISONS

Pub. L. 100–690, title VII, § 7302, Nov. 18, 1988, 102 Stat. 4463, provided that: ''In conjunction with the Depart-

ment of Defense and the Commission on Alternative Utilization of Military Facilities as established in the National Defense Authorization Act of Fiscal Year 1989 [see section 2819 of Pub. L. 100–456, set out as a note under section 2391 of Title 10, Armed Forces], the Bureau of Prisons shall be responsible for—

''(1) administering Bureau of Prisons confinement facilities for civilian nonviolent prisoners located on military installations in cooperation with the Secretary of Defense, with an emphasis on placing women inmates in such facilities, or in similar minimum security confinement facilities not located on military installations, so that the percentage of eligible women equals the percentage of eligible men housed in such or similar minimum security confinement facilities (i.e., prison camps);

''(2) establishing and regulating drug treatment programs for inmates held in such facilities in coordination and cooperation with the National Institute on Drug Abuse; and

''(3) establishing and managing work programs in accordance with guidelines under the Bureau of Prisons for persons held in such facilities and in cooperation with the installation commander.''

CROSS REFERENCES

Expenses of transportation of prisoners, see section 4008 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3563, 3583 of this title.

§ 4043. Acceptance of gifts and bequests to the Commissary Funds, Federal Prisons

The Attorney General may accept gifts or bequests of money for credit to the ''Commissary Funds, Federal Prisons''. A gift or bequest under this section is a gift or bequest to or for the use of the United States under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(Added Pub. L. 97–258, § 2(d)(4)(B), Sept. 13, 1982, 96 Stat. 1059; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4043	31:725s–4.	May 15, 1952, ch. 289, § 2, 66 Stat. 72; July 9, 1952, ch. 600, 66 Stat. 479.

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

DEPOSIT OR INVESTMENT OF EXCESS AMOUNTS IN FEDERAL PRISON COMMISSARY FUND

Section 108 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that: ''For fiscal year 1996 and each fiscal year thereafter, amounts in the Federal Prison System's Commissary Fund, Federal Prisons, which are not currently needed for operations, shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investment shall be deposited in the Commissary Fund.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–317, title I, § 107, Aug. 26, 1994, 108 Stat. 1735.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 170, 2055.

§ 4044. Donations on behalf of the Bureau of Prisons

The Attorney General may, in accordance with rules prescribed by the Attorney General, accept in the name of the Department of Justice any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries. The Attorney General may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey such property other than money.

(Added Pub. L. 99–646, § 67(a), Nov. 10, 1986, 100 Stat. 3616.)

§ 4045. Authority to conduct autopsies

A chief executive officer of a Federal penal or correctional facility may, pursuant to rules prescribed by the Director, order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death, when it is determined that such autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of State and local law protecting religious beliefs with respect to such autopsies shall be observed. Such officer may also order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility, with the written consent of a person authorized to permit such an autopsy or post-mortem operation under the law of the State in which the facility is located.

(Added Pub. L. 99–646, § 67(a), Nov. 10, 1986, 100 Stat. 3616.)

§ 4046. Shock incarceration program

(a) The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

(b) For such initial portion of the term of imprisonment as the Bureau of Prisons may determine, not to exceed 6 months, an inmate in the shock incarceration program shall be required to—

(1) adhere to a highly regimented schedule that provides the strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training; and

(2) participate in appropriate job training and educational programs (including literacy programs) and drug, alcohol, and other counseling programs.

(c) An inmate who in the judgment of the Director of the Bureau of Prisons has successfully completed the required period of shock incarceration shall remain in the custody of the Bureau for such period (not to exceed the remainder of

the prison term otherwise required by law to be served by that inmate), and under such conditions, as the Bureau deems appropriate.

(Added Pub. L. 101–647, title XXX, § 3001(a), Nov. 29, 1990, 104 Stat. 4915.)

AUTHORIZATION OF APPROPRIATIONS

Section 3002 of Pub. L. 101–647 provided that: ''There are authorized to be appropriated for fiscal year 1990 and each fiscal year thereafter such sums as may be necessary to carry out the shock incarceration program established under the amendments made by this Act [see Tables for classification]''.

§ 4047. Prison impact assessments

(a) Any submission of legislation by the Judicial or Executive branch which could increase or decrease the number of persons incarcerated in Federal penal institutions shall be accompanied by a prison impact statement (as defined in subsection (b)).

(b) The Attorney General shall, in consultation with the Sentencing Commission and the Administrative Office of the United States Courts, prepare and furnish prison impact assessments under subsection (c) of this section, and in response to requests from Congress for information relating to a pending measure or matter that might affect the number of defendants processed through the Federal criminal justice system. A prison impact assessment on pending legislation must be supplied within 21 days of any request. A prison impact assessment shall include—

(1) projections of the impact on prison, probation, and post prison supervision populations;

(2) an estimate of the fiscal impact of such population changes on Federal expenditures, including those for construction and operation of correctional facilities for the current fiscal year and 5 succeeding fiscal years;

(3) an analysis of any other significant factor affecting the cost of the measure and its impact on the operations of components of the criminal justice system; and

(4) a statement of the methodologies and assumptions utilized in preparing the assessment.

(c) The Attorney General shall prepare and transmit to the Congress, by March 1 of each year, a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year.

(Added Pub. L. 103–322, title II, § 20402(a), Sept. 13, 1994, 108 Stat. 1824.)

CHAPTER 305—COMMITMENT AND TRANSFER

Sec.
4081. Classification and treatment of prisoners.
4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough.
4083. Penitentiary imprisonment; consent.
4084. Repealed.
4085. Repealed.
4086. Temporary safe-keeping of federal offenders by marshals.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 601(f)(14), Oct. 11, 1996, 110 Stat. 3500, substituted ''centers;'' for ''centers,'' in item 4082.

1984—Pub. L. 98–473, title II, § 218(e), Oct. 12, 1984, 98 Stat. 2027, substituted ''Repealed'' for ''Copy of commitment delivered with prisoner'' in item 4084, and ''Repealed'' for ''Transfer for state offense; expense'' in item 4085.

1965—Pub. L. 89–176, § 2, Sept. 10, 1965, 79 Stat. 675, substituted ''residential treatment centers, extension of limits of confinement; work furlough'' for ''transfer'' in item 4082.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 955.

§ 4081. Classification and treatment of prisoners

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

(June 25, 1948, ch. 645, 62 Stat. 850.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 907 (May 27, 1930, ch. 339, § 7, 46 Stat. 390).

Language of section is so changed as to make one policy for all institutions, thus clarifying the manifest intent of Congress.

Minor changes were made in phraseology.

§ 4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

(a) The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, shall be deemed an escape from the custody of the Attorney General punishable as provided in chapter 35 of this title.

(b)(1) The Attorney General shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to prisoners who have been convicted of felony offenses against the United States and who are confined at a facility which is a residential community treatment center located in the geographical area in which such agency has jurisdiction, the following information maintained by the Bureau of Prisons (to the extent that the Bureau of Prisons maintains such information)—

(A) the names of such prisoners;

(B) the community treatment center addresses of such prisoners;

(C) the dates of birth of such prisoners;

(D) the Federal Bureau of Investigation numbers assigned to such prisoners;

(E) photographs and fingerprints of such prisoners; and

(F) the nature of the offenses against the United States of which each such prisoner has

been convicted and the factual circumstances relating to such offenses.

(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.

(c) As used in this section—

the term ''facility'' shall include a residential community treatment center; and

the term ''relative'' shall mean a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(June 25, 1948, ch. 645, 62 Stat. 850; Sept. 10, 1965, Pub. L. 89–176, § 1, 79 Stat. 674; Dec. 28, 1973, Pub. L. 93–209, 87 Stat. 907; Oct. 12, 1984, Pub. L. 98–473, title II, § 218(a), 98 Stat. 2027; Nov. 10, 1986, Pub. L. 99–646, § 57(a), 100 Stat. 3611.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 753f (May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Words ''by the juvenile court of the District of Columbia, as well as to those committed by any court of the United States,'' at end of section were omitted as unnecessary, and word ''all'' inserted before ''persons'', without change of meaning.

Provision against penitentiary imprisonment for a term of 1 year or less without consent of defendant was incorporated in section 4083 of this title.

The phrase ''if in his judgment it shall be for the well-being of the prisoner or relieve overcrowded or unhealthful conditions in the institution where such person is confined or for other reasons'', was omitted as unnecessary.

Changes were made in phraseology.

This section supersedes section 705 of title 18, U.S.C., 1940 ed., providing for execution of sentences in houses of correction or reformation; and section 748 of title 18, U.S.C., 1940 ed., providing for confinement of prisoners in United States Disciplinary Barracks.

AMENDMENTS

1986—Subsecs. (f), (g). Pub. L. 99–646 added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Pub. L. 98–473 struck out subsecs. (a) to (c) and (e) and redesignated subsecs. (d), (f), and (g) as (a), (b), and (c), respectively. Prior to amendment subsecs. (a) to (c) and (e) read as follows:

''(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

''(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another.

''(c) The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to—

''(1) visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with the public interest; or

''(2) work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner of the institution or facility to which he is committed, provided that—

''(i) representatives of local union central bodies or similar labor union organizations are consulted;

''(ii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

''(iii) the rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts.

''(e) The authority conferred upon the Attorney General by this section shall extend to all persons committed to the National Training School for Boys.''

1973—Subsec. (c)(1). Pub. L. 93–209 provided for extension of limits to permit establishment or reestablishment of family and community ties and struck out ''only'' after ''may be granted''.

1965—Subsec. (a). Pub. L. 89–176 designated as subsec. (a) first unnumbered par. and struck out ''or his authorized representative'' after ''Attorney General of the United States''.

Subsec. (b). Pub. L. 89–176 designated as subsec. (b) second and third unnumbered par., inserted ''or facility'' after ''appropriate institution'', substituted ''may at any time transfer a person from one place of confinement to another'' for ''may order any inmate transferred from one institution to another'', and made minor changes in language.

Subsecs. (c), (d). Pub. L. 89–176 added subsecs. (c) and (d).

Subsec. (e). Pub. L. 89–176 designated as subsec. (e) fourth and last unnumbered pars.

Subsec. (f). Pub. L. 89–176 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

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

CROSS REFERENCES

Expense of transferring prisoners at prison camps, see section 4125 of this title.

Expenses of transportation of prisoners, see section 4008 of this title.

Penitentiary imprisonment for term of one year prohibited except with consent of defendant, see section 4083 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5003 of this title.

§ 4083. Penitentiary imprisonment; consent

Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary.

A sentence for an offense punishable by imprisonment for one year or less shall not be served in a penitentiary without the consent of the defendant.

(June 25, 1948, ch. 645, 62 Stat. 850; Sept. 14, 1959, Pub. L. 86–256, 73 Stat. 518.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753f, 762 (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1896, ch. 400, § 1, 29 Stat. 380; May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Said section 762 was condensed and simplified and extended to all penitentiaries instead of to Leavenworth only, since the section is merely declaratory of existing law. (See section 1 of this title classifying offenses and notes thereunder.)

The second paragraph is derived from said section 753f of title 18, U.S.C., 1940 ed.

Minor changes of phraseology were made.

AMENDMENTS

1959—Pub. L. 86–256 substituted ''punishable by imprisonment for'' for ''and sentenced to terms of imprisonment of'' in first sentence.

[§§ 4084, 4085. Repealed. Pub. L. 98–473, title II, § 218(a)(3), Oct. 12, 1984, 98 Stat. 2027]

Section 4084, act June 25, 1948, ch. 645, 62 Stat. 850, related to delivery of prisoner with copy of commitment.

Section 4085, act June 25, 1948, ch. 645, 62 Stat. 850, related to authority, expense, etc., respecting transfer of Federal prisoner for State offense.

EFFECTIVE DATE OF REPEAL

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

§ 4086. Temporary safe-keeping of federal offenders by marshals

United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 691, 692, (R.S. §§ 5537, 5538).

Said section 691 of title 18, U.S.C., 1940 ed., is superseded by sections 753b and 753c of title 18, U.S.C., 1940 ed., which are incorporated in sections 4002, 4003 and 4042 of this title.

This section is rewritten to retain the intent of section 692 of title 18, U.S.C., 1940 ed., which was to insure a safekeeping of United States prisoners until their commitment or confinement in Federal penal institutions. The language conforms with that of said sections 692 and 753b.

Minor changes were made in phraseology.

CROSS REFERENCES

Bureau of Prisons responsible for safekeeping of United States prisoners, see sections 4002 and 4042 of this title.

Construction of Federal prisons in States without facilities for Federal prisoners, see sections 4003 and 4009 of this title.

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

Sec.
4100. Scope and limitation of chapter.
4101. Definitions.
4102. Authority of the Attorney General.
4103. Applicability of United States laws.
4104. Transfer of offenders on probation.
4105. Transfer of offenders serving sentence of imprisonment.
4106. Transfer of offenders on parole; parole of offenders transferred.
4106A. Transfer of offenders on parole; parole of offenders transferred.
4107. Verification of consent of offender to transfer from the United States.
4108. Verification of consent of offender to transfer to the United States.
4109. Right to counsel, appointment of counsel.
4110. Transfer of juveniles.
4111. Prosecution barred by foreign conviction.
4112. Loss of rights, disqualification.
4113. Status of alien offender transferred to a foreign country.
4114. Return of transferred offenders.
4115. Execution of sentences imposing an obligation to make restitution or reparations.

AMENDMENTS

1988—Pub. L. 100–690, title VII, § 7101(c), Nov. 18, 1988, 102 Stat. 4415, added item 4106A.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 955.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country. The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon,

commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1212; amended Pub. L. 100–690, title VII, § 7101(e), Nov. 18, 1988, 102 Stat. 4416.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 inserted ", or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer," after "under eighteen years of age", ", guardian ad litem," after "guardian", and "The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title."

AUTHORIZATION OF APPROPRIATIONS

Section 5(a) of Pub. L. 95–144 provided that: "There is authorized to be appropriated such funds as may be required to carry out the purposes of this Act [which enacted this chapter and sections 955 of Title 10, Armed Forces, and 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title]".

PRISONER TRANSFER TREATIES

Pub. L. 104–208, div. C, title III, § 330, Sept. 30, 1996, 110 Stat. 3009–631, provided that:

"(a) NEGOTIATIONS WITH OTHER COUNTRIES.—(1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who—

"(A) is a national of a country that is party to such a treaty; and

"(B) has been convicted of a criminal offense under Federal or State law and who—

"(i) is not in lawful immigration status in the United States, or

"(ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

"(2) In entering into negotiations under paragraph (1), the President may consider providing for appropriate compensation, subject to the availability of appropriations, in cases where the United States is able to independently verify the adequacy of the sites where aliens will be imprisoned and the length of time the alien is actually incarcerated in the foreign country under such a treaty.

"(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

"(1) the focus of negotiations for such agreements should be—

"(A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,

"(B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,

"(C) to eliminate any requirement of prisoner consent to such a transfer, and

"(D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prisons [sic] sentences;

"(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States; and

"(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

"(c) PRISONER CONSENT.—Notwithstanding any other provision of law, except as required by treaty, the transfer of an alien from a Federal, State, or local incarceration facility under an agreement of the type referred to in subsection (a) shall not require consent of the alien.

"(d) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], and annually thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate stating whether each prisoner transfer treaty to which the United States is a party has been effective in the preceding 12 months in bringing about the return of deportable incarcerated aliens to the country of which they are nationals and in ensuring that they serve the balance of their sentences.

"(e) TRAINING FOREIGN LAW ENFORCEMENT PERSONNEL.—(1) Subject to paragraph (2), the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training an appropriate number of foreign law enforcement personnel, and shall make appointments of foreign law enforcement personnel to such academies, as necessary to further the following United States law enforcement goals:

"(A) Preventing of drug smuggling and other cross-border criminal activity.

"(B) Preventing illegal immigration.

"(C) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or the appropriate duty or tariff for which has not been paid).

"(2) The appointments described in paragraph (1) shall be made only to the extent there is capacity in such academies beyond what is required to train United States citizens needed in the Border Patrol and Customs Service, and only of personnel from a country with which the prisoner transfer treaty has been stated to be effective in the most recent report referred to in subsection (d).

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4109 of this title.

§ 4101. Definitions

As used in this chapter the term—

(a) "double criminality" means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(b) "imprisonment" means a penalty imposed by a court under which the individual is confined to an institution;

(c) ''juvenile'' means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) ''juvenile delinquency'' means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) ''offender'' means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) ''parole'' means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision, including a term of supervised release pursuant to section 3583;

(g) ''probation'' means any form of a sentence under which the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which a penalty of imprisonment may be ordered executed;

(h) ''sentence'' means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) ''transfer'' means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) ''treaty'' means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1213; amended Pub. L. 98–473, title II, § 223(m)(1), Oct. 12, 1984, 98 Stat. 2029.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–473 inserted ''including a term of supervised release pursuant to section 3583'' after ''supervision''.

Subsec. (g). Pub. L. 98–473 substituted ''under which'' for ''to a penalty of imprisonment the execution of which is suspended'' and ''a'' for ''the suspended'' before ''penalty''.

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for

the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1214.)

CHANGE OF NAME

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

CERTIFICATION BY ATTORNEY GENERAL TO SECRETARY OF STATE FOR REIMBURSEMENT OF EXPENSES INCURRED UNDER TRANSFER TREATY

Section 5(b) of Pub. L. 95–144 provided that: "The Attorney General shall certify to the Secretary of State the expenses of the United States related to the return of an offender to the foreign country of which the offender is a citizen or national for which the United States is entitled to seek reimbursement from that country under a treaty providing for transfer and reimbursement."

§ 4103. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or this chapter provides otherwise.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4104. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with section 3653 of this title and rule 32(f) of the Federal Rules of Criminal Procedure. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) The provisions of sections 4105 and 4106 of this title shall be applicable following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4105. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits toward service of sentence for satisfactory behavior, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 3624(b) of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 3624(a) of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 3624(b) of this title.

(3) Credit toward service of sentence may be withheld as provided in section 3624(b) of this title.

(4) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1215; amended Pub. L. 98–473, title II, § 223(m)(2), Oct. 12, 1984, 98 Stat. 2029.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–473 substituted "toward service of sentence for satisfactory behavior" for "for good time", "3624(b)" for "4161", and "3624(a)" for "4164".

Subsec. (c)(2). Pub. L. 98–473 substituted "3624(b)" for "4161".

Subsec. (c)(3), (4). Pub. L. 98–473 redesignated par. (4) as (3) and amended it generally, and struck out former par. (3). Prior to redesignation and amendment, former pars. (3) and (4) read as follows:

''(3) A transferred offender may earn extra good time deductions, as authorized in section 4162 of this title, from the time of transfer.

''(4) All credits toward service of the sentence, other than the credit for time in custody before sentencing, may be forfeited as provided in section 4165 of this title and may be restored by the Attorney General as provided in section 4166 of this title.''

Subsec. (c)(5). Pub. L. 98–473 redesignated par. (5) as (4).

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218[1] of this title shall be applicable.

(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

(d) This section shall apply only to offenses committed before November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1216; amended Pub. L. 98–473, title II, § 223(m)(3), Oct. 12, 1984, 98 Stat. 2029; Pub. L. 100–182, § 14, Dec. 7, 1987, 101 Stat. 1268; Pub. L. 100–690, title VII, § 7072(c), Nov. 18, 1988, 102 Stat. 4405.)

REFERENCES IN TEXT

Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218 of this title, referred to in subsec. (b), were repealed effective Nov. 1, 1987, by Pub. L. 98–473, title II, §§ 218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, subject to remaining effective for five years after Nov. 1, 1987, in certain circumstances.

Section 235 of the Comprehensive Crime Control Act of 1984, referred to in subsec. (d), is set out as an Effective Date note under section 3551 of this title.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 substituted ''4215'' for ''4216''.

1987—Pub. L. 100–182 amended section generally. Prior to amendment, section read as follows:

''(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Probation System for supervision.

''(b) An offender transferred to the United States to serve a sentence of imprisonment shall be released pursuant to section 3624(a) of this title after serving the period of time specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1). He shall be released to serve a term of supervised release for any term specified in the applicable guideline. The provisions of section 3742 of this title apply to a sentence to a term of imprisonment under this subsection, and the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States has jurisdiction to review the period of imprisonment as though it had been imposed by the United States district court.''

1984—Subsec. (a). Pub. L. 98–473 substituted ''Probation System'' for ''Parole Commission''.

Subsec. (b). Pub. L. 98–473 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4216; and 4218 of this title shall be applicable.''

Subsec. (c). Pub. L. 98–473 struck out subsec. (c) which read as follows: ''An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.''

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

§ 4106A. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b)(1)(A) The United States Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in a United States district court of a similar offense.

(B) In making such determination, the United States Parole Commission shall consider—

(i) any recommendation of the United States Probation Service, including any recommendation as to the applicable guideline range; and

(ii) any documents provided by the transferring country;

relating to that offender.

(C) The combined periods of imprisonment and supervised release that result from such deter-

[1] See References in Text note below.

mination shall not exceed the term of imprisonment imposed by the foreign court on that offender.

(D) The duties conferred on a United States probation officer with respect to a defendant by section 3552 of this title shall, with respect to an offender so transferred, be carried out by the United States Probation Service.

(2)(A) A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender is imprisoned at the time of the determination of such Commission. Notice of appeal must be filed not later than 45 days after receipt of notice of such determination.

(B) The court of appeals shall decide and dispose of the appeal in accordance with section 3742 of this title as though the determination appealed had been a sentence imposed by a United States district court.

(3) During the supervised release of an offender under this subsection, the United States district court for the district in which the offender resides shall supervise the offender.

(c) This section shall apply only to offenses committed on or after November 1, 1987.

(Added Pub. L. 100–690, title VII, § 7101(a), Nov. 18, 1988, 102 Stat. 4415; amended Pub. L. 101–647, title XXXV, §§ 3599B, 3599C, Nov. 29, 1990, 104 Stat. 4931, 4932.)

AMENDMENTS

1990—Pub. L. 101–647, § 3599B, inserted ''of'' before second reference to ''offenders'' in section catchline.

Subsec. (b)(1)(C). Pub. L. 101–647, § 3599C, inserted period at end.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3006A, 4109 of this title.

§ 4107. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate or a judge as defined in section 451 of title 28, United States Code.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(2) the sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(3) if a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the United States for the purpose of completing the sentence if the United States requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1216.)

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4109 of this title; title 28 section 636.

§ 4108. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof, shall be verified in the country in which the sentence was imposed by a United States magistrate, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28, United States Code. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(2) the sentence shall be carried out according to the laws of the United States and that those laws are subject to change;

(3) if a United States court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the United States, he may be returned to the country which imposed the sentence for the

purpose of completing the sentence if that country requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1217; amended Pub. L. 98–473, title II, § 223(m)(4), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100–690, title VII, § 7101(b), Nov. 18, 1988, 102 Stat. 4415.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 struck out ''including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 944(a)(1),'' after ''consequences thereof,''.

1984—Subsec. (a). Pub. L. 98–473 inserted '', including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1),'' after ''consequences thereof''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 636.

§ 4109. Right to counsel, appointment of counsel

(a) In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with section 3006A of this title. Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;[1]

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 3006A of this title for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3324(a) and (b) of title 31, the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(b) Guardians ad litem appointed by the verifying officer under section 4100 of this title to represent offenders who are financially unable to provide for compensation and travel expenses of the guardian ad litem shall be compensated and reimbursed under subsection (a)(1) of this section.

(c) The offender shall have the right to advice of counsel in proceedings before the United States Parole Commission under section 4106A of this title and in an appeal from a determination of such Commission under such section. If the offender is financially unable to obtain counsel, counsel for such proceedings and appeal shall be appointed under section 3006A of this title.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218; amended Pub. L. 97–258, § 3(e)(2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 100–690, title VII, § 7101(d), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–647, title XXXV, § 3598, Nov. 29, 1990, 104 Stat. 4931.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–647 substituted ''section 3006A of this title'' for ''the Criminal Justice Act (18 U.S.C. 3006A)'' in par. (1) and for ''the Criminal Justice Act (18 U.S.C. 3006(a))'' in par. (2).

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

1982—Par. (2). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes as amended (31 U.S.C. 529)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3006A, 4100 of this title; title 28 section 636.

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall

[1] So in original. Probably should be ''section 3006A of this title;''. See 1990 Amendment note below.

be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 240B of the Immigration and Nationality Act and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been removed from this country.

(c) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and removed from the United States.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1219; amended Pub. L. 104–208, div. C, title III, § 308(d)(4)(U), (e)(1)(Q), (2)(I), (g)(3)(B), (5)(A)(iv), Sept. 30, 1996, 110 Stat. 3009–619, 3009–620, 3009–622, 3009–623.)

REFERENCES IN TEXT

Section 240B of the Immigration and Nationality Act, referred to in subsec. (a), is classified to section 1229c of Title 8, Aliens and Nationality.

Section 240 of the Immigration and Nationality Act, referred to in subsecs. (b) and (c), is classified to section 1229a of Title 8.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 308(g)(5)(A)(iv)(I), substituted ''section 240B of the Immigration and Nationality Act'' for ''section 1252(b) or section 1254(e) of title 8, United States Code,''.

Subsec. (b). Pub. L. 104–208, § 308(g)(5)(A)(iv)(II), substituted ''section 240 of the Immigration and Nationality Act'' for ''section 1252 of title 8, United States Code,''.

Pub. L. 104–208, § 308(e)(1)(Q), (2)(I), substituted ''removal'' for ''deportation'' and ''removed'' for ''deported''.

Subsec. (c). Pub. L. 104–208, § 308(g)(3)(B), substituted ''240 of the Immigration and Nationality Act'' for ''1226 of title 8, United States Code''.

Pub. L. 104–208, § 308(d)(4)(U), (e)(2)(I), substituted ''removal'' for ''exclusion and deportation'' and ''removed'' for ''deported''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate ordering the of-

fender to appear or to be brought before the issuing authority. If the justice, judge, or magistrate finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1219.)

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 4115. Execution of sentences imposing an obligation to make restitution or reparations

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the United States has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

(Added Pub. L. 95–144, § 1, Oct. 28, 1977, 91 Stat. 1220.)

CHAPTER 307—EMPLOYMENT

Sec.
4121. Federal Prison Industries; board of directors.
4122. Administration of Federal Prison Industries.
4123. New industries.
4124. Purchase of prison-made products by Federal departments.
4125. Public works; prison camps.
4126. Prison Industries Fund; use and settlement of accounts.
4127. Prison Industries report to Congress.
4128. Enforcement by Attorney General.
4129. Authority to borrow and invest.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, § 3599A, Nov. 29, 1990, 104 Stat. 4931, substituted ''Fund'' for ''fund'' in item 4126.

1988—Pub. L. 100–690, title VII, § 7093(b), Nov. 18, 1988, 102 Stat. 4412, added item 4129.

CROSS REFERENCES

No postal equipment or supplies to be manufactured by convict labor except as provided in this chapter, see section 2201 of Title 39, Postal Service.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 2201; title 41 sections 42, 48.

§ 4121. Federal Prison Industries; board of directors

''Federal Prison Industries'', a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 62, 63 Stat. 98.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744i, 744j (June 23, 1934, ch. 736, §§ 1, 2, 48 Stat. 1211).

Section consolidates sections 744i and 744j of title 18, U.S.C., 1940 ed. The former was rewritten omitting unnecessary recital as to policy and expressing the original language of the two sections more logically.

Changes were made in transportation and phraseology.

1949 ACT

This section [section 62] incorporates in section 4121 of title 18, U.S.C., with changes in phraseology, the provisions of section 3 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), which was enacted subsequent to the enactment of the revision of title 18 and which provided for appointment of an additional member of the board of directors of the Federal Prison Industries, as a representative of the Secretary of Defense.

AMENDMENTS

1949—Act May 24, 1949, made a representative of the Secretary of Defense a member of the board of directors.

TRANSFER OF FUNCTIONS

Federal Prison Industries, Inc. (together with its Board of Directors), and its functions transferred to Department of Justice to be administered under general direction and supervision of Attorney General, by Reorg. Plan No. II of 1939, § 3(a), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431, set out in the Appendix to Title 5, Government Organization and Employees. See, also, Reorg. Plan No. 2 of 1950, § 1, eff. May 1, 1950, 15 F.R.

3173, 64 Stat. 1261, and section 509 of Title 28, Judiciary and Judicial Procedure.

MANDATORY WORK REQUIREMENT FOR ALL PRISONERS

Pub. L. 101–647, title XXIX, § 2905, Nov. 29, 1990, 104 Stat. 4914, provided that:

''(a) IN GENERAL.—(1) It is the policy of the Federal Government that convicted inmates confined in Federal prisons, jails, and other detention facilities shall work. The type of work in which they will be involved shall be dictated by appropriate security considerations and by the health of the prisoner involved.

''(2) A Federal prisoner may be excused from the requirement to work only as necessitated by—

''(A) security considerations;

''(B) disciplinary action;

''(C) medical certification of disability such as would make it impracticable for prison officials to arrange useful work for the prisoner to perform; or

''(D) a need for the prisoner to work less than a full work schedule in order to participate in literacy training, drug rehabilitation, or similar programs in addition to the work program.''

CLOSURE OF MCNEIL ISLAND PENITENTIARY; REPORT ON STATUS OF FEDERAL PRISON INDUSTRIES

Pub. L. 95–624, § 10, Nov. 9, 1978, 92 Stat. 3463, provided that:

''(a) On or before September 1, 1979, the Attorney General shall submit to the Congress—

''(1) a plan to assure the closure of the United States Penitentiary on McNeil Island, Steilacoom, Washington, on or before January 1, 1982; and

''(2) a report on the status of the Federal Prison Industries.

''(b) The report made under this section shall include a long-range plan for the improvement of meaningful employment training, and the methods which could be undertaken to employ a greater number of United States prisoners in the program. Such report may include recommendations for legislation.''

CROSS REFERENCES

Federal Prison Industries, Inc. as wholly owned Government Corporation, see section 9101 of Title 31, Money and Finance.

§ 4122. Administration of Federal Prison Industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b)(1) Its board of directors shall provide employment for the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible, diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.

(2) Federal Prison Industries shall conduct its operations so as to produce products on an economic basis, but shall avoid capturing more than a reasonable share of the market among Federal departments, agencies, and institutions for any specific product. Federal Prison Industries shall concentrate on providing to the Federal Government only those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible.

(3) Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

(4) Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

(A) The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

(i) the number of vendors currently meeting the requirements of the Federal Government for the product;

(ii) the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

(iii) the size of the Federal Government and non-Federal Government markets for the product;

(iv) the projected growth in the Federal Government demand for the product; and

(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.

(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.

(D) The corporation shall provide to the board of directors—

(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

(ii) comments submitted to the corporation on the proposal, and

(iii) the corporation's recommendations for action on the proposal in light of such comments.

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.

(6) Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.

(c) Its board of directors may provide for the vocational training of qualified inmates without regard to their industrial or other assignments.

(d)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any department or agency comprising the Department of Defense, to the extent and under terms and conditions agreed upon by the Secretary of Defense, the Attorney General and the Board of Directors of Federal Prison Industries.

(2) Any department or agency of the Department of Defense may, without exchange of funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under paragraph (1) of this subsection.

(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Commissioner of the District of Columbia to the extent and under terms and conditions agreed upon by the Commissioner, the Attorney General, and the Board of Directors of Federal Prison Industries.

(2) The Commissioner of the District of Columbia may, without exchange of funds, transfer to the Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled ''An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes.''

(June 25, 1948, ch. 645, 62 Stat. 851; May 24, 1949, ch. 139, § 63, 63 Stat. 98; Oct. 31, 1951, ch. 655, § 31, 65 Stat. 722; Dec. 27, 1967, Pub. L. 90–226, title VIII, § 802, 81 Stat. 741; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7096, 102 Stat. 4413.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§ 744a, 744c, 744k (May 27, 1930, ch. 340, §§ 1, 3, 46 Stat. 391; June 23, 1934, ch. 736, § 3, 48 Stat. 1211).

Section consolidates sections 744a, part of 744c, and 744k of title 18, U.S.C., 1940 ed., with such changes of phraseology as were necessary to effect the consolidation.

Provisions in section 744k of title 18, U.S.C., 1940 ed., for transfer of duties to the corporation was omitted as executed.

Other provisions of said section 744c of title 18, U.S.C., 1940 ed., form section 4123 of this title.

Changes were made in phraseology.

1949 ACT

Subsection (c) of section 4122 of title 18, U.S.C., as added by this amendment [see section 63], incorporates provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4126 of such title by another section of this bill.

Subsections (d) and (e) of such section 4122, added by this amendment [see section 63], incorporate, with changes in phraseology, the provisions of sections 1 and 2 of act of June 29, 1948 (ch. 719, 62 Stat. 1100), extending the functions and duties of Federal Prisons Industries, Incorporated, to military disciplinary barracks. Section 3 of such act is incorporated in section 4121 of such title by another section of this bill, and section 4 of such act is classified to section 1621a of title 50, U.S.C., Appendix, War and National Defense.

REFERENCES IN TEXT

The Act approved October 3, 1964 (D.C. Code, sections 24–451 et seq.), entitled ''An Act to establish in the Treasury a correctional institution industries fund for the government of the District of Columbia, and for other purposes'', referred to in subsec. (e)(3), is Pub. L. 88–622, Oct. 3, 1964, 78 Stat. 1000.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible'' for ''all physically fit inmates in the United States penal and correctional institutions'', and added pars. (2) to (6).

1967—Subsec. (d). Pub. L. 90–226, § 802(1), (2), designated existing provisions of subsec. (d) as par. (1) thereof, designated existing provisions of subsec. (e) as par. (2) of subsec. (d), and substituted reference to par. (1) of this subsection for reference to subsec. (d) of this section.

Subsec. (e). Pub. L. 90–226, § 802(3), added subsec. (e). Former subsec. (e) redesignated (d)(2).

1951—Subsecs. (d), (e). Act Oct. 31, 1951, substituted ''Department of Defense'' for ''National Military Establishment''.

1949—Act May 24, 1949, designated existing first two pars. as subsecs. (a) and (b), respectively, and added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93–198, classified to section 1–241 of the District of Columbia Code.

UTILIZATION OF SURPLUS PROPERTY

Act June 29, 1948, ch. 719, § 4, 62 Stat. 1100, provided that: ''For its own use in the industrial employment and training of prisoners and not for transfer or disposition, transfers of surplus property under the Surplus Property Act of 1944 [former sections 1611 to 1646 of Appendix to Title 50, War and National Defense, may be made to Federal Prison Industries, Incorporated, without reimbursement or transfer of funds.''

§ 4123. New industries

Any industry established under this chapter shall be so operated as not to curtail the production of any existing arsenal, navy yard, or other Government workshop.

Such forms of employment shall be provided as will give the inmates of all Federal penal and correctional institutions a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release.

The industries may be either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744c (May 27, 1930, ch. 340, § 3, 46 Stat. 391).

A part of said section 744c of title 18, U.S.C., 1940 ed., is incorporated in section 4122 of this title.

References to the Attorney General were omitted because section 744k of title 18, U.S.C., 1940 ed., as originally enacted, provided for the transfer to Federal Prison Industries of the powers and duties then vested in the Attorney General.

References to ''this chapter'' were substituted for ''this section'' since the general authority to establish and supervise prison industries is contained in this chapter.

Minor changes of phraseology were made.

§ 4124. Purchase of prison-made products by Federal departments

(a) The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

(b) Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

(c) Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: ''Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period.''.

(d) Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.

(June 25, 1948, ch. 645, 62 Stat. 851; Oct. 31, 1951, ch. 655, § 32, 65 Stat. 723; Feb. 14, 1984, Pub. L. 98–216, § 3(b)(2), 98 Stat. 6; Nov. 29, 1990, Pub. L. 101–647, title XXIX, § 2901, 104 Stat. 4912; Oct. 28, 1992, Pub. L. 102–564, title III, § 303(b), 106 Stat. 4262; Oct. 19, 1996, Pub. L. 104–316, title I, § 109(b), 110 Stat. 3832.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744g (May 27, 1930, ch. 340, § 7, 46 Stat. 392).

The revised section substituted the Director of the Bureau of Federal Supply of the Treasury Department for the General Supply Committee, the functions of the latter having been transferred to the Procurement Division of the Treasury Department by Executive Order No. 6166, § 1, June 10, 1933, and the name of that unit having been changed to Bureau of Federal Supply by order of the Secretary of the Treasury effective January 1, 1947, 11 Federal Register No. 13,638. The Bureau of the Budget was substituted for the Bureau of Efficiency which was abolished by Act of March 3, 1933, ch. 212, § 17, 47 Stat. 1519, without transferring its functions elsewhere. However, the Bureau of the Budget performs similar duties and its Director logically should serve on the arbitration board.

Reference to authority for appropriations was omitted and words ''by this chapter'' substituted therefor.

The word ''agencies'' was substituted for ''independent establishments'' to avoid any possibility of ambiguity. See definition of ''agency'' in section 6 of this title.

REFERENCES IN TEXT

Section 6(d)(4) of the Office of Federal Procurement Policy Act, referred to in subsec. (c), is classified to section 405(d)(4) of Title 41, Public Contracts.

The date of the enactment of this subsection, referred to in subsec. (d), is the date of enactment of Pub. L. 101–647, which was approved Nov. 29, 1990.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–316 substituted ''Attorney General'' for ''Comptroller General of the United States''.

1992—Subsec. (c). Pub. L. 102–564 substituted ''acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions'' for ''to the General Services Administration all of its acquisitions of products and services from Federal Prison Industries, and that reported information shall be entered in the Federal Procurement Data System referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act''.

1990—Pub. L. 101–647 designated first and second pars. as subsecs. (a) and (b), respectively, and added subsecs. (c) and (d).

1984—Pub. L. 98–216 substituted ''President'' for ''Director of the Bureau of the Budget'' in second par.

1951—Act Oct. 31, 1951, substituted ''Administrator of General Services'' for ''Director of the Bureau of Federal Supply, Department of the Treasury'' in second par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 657a; title 41 section 48.

§ 4125. Public works; prison camps

(a) The Attorney General may make available to the heads of the several departments the services of United States prisoners under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building levees, and constructing or repairing any other

public ways or works financed wholly or in major part by funds appropriated by Congress.

(b) The Attorney General may establish, equip, and maintain camps upon sites selected by him elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(c) The expenses of transferring and maintaining prisoners at such camps and of operating such camps shall be paid from the appropriation ''Support of United States prisoners'', which may, in the discretion of the Attorney General, be reimbursed for such expenses.

(d) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe.

(e) All other laws of the United States relating to the imprisonment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

(June 25, 1948, ch. 645, 62 Stat. 852.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§744b, 851, 853, 854, 855 (Feb. 26, 1929, ch. 336, §§1, 3, 4, 5, 45 Stat. 1318; May 27, 1930, ch. 340, §2, 46 Stat. 391).

Section consolidates section 744b of title 18, U.S.C., 1940 ed., with those portions of sections 851, 853–855 of title 18, U.S.C., 1940 ed., which may not have been superseded by section 744b of said title.

Section 851 of title 18, U.S.C., 1940 ed., was superseded except for the proviso which formed the basis for the added words ''elsewhere than upon Indian reservations''.

Section 855 of title 18, U.S.C., 1940 ed., was superseded by section 744b of title 18, U.S.C., 1940 ed., except as to the specific mention in section 855 of said title of expense for maintenance and operation of camps. Hence a reference to operation was added in subsection (c) of this section.

Section 854 of title 18, U.S.C., 1940 ed., was added as a part of subsection (c).

Section 853 of title 18, U.S.C., 1940 ed., was added as subsection (d) of this section, although its retention may be unnecessary.

The phrase ''the cost of which is borne exclusively by the United States'' which followed the words ''constructing or repairing roads'' was omitted as inconsistent with the later phrase ''constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated from the Treasury of the United States.''

The provision for transfer of prisoners was omitted as duplicitous of a similar provision in section 4082 of this title.

Other changes of phraseology were made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4126 of this title; title 15 section 657a.

§ 4126. Prison Industries Fund; use and settlement of accounts

(a) All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the General Accounting Office.

(b) All valid claims and obligations payable out of said fund shall be assumed by the corporation.

(c) The corporation, in accordance with the laws generally applicable to the expenditures of the several departments, agencies, and establishments of the Government, is authorized to employ the fund, and any earnings that may accrue to the corporation—

(1) as operating capital in performing the duties imposed by this chapter;

(2) in the lease, purchase, other acquisition, repair, alteration, erection, and maintenance of industrial buildings and equipment;

(3) in the vocational training of inmates without regard to their industrial or other assignments;

(4) in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution in which the inmates are confined.

In no event may compensation for such injuries be paid in an amount greater than that provided in chapter 81 of title 5.

(d) Accounts of all receipts and disbursements of the corporation shall be rendered to the General Accounting Office for settlement and adjustment, as required by the Comptroller General.

(e) Such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

(f) Funds available to the corporation may be used for the lease, purchase, other acquisition, repair, alteration, erection, or maintenance of facilities only to the extent such facilities are necessary for the industrial operations of the corporation under this chapter. Such funds may not be used for the construction or acquisition of penal or correctional institutions, including camps described in section 4125.

(June 25, 1948, ch. 645, 62 Stat. 852; May 24, 1949, ch. 139, §64, 63 Stat. 99; Sept. 26, 1961, Pub. L. 87–317, 75 Stat. 681; Nov. 18, 1988, Pub. L. 100–690, title VII, §7094, 102 Stat. 4412.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §§744d, 744e, 744f, 744*l* (May 27, 1930, ch. 340, §§4–6, 46 Stat. 391, 392; June 23, 1934, ch. 736, §4, 48 Stat. 1211).

This section is a restatement of section 744*l* of title 18, U.S.C., 1940 ed., with which sections 744d and 744f and the first sentence of section 744e of title 18, U.S.C., 1940 ed., are consolidated, in view of the fact that those provisions have been superseded by section 744*l* of title 18, U.S.C., 1940 ed., in connection with other provisions of the act of June 23, 1934, ch. 736, 48 Stat. 1211.

The first sentence of section 744*l* of title 18, U.S.C., 1940 ed., authorizing replacement of the prison indus-

tries working capital fund by the prison industries fund was omitted, as executed. That provision superseded section 744d of title 18, U.S.C., 1940 ed., which authorized creation of the prison industries working capital fund and the first sentence of section 744e of title 18, U.S.C., 1940 ed., directing that certain funds should be credited to the consolidated prison industries working capital fund.

The phrase ''or received from the sale of the products or by-products of such Industries, or for the services of Federal prisoners,'' was inserted to make the first paragraph of this section complete, and required the Federal Prison Industries to account for all moneys under its control.

The words ''in the repair, alteration, erection and maintenance of industrial buildings and equipment'' and ''under rules and regulations promulgated by the Attorney General in paying compensation to inmates employed in any industry, or performing outstanding services in industrial operations'' were inserted in part to conform to administrative construction, and in part to provide greater flexibility in the operation of Prison Industries. Much friction was caused by the inability of Prison Industries to compensate inmates whose services in operating the utilities of the institution were most necessary but which were uncompensated while those prisoners who worked in the Industries received compensation. This inequitable situation is corrected by the revised section.

The words ''in performing the duties imposed by this chapter'' were substituted for the words ''for the purposes enumerated in sections 744a–744h of this title,'' since the provisions with regard to prison industries now appear in this chapter. The general provisions as to use of the fund supersede the more specific provisions of section 744f of said title (enacted earlier).

A reference to the Federal Employees' Compensation Act as appeared in the 1934 act was substituted for the reference to specific sections of title 5. The word ''law'' was substituted for the reference to sections in title 31 since translation of the reference in the 1934 act was not practicable.

Remaining provisions of said section 744e of title 18, U.S.C., 1940 ed., relating to authorization of appropriations, were omitted as unnecessary.

Other changes in phraseology were made.

1949 ACT

This section [section 64] incorporates in section 4126 of title 18, U.S.C., provisions of act of May 11, 1948 (ch. 276, 62 Stat. 230), which was not incorporated in title 18 when the revision was enacted. The remainder of such act is incorporated in section 4122 of such title by another section of this bill.

AMENDMENTS

1988—Subsecs. (a), (b). Pub. L. 100–690, § 7094(1), designated first and second pars. as subsecs. (a) and (b), respectively.

Subsec. (c). Pub. L. 100–690, § 7094(1), (2), designated third par. as subsec. (c) and amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the corporation, as operating capital in performing the duties imposed by this chapter; in the repair, alteration, erection and maintenance of industrial buildings and equipment; in the vocational training of inmates without regard to their industrial or other assignments; in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act.''

Subsecs. (d), (e). Pub. L. 100–690, § 7094(1), designated fourth and fifth pars. as subsecs. (d) and (e), respectively.

Subsec. (f). Pub. L. 100–690, § 7094(3), added subsec. (f).

1961—Pub. L. 87–317 authorized compensation for injuries to inmates incurred while working in connection with the maintenance or operation of the institution where confined.

1949—Act May 24, 1949, inserted ''in the vocational training of inmates without regard to their industrial or other assignments;'' after second semicolon in third par.

CROSS REFERENCES

Financial control of Corporation, see section 9101 et seq. of Title 31, Money and Finance.

General Accounting Office; creation, powers, duties, etc., see section 702 et seq. of Title 31.

§ 4127. Prison Industries report to Congress

The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.

(June 25, 1948, ch. 645, 62 Stat. 852; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7095, 102 Stat. 4413.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744m (June 23, 1934, ch. 736, § 5, 48 Stat. 1212).

Words ''of Federal Prison Industries'' were inserted after ''board of directors''.

Minor changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100–690 amended section generally. Prior to amendment, section read as follows: ''The board of directors of Federal Prison Industries shall make annual reports to Congress on the conduct of the business of the corporation and on the condition of its funds.''

CROSS REFERENCES

Annual management reports to Congress by Government corporations, see section 9106 of Title 31, Money and Finance.

§ 4128. Enforcement by Attorney General

In the event of any failure of Federal Prison Industries to act, the Attorney General shall not be limited in carrying out the duties conferred upon him by law.

(June 25, 1948, ch. 645, 62 Stat. 853.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 744n (June 23, 1934, ch. 736, § 6, 48 Stat. 1212).

Phrase relating to section being ''supplemental'' to sections 744i–744h of title 18, U.S.C., 1940 ed., is omitted as unnecessary.

Retention of remainder of section is essential to insure authority of Attorney General to require performance of duties of Prison Industries. (See sections 4001 and 4003 of this title.) This is also consistent with 1939 Reorganization Plan No. II, § 3(a), transferring the corporation to the Department of Justice ''under the general direction and supervision of the Attorney Gen-

eral''. (See section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

Words ''Federal Prison Industries'' were substituted for ''the corporation''.

§ 4129. Authority to borrow and invest

(a)(1) As approved by the board of directors, Federal Prison Industries, to such extent and in such amounts as are provided in appropriations Acts, is authorized to issue its obligations to the Secretary of the Treasury, and the Secretary of the Treasury, in the Secretary's discretion, may purchase or agree to purchase any such obligations, except that the aggregate amount of obligations issued by Federal Prison Industries under this paragraph that are outstanding at any time may not exceed 25 percent of the net worth of the corporation. For purchases of such obligations by the Secretary of the Treasury, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31 after the date of the enactment of this section, and the purposes for which securities may be issued under that chapter are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. For purposes of the first sentence of this paragraph, the net worth of Federal Prison Industries is the amount by which its assets (including capital) exceed its liabilities.

(2) The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(b) Federal Prison Industries may request the Secretary of the Treasury to invest excess moneys from the Prison Industries Fund. Such investments shall be in public debt securities with maturities suitable to the needs of the corporation as determined by the board of directors, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(Added Pub. L. 100–690, title VII, § 7093(a), Nov. 18, 1988, 102 Stat. 4411.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 100–690 which was approved Nov. 18, 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4127 of this title.

[CHAPTER 309—REPEALED]

[§§ 4161 to 4166. Repealed. Pub. L. 98–473, title II, § 218(a)(4), Oct. 12, 1984, 98 Stat. 2027]

Section 4161, acts June 25, 1948, ch. 645, 62 Stat. 853; Sept. 14, 1959, Pub. L. 86–259, 73 Stat. 546, related to computation of reduction of time of sentence generally.

Section 4162, act June 25, 1948, ch. 645, 62 Stat. 853, related to deduction from sentence for industrial good time.

Section 4163, acts June 25, 1948, ch. 645, 62 Stat. 853; Sept. 19, 1962, Pub. L. 87–665, 76 Stat. 552, related to discharge of prisoner.

Section 4164, acts June 25, 1948, ch. 645, 62 Stat. 853; June 29, 1951, ch. 176, 65 Stat. 98, related to released prisoner as parolee.

Section 4165, act June 25, 1948, ch. 645, 62 Stat. 854, related to forfeiture of good time for offense.

Section 4166, act June 25, 1948, ch. 645, 62 Stat. 854, related to restoration of forfeited commutation.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, with sections to remain in effect for five years as to an individual who committed as offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(B) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

[CHAPTER 311—REPEALED]

CODIFICATION

A prior chapter 311, consisting of sections 4201–4210, act June 25, 1948, ch. 645, 62 Stat. 854, 855, as amended, was repealed by section 2 of Pub. L. 94–233 as part of the general revision of this chapter by Pub. L. 94–233.

[§§ 4201 to 4218. Repealed. Pub. L. 98–473, title II, § 218(a)(5), Oct. 12, 1984, 98 Stat. 2027]

EFFECTIVE DATE OF REPEAL; CHAPTER TO REMAIN IN EFFECT FOR FIFTEEN YEARS AFTER NOV. 1, 1987

Section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title, provided that the repeal of this chapter is effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. Section 235(b)(1)(A) of Pub. L. 98–473 provided that the provisions of this chapter in effect before Nov. 1, 1987, shall remain in effect for five years after Nov. 1, 1987, as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473. Pub. L. 101–650, title III, § 316, Dec. 1, 1990, 104 Stat. 5115, extended the period that this chapter remains in effect after Nov. 1, 1987, from five years to ten years. Pub. L. 104–232, § 2(a), Oct. 2, 1996, 110 Stat. 3055, extended the period that this chapter remains in effect after Nov. 1, 1987, from ten years to fifteen years. Prior to repeal, the provisions of this chapter read as follows:

§ 4201. Definitions

As used in this chapter—

(1) ''Commission'' means the United States Parole Commission;

(2) ''Commissioner'' means any member of the United States Parole Commission;

(3) ''Director'' means the Director of the Bureau of Prisons;

(4) ''Eligible prisoner'' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

(5) ''Parolee'' means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205(f); and

(6) ''Rules and regulations'' means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 219.)

§ 4202. Parole Commission created

There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the Commissioners one to serve as Chairman. The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a Commissioner, the Commissioner shall continue to act until a successor has been appointed and qualified, except that no Commissioner may serve in excess of twelve years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 219.)

PAROLE COMMISSION PHASEOUT

Pub. L. 104–232, §§ 1–3, Oct. 2, 1996, 110 Stat. 3055, 3056, as amended by Pub. L. 105–33, title XI, § 11231(d), Aug. 5, 1997, 111 Stat. 745, provided that:

''SECTION 1. SHORT TITLE.

''This Act [enacting and amending provisions set out as notes under section 3551 of this title] may be cited as the 'Parole Commission Phaseout Act of 1996'.

''SEC. 2. EXTENSION OF PAROLE COMMISSION.

''(a) IN GENERAL.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out as a note under section 3551 of this title] (98 Stat. 2032) as it related to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to 'ten years' or 'ten-year period' shall be deemed to be a reference to 'fifteen years' or 'fifteen-year period', respectively.

''(b) POWERS AND DUTIES OF PAROLE COMMISSION.—Notwithstanding section 4203 of title 18, United States Code, the United States Parole Commission may perform its functions with any quorum of Commissioners, or Commissioner, as the Commission may prescribe by regulation.

''(c) The United States Parole Commission shall have no more than five members.

''SEC. 3. REPORTS BY THE ATTORNEY GENERAL.

''(a) IN GENERAL.—Beginning in the year 1998, the Attorney General shall report to the Congress not later than May 1 of each year through the year 2002 on the status of the United States Parole Commission. Unless the Attorney General, in such report, certifies that the continuation of the Commission is the most effective and cost-efficient manner for carrying out the Commission's functions, the Attorney General shall include in such report an alternative plan for a transfer of the Commission's functions to another entity.

''(b) TRANSFER WITHIN THE DEPARTMENT OF JUSTICE.—

''(1) EFFECT OF PLAN.—If the Attorney General includes such a plan in the report, and that plan provides for the transfer of the Commission's functions and powers to another entity within the Department of Justice, such plan shall take effect according to its terms on November 1 of that year in which the report is made, unless Congress by law provides otherwise. In the event such plan takes effect, all laws pertaining to the authority and jurisdiction of the Commission with respect to individual offenders shall remain in effect notwithstanding the expiration of the period specified in section 2 of this Act.

''(2) CONDITIONAL REPEAL.—Effective on the date such plan takes effect, paragraphs (3) and (4) of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98–473, set out as a note under section 3551 of this title] (98 Stat. 2032) are repealed.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXTENSION OF TERM OF COMMISSIONER

Section 235(b)(2) of Pub. L. 98–473, which provided that notwithstanding the provisions of section 4202 of this title as in effect on the day before Nov. 1, 1987 [set out above], the term of office of a Commissioner who is in office on Nov. 1, 1987, is extended to the end of the five-year period after Nov. 1, 1987, was repealed by Pub. L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056. Pub. L. 101–650, title III, § 316, Dec. 1, 1990, 104 Stat. 5115, further extended the term of office of a Commissioner to a ten-year period after Nov. 1, 1987.

§ 4203. Powers and duties of the Commission

(a) The Commission shall meet at least quarterly, and by majority vote shall—

(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

(2) create such regions as are necessary to carry out the provisions of this chapter; and

(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

(1) grant or deny an application or recommendation to parole any eligible prisoner;

(2) impose reasonable conditions on an order granting parole;

(3) modify or revoke an order paroling any eligible prisoner; and

(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations, or agencies shall bear excessive caseloads.

(c) The Commission, by majority vote, and pursuant to rules and regulations—

(1) may delegate to any Commissioner or commissioners powers enumerated in subsection (b) of this section;

(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

(3) may delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

(4) may review, or may delegate to the National Appeals Board the power to review, any decision made

pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each Commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

(e)(1) The Commission shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to individuals who are under the jurisdiction of the Commission, who have been convicted of felony offenses against the United States, and who reside, are employed, or are supervised in the geographical area in which such agency has jurisdiction, the following information maintained by the Commission (to the extent that the Commission maintains such information)—

(A) the names of such individuals;

(B) the addresses of such individuals;

(C) the dates of birth of such individuals;

(D) the Federal Bureau of Investigation numbers assigned to such individuals;

(E) photographs and fingerprints of such individuals; and

(F) the nature of the offenses against the United States of which each such individual has been convicted and the factual circumstances relating to such offense.

(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 220; amended Pub. L. 99–646, § 57(b), (c), Nov. 10, 1986, 100 Stat. 3611, 3612.)

§ 4204. Powers and duties of the Chairman

(a) The Chairman shall—

(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

(B) regional Commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

(5) designate not fewer than three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one Commissioner to serve as regional Commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President, or his designee;

(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

(b) The Chairman shall have the power to—

(1) without regard to section 3324(a) and (b) of title 31, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

(6) publish data concerning the parole process;

(7) devise and conduct, in various geographical locations, seminars, workshops and training programs providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local, and private agencies with their consent.

(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 221; amended Pub. L. 97–258, § 3(e)(3), (4), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 99–646, § 58(a), Nov. 10, 1986, 100 Stat. 3612.)

EX. ORD. NO. 11919. DELEGATION OF PRESIDENTIAL AUTHORITY TO CONCUR IN DESIGNATIONS OF COMMISSIONERS

Ex. Ord. No. 11919, June 9, 1976, 41 F.R. 23663, provided: By virtue of the authority vested in me by section 301 of title 3, United States Code, and section 4204(a)(5) of title 18, United States Code, as enacted by the Parole Commission and Reorganization Act (Public Law 94–233), and as President of the United States of America, it is hereby ordered that the Attorney General shall serve as the President's designee for purposes of concurring in designations of Commissioners of the United States Parole Commission to serve on the National Appeals Board, as vice chairman of the Commission, and as regional Commissioner.

GERALD R. FORD.

§ 4205. Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such

term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 222.)

§ 4206. Parole determination criteria

(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

(2) that release would not jeopardize the public welfare;

subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing: *Provided*, That the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: *Provided, however*, That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 223.)

§ 4207. Information considered

In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge;

(5) a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim; and

(5)[(6)] reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 224; amended Pub. L. 98–473, title II, § 1408(a), Oct. 12, 1984, 98 Stat. 2177.)

§ 4208. Parole determination proceeding; time

(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be

released on parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b)(1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b)(2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a Federal institution, as the case may be. An eligible prisoner may knowingly and intelligently waive any proceeding.

(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

(c) Subparagraph (2) of subsection (b) shall not apply to—

(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

(d)(1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and a representative of the Commission at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

(Added Pub. L. 94–233, §2, Mar. 15, 1976, 90 Stat. 224; amended Pub. L. 99–646, §58(b), Nov. 10, 1986, 100 Stat. 3612.)

§4209. Conditions of parole

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime, that the parolee not possess illegal controlled substances.[sic] and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. In every case, the Commission shall impose as a condition of parole for a person described in section 4042(c)(4), that the parolee report the address where the parolee will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the parolee register in any State where the parolee 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 every case, the Commission shall also impose as a condition of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the Commission for any individual parolee if it determines that there is good cause for doing so. The results of a drug test administered in accordance with the provisions of the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The Commission shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 4214(f) when considering any action against a defendant who fails a drug test. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

(1) the nature and circumstances of the offense; and

(2) the history and characteristics of the parolee;

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

(c) Release on parole or release as if on parole (or probation, or supervised release where applicable) may as a condition of such release require—

(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole; or

(2) a parolee to remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration.

A parolee residing in a residential community treatment center pursuant to paragraph (1) of this subsection may be required to pay such costs incident to such residence as the Commission deems appropriate.

(d)(1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a United States probation officer supervising a parolee: *Provided*, That the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten-day period, the Commission shall have twenty-one days, exclusive of holidays,

to act upon such motion or application. Notwithstanding any other provision of this paragraph, the Commission may modify conditions of parole, without regard to such ten-day period, on any such motion if the Commission determines that the immediate modification of conditions of parole is required to prevent harm to the parolee or to the public.

(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 225; amended Pub. L. 98–473, title II, §§ 235(a)(1), 238(e), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98–596, §§ 7, 12(a)(5), (9), (b), Oct. 30, 1984, 98 Stat. 3138, 3139, 3140; Pub. L. 99–646, § 58(c), Nov. 10, 1986, 100 Stat. 3612; Pub. L. 100–690, title VII, §§ 7303(c)(1), (2), 7305(c), Nov. 18, 1988, 102 Stat. 4464, 4466; Pub. L. 103–322, title II, § 20414(d), Sept. 13, 1994, 108 Stat. 1832; Pub. L. 105–119, title I, § 115(a)(8)(B)(v), Nov. 26, 1997, 111 Stat. 2466.)

REFERENCES IN TEXT

Section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (a), is classified to section 14071(a)(3) of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 98–473, §§ 235(a)(1), 238(e), (i), and Pub. L. 98–596, § 12(a)(5), (9), (b), amended section as follows: Section 238(e) of Pub. L. 98–473 amended provisions of subsec. (a) preceding par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98–473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(5) of Pub. L. 98–596 amended provisions of subsec. (a) preceding par. (1) to read as they had before amendment by Pub. L. 98–473, applicable pursuant to section 12(b) of Pub. L. 98–596 on and after the date of enactment of Pub. L. 98–473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98–473 which repealed section 238 of Pub. L. 98–473 on the same date established by section 235(a)(1) of Pub. L. 98–473 was repealed by section 12(a)(9) of Pub. L. 98–596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105–119, set out as a note under section 14071 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(c)(1), (2) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

§ 4210. Jurisdiction of Commission

(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that—

(1) such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

(2) in the case of a parolee who has been convicted of any criminal offense committed subsequent to his release on parole, and such offense is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214(b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(e) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 226; amended Pub. L. 99–646, § 58(d), (e), Nov. 10, 1986, 100 Stat. 3612.)

§ 4211. Early termination of parole

(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210.

(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(c)(1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engaged in conduct violating any criminal law.

(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

(3) In calculating the five-year period referred to in subparagraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4212. Aliens

When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4213. Summons to appear or warrant for retaking of parolee

(a) If any parolee is alleged to have violated his parole, the Commission may—

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 227.)

§ 4214. Revocation of parole

(a)(1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

(i) continuation of revocation proceedings is not warranted; or

(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

(iii) the parolee is not likely to fail to appear for further proceedings; and

(iv) the parolee does not constitute a danger to himself or others.

(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

(b)(1) Conviction for any criminal offense committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such an offense and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section to assist him in the preparation of such application.

(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section.

(3) Following the disposition review, the Commission may:

(A) let the detainer stand; or

(B) withdraw the detainer.

(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a)(1)(A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a)(2)(B) of this section.

(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

(1) restore the parolee to supervision;

(2) reprimand the parolee;

(3) modify the parolee's conditions of the parole;

(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local

crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

(f) Notwithstanding any other provision of this section, a parolee who is found by the Commission to be in possession of a controlled substance shall have his parole revoked.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 228; amended Pub. L. 98–473, title II, §§ 235(a)(1), 238(f), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98–596, § 12(a)(6), (9), (b), Oct. 30, 1984, 98 Stat. 3139, 3140; Pub. L. 99–646, § 58(f), Nov. 10, 1986, 100 Stat. 3612; Pub. L. 100–690, title VII, § 7303(c)(3), Nov. 18, 1988, 102 Stat. 4464.)

CODIFICATION

Pub. L. 98–473, §§ 235(a)(1), 238(f), (i), and Pub. L. 98–596, § 12(a)(6), (9), (b), amended section as follows: Section 238(f) of Pub. L. 98–473 amended par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98–473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(6) of Pub. L. 98–596 amended par. (1) to read as it had before amendment by Pub. L. 98–473, applicable pursuant to section 12(b) of Pub. L. 98–596 on and after the date of enactment of Pub. L. 98–473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98–473 which repealed section 238 of Pub. L. 98–473 on the same date established by section 235(a)(1) of Pub. L. 98–473 was repealed by section 12(a)(9) of Pub. L. 98–596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7303(c)(3) of Pub. L. 100–690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub. L. 100–690, set out as a note under section 3563 of this title.

§ 4215. Appeal

(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211(c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may appeal such decision by submitting a written application to the National Appeal [Appeals] Board not later than thirty days following the date on which the decision is rendered.

(b) The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 230; amended Pub. L. 98–473, title II, § 1408(c), Oct. 12, 1984, 98 Stat. 2178.)

[§ 4216. Repealed. Pub. L. 99–646, § 3(a), Nov. 10, 1986, 100 Stat. 3592]

[§ 4217. Repealed. Pub. L. 99–646, § 58(g)(1), Nov. 10, 1986, 100 Stat. 3612, as amended by Pub. L. 100–690, title VII, § 7014, Nov. 18, 1988, 102 Stat. 4395]

§ 4218. Applicability of Administrative Procedure Act

(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557, the Commission is an ''agency'' as defined in such chapter.

(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rulemaking, shall be deemed not to include the phrase ''general statements of policy''.

(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

(d) Actions of the Commission pursuant to paragraphs (1), (2), and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.

(Added Pub. L. 94–233, § 2, Mar. 15, 1976, 90 Stat. 231.)

CHAPTER 313—OFFENDERS WITH MENTAL DISEASE OR DEFECT

Sec.
4241. Determination of mental competency to stand trial.
4242. Determination of the existence of insanity at the time of the offense.
4243. Hospitalization of a person found not guilty only by reason of insanity.
4244. Hospitalization of a convicted person suffering from mental disease or defect.
4245. Hospitalization of an imprisoned person suffering from mental disease or defect.
4246. Hospitalization of a person due for release but suffering from mental disease or defect.
4247. General provisions for chapter.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057, substituted ''OFFENDERS WITH MENTAL DISEASE OR DEFECT'' for ''MENTAL DEFECTIVES'' in chapter heading, ''Determination of mental competency to stand trial'' for ''Examination and transfer to hospital'' in item 4241, ''Determination of the existence of insanity at the time of the offense'' for ''Retransfer upon recovery'' in item 4242, ''Hospitalization of a person found not guilty only by reason of insanity'' for ''Delivery to state authorities on expiration of sentence'' in item 4243, ''Hospitalization of a convicted person suffering from mental disease or defect'' for ''Mental competency after arrest and before trial'' in item 4244, ''Hospitalization of an imprisoned person suffering from mental disease or defect'' for ''Mental incompetency undisclosed at trial'' in item 4245, ''Hospitalization of a person due for release but suffering from mental disease or defect'' for ''Procedure upon finding of mental incompetency'' in item 4246, and ''General provisions for chapter'' for ''Alternate procedure on expiration of sentence'' in item 4247, and struck out item 4248 ''Termination of custody by release or transfer''.

1951—Act Oct. 31, 1951, ch. 655, § 33, 65 Stat. 723, inserted ''on expiration of sentence'' in item 4243.

1949—Act Sept. 7, 1949, ch. 535, § 2, 63 Stat. 688, added items 4244 to 4248.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3006A of this title; title 10 section 876b.

§ 4241. Determination of mental competency to stand trial

(a) MOTION TO DETERMINE COMPETENCY OF DEFENDANT.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the trial to proceed; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the trial to proceed, the defendant is subject to the provisions of section 4246.

(e) DISCHARGE.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial. Upon discharge, the defendant is subject to the provisions of chapter 207.

(f) ADMISSIBILITY OF FINDING OF COMPETENCY.—A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

(June 25, 1948, ch. 645, 62 Stat. 855; Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2057.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 876 (May 13, 1930, ch. 254, § 6, 46 Stat. 271).

Changes were made in phraseology and surplusage omitted.

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting "Determination of mental competency to stand trial" for "Examination and transfer to hospital" in section catchline, and substituting provisions relating to motion, report, hearing, etc., for determination of competency of defendant, for provisions relating to boards of examiners for examination of inmates of Federal penal and correctional institutions and transfer of such inmates to hospitals.

SHORT TITLE OF 1984 AMENDMENT

Section 401 of chapter IV (§§ 401–406) of title II of Pub. L. 98–473 provided that: "This chapter [enacting section 20 of this title and amending this chapter, section 3006A of this title, and rule 12.2 of the Federal Rules of Criminal Procedure and rule 704 of the Federal Rules of Evidence set out in the Appendix to this title] may be sited [cited] as the 'Insanity Defense Reform Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4246, 4247 of this title; title 10 section 876b.

§ 4242. Determination of the existence of insanity at the time of the offense

(a) MOTION FOR PRETRIAL PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the Government, or on the court's own motion, the jury

shall be instructed to find, or, in the event of a nonjury trial, the court shall find the defendant—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of insanity.

(June 25, 1948, ch. 645, 62 Stat. 855; Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 877 (May 13, 1930, ch. 254, § 7, 46 Stat. 272).

Minor change was made in phraseology.

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Determination of the existence of insanity at the time of the offense'' for ''Retransfer upon recovery'' in section catchline, and substituting provisions relating to motion for pretrial psychiatric or psychological examination, and special verdict, for provisions relating to retransfer to a penal or correctional institution upon recovery of an inmate of the United States hospital for defective delinquents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4247 of this title.

§ 4243. Hospitalization of a person found not guilty only by reason of insanity

(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—A hearing shall be conducted pursuant to the provisions of section 4247(d) and shall take place not later than forty days following the special verdict.

(d) BURDEN OF PROOF.—In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) DETERMINATION AND DISPOSITION.—If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) DISCHARGE.—When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(g) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(h) LIMITATIONS ON FURLOUGHS.—An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only—

(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

(2) in an emergency; or

(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title).

(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

(2) APPLICATION.—

(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

(D) EFFECT.—Nothing in this paragraph shall be construed to—

(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.

(June 25, 1948, ch. 645, 62 Stat. 855; Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2059; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7043, 102 Stat. 4400; Oct. 11, 1996, Pub. L. 104–294, title III, § 301(a), 110 Stat. 3494.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 878 (May 13, 1930, ch. 254, § 8, 46 Stat. 272).

Changes were made in translations and phraseology, and unnecessary words omitted.

AMENDMENTS

1996—Subsec. (i). Pub. L. 104–294 added subsec. (i).

1988—Subsec. (h). Pub. L. 100–690 added subsec. (h).

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a person found not guilty only by reason of insanity'' for ''Delivery to state authorities on expiration of sentence'' in section catchline, and substituting provisions relating to determination of present mental condition of acquitted person, examination and report, hearing, etc., for provisions relating to duties of the superintendent of the United States hospital for defective delinquents regarding delivery to state authorities on expiration of sentence of any insane person.

SEVERABILITY

Section 301(d) of Pub. L. 104–294 provided that: ''If any provision of this section [amending this section and enacting provisions set out as notes below], an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.''

TRANSFER OF RECORDS

Section 301(b) of Pub. L. 104–294 provided that: ''Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

''(1) not later than 30 days after the date of enactment of this Act [Oct. 11, 1996], shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

''(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

''(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

''(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.''

CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES

Section 301(c) of Pub. L. 104–294 provided that: ''The amendments made by this section [amending this section and enacting provisions set out as notes above] shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3154, 3603, 4247 of this title; title 10 section 876b; title 28 section 1826.

§ 4244. Hospitalization of a convicted person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c). In addition to the information required to be included in the psychiatric or psychological report pursuant to the provisions of section 4247(c), if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.

(e) DISCHARGE.—When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing and may modify the provisional sentence.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 686; amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2061.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a convicted person suffering from mental disease or defect'' for ''Mental incompetency after arrest and before trial'' in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of convicted defendant, for provisions relating to motion, examination, etc., to determine the mental competency of a person after arrest and before trial.

SEPARABILITY

Section 4 of act Sept. 7, 1949, provided that: ''If any provision of Title 18, United States Code, sections 4244 to 4248, inclusive, or the application thereof to any person or circumstance shall be held invalid, the remainder of the said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.''

USE OF APPROPRIATIONS

Section 3 of act Sept. 7, 1949, provided that: ''The Attorney General may authorize the use of any unexpended balance of the appropriation for 'Support of United States prisoners' for carrying out the purposes of Title 18, United States Code, sections 4244 to 4248, inclusive, or in payment of any expenses incidental thereto and not provided for by other specific appropriations.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3552, 4247 of this title.

§ 4245. Hospitalization of an imprisoned person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF IMPRISONED PERSON.—If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the person may be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier.

(e) DISCHARGE.—When the director of the facility in which the person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the person has not expired, the court shall order that the person be reimprisoned until the expiration of his sentence of imprisonment.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2062.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of an imprisoned person suffering from mental disease or defect'' for ''Mental incompetency undisclosed at trial'' in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of imprisoned person, for provisions relating to procedures and authorities regarding mental incompetency undisclosed at trial.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4247 of this title.

§ 4246. Hospitalization of a person due for release but suffering from mental disease or defect

(a) INSTITUTION OF PROCEEDING.—If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of

the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(e) DISCHARGE.—When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a medical facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(g) RELEASE TO STATE OF CERTAIN OTHER PERSONS.—If the director of a facility in which a person is hospitalized pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than ten days after certification by the director of the facility.

(h) DEFINITION.—As used in this chapter the term ''State'' includes the District of Columbia.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2062; Nov. 29, 1990, Pub. L. 101–647, title XXXV, § 3599D, 104 Stat. 4932; Aug. 5, 1997, Pub. L. 105–33, title XI, § 11204(1), 111 Stat. 739.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 11204(1)(A), inserted ''in the custody of the Bureau of Prisons'' after ''certifies that a person''.

Subsec. (h). Pub. L. 105–33, § 11204(1)(B), added subsec. (h).

1990—Subsec. (g). Pub. L. 101–647 substituted ''chapter'' for ''subchapter''.

1984—Pub. L. 98–473 amended section generally, substituting ''Hospitalization of a person due for release but suffering from mental disease or defect'' for ''Procedure upon finding of mental incompetency'' in section catchline, and substituting provisions relating to proceedings, examination and report, hearing, etc., regarding hospitalization of a person due for release but suffering from mental disease or defect, for provisions relating to powers of the trial court with respect to finding of mental incompetency of accused.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 11721 of title XI of Pub. L. 105–33 provided that: ''Except as otherwise provided in this title [enact-

ing section 138 of Title 40, Public Buildings, Property, and Works, amending this section, section 4247 of this title, section 1063 of Title 20, Education, section 225b of Title 24, Hospitals and Asylums, sections 6103 and 7213 of Title 26, Internal Revenue Code, sections 715 and 6501 of Title 31, Money and Finance, sections 71f and 138 of Title 40, and sections 13723 and 14407 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under section 6103 of Title 26, and amending provisions set out as a note under section 4201 of this title], the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [Pub. L. 104–8, 109 Stat. 108], as amended by this title [so certified Sept. 8, 1997].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3154, 3603, 4241, 4247 of this title; title 10 section 876b.

§ 4247. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) ''rehabilitation program'' includes—

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and

(D) organized physical sports and recreation programs;

(2) ''suitable facility'' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant; and

(3) ''State'' includes the District of Columbia.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245 or 4246, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, or 4246, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243, or 4246, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) PSYCHIATRIC OR PSYCHOLOGICAL REPORTS.—A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and—

(A) if the examination is ordered under section 4241, whether the person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

(B) if the examination is ordered under section 4242, whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246, whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(E) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(d) HEARING.—At a hearing ordered pursuant to this chapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS.—(1) The director of the facility in which a person is hospitalized pursuant to—

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, or 4246 shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of

the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.

(2) The director of the facility in which a person is hospitalized pursuant to section 4241, 4243, 4244, 4245, or 4246 shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

(f) VIDEOTAPE RECORD.—Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 4243 or 4246 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) DISCHARGE.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

(i) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—The Attorney General—

(A) may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter;

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243 or 4246;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, or 4246, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter and in the establishment of standards for facilities used in the implementation of this chapter.

(j) Sections 4241, 4242, 4243, and 4244 do not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2065; Nov. 18, 1988, Pub. L. 100–690, title VII, §§ 7044, 7047(a), 102 Stat. 4400, 4401; Sept. 13, 1994, Pub. L. 103–322, title XXXIII, § 330003(d), 108 Stat. 2141; Aug. 5, 1997, Pub. L. 105–33, title XI, § 11204(2), (3), 111 Stat. 739.)

REFERENCES IN TEXT

Acts of Congress applicable exclusively to the District of Columbia, referred to in subsec. (j), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (j), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1997—Subsec. (a)(3). Pub. L. 105–33, § 11024(2)(C), added par. (3).

Subsec. (j). Pub. L. 105–33, § 11024(3), substituted "Sections 4241, 4242, 4243, and 4244 do" for "This chapter does".

1994—Subsec. (h). Pub. L. 103–322 substituted "subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243," for "subsection (e) of section 4241, 4243, 4244, 4245, or 4246,".

1988—Subsec. (b). Pub. L. 100–690, § 7047(a), substituted "psychologist" for "clinical psychologist" in first sentence.

Subsec. (e)(1)(B). Pub. L. 100–690, § 7044, inserted at end "A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title."

1984—Pub. L. 98–473 amended section generally, substituting "General provisions for chapter" for "Alternate procedure of expiration of sentence" in section catchline, and substituting provisions relating to definitions, examinations, reports, etc., as applicable to chapter, for provisions relating to powers and duties regarding alternate procedure on expiration of sentence of prisoner.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of this title.

CROSS REFERENCES

For application of this chapter to persons subject to chapter 47 of Title 10, Armed Forces, see section 876b of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4241, 4242, 4243, 4244, 4245, 4246 of this title; title 10 section 876b.

[§ 4248. Omitted]

CODIFICATION

Section, act Sept. 7, 1949, ch. 535, § 1, 63 Stat. 688, which related to the termination of custody by release or transfer, was omitted in the general amendment of this chapter by Pub. L. 98–473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057.

[CHAPTER 314—REPEALED]

[§§ 4251 to 4255. Repealed. Pub. L. 98–473, title II, § 218(a)(6), Oct. 12, 1984, 98 Stat. 2027]

Section 4251, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1442; amended Pub. L. 91–513, title III, § 1102(s), Oct. 27, 1970, 84 Stat. 1294; Pub. L. 92–420, § 3, Sept. 16, 1972, 86 Stat. 677, defined terms for purposes of this chapter.

Section 4252, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to examination to determine if offender is an addict and likely to be rehabilitated through treatment.

Section 4253, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to commitment for treatment.

Section 4254, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443, related to conditional release.

Section 4255, added Pub. L. 89–793, title II, § 201, Nov. 8, 1966, 80 Stat. 1443; amended Pub. L. 95–537, § 3, Oct. 27, 1978, 92 Stat. 2038; Pub. L. 99–570, § 1861(c), Oct. 27, 1986, 100 Stat. 3207–53; Pub. L. 99–646, § 19, Nov. 10, 1986, 100 Stat. 3596, related to supervision in the community.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, with sections to remain in effect for five years as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98–473, see section 235(a)(1), (b)(1)(C) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

Sec.
4281. Repealed.
4282. Arrested but unconvicted persons.
4283. Repealed.
4284. Repealed.
4285. Persons released pending further judicial proceedings.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 218(f), Oct. 12, 1984, 98 Stat. 2027, in items 4281, 4283, and 4284, substituted ''Repealed'' for ''Discharge from prison'', ''Probation'', and ''Advances for rehabilitation'', respectively.

1978—Pub. L. 95–503, § 2, Oct. 24, 1978, 92 Stat. 1704, added item 4285.

1952—Act May 15, 1952, ch. 289, § 3, 66 Stat. 73, added item 4284.

[§ 4281. Repealed. Pub. L. 98–473, title II, § 218(a)(7), Oct. 12, 1984, 98 Stat. 2027]

Section, acts June 25, 1948, ch. 645, 62 Stat. 856; Sept. 19, 1962, Pub. L. 87–672, 76 Stat. 557, related to discharge from prison of a convicted person.

EFFECTIVE DATE OF REPEAL

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

§ 4282. Arrested but unconvicted persons

On the release from custody of a person arrested on a charge of violating any law of the United States or of the Territory of Alaska, but not indicted nor informed against, or indicted or informed against but not convicted, and detained pursuant to chapter 207, or a person held as a material witness, the court in its discretion may direct the United States marshal for the district wherein he is released, pursuant to regulations promulgated by the Attorney General, to furnish the person so released with transportation and subsistence to the place of his arrest, or, at his election, to the place of his bona fide residence if such cost is not greater than to the place of arrest.

(June 25, 1948, ch. 645, 62 Stat. 856; Oct. 12, 1984, Pub. L. 98–473, title II, § 207, 98 Stat. 1986.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 746a (July 3, 1926, ch. 795, § 2, as added June 21, 1941, ch. 212, 55 Stat. 254).

The phrase ''informed against'' was inserted in two places in view of the fact that under the Federal Rules of Criminal Procedure the use of informations may be expected to increase. See Rule 7(b).

The section was extended to cover a person held as a material witness and unable to make bail. His predicament obviously calls for the relief afforded by the revised section.

Changes were made in phraseology and surplusage omitted.

AMENDMENTS

1984—Pub. L. 98–473 substituted ''and detained pursuant to chapter 207'' for ''and not admitted to bail'' and struck out ''and unable to make bail'' after ''held as a material witness''.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

[§§ 4283, 4284. Repealed. Pub. L. 98–473, title II, § 218(a)(7), Oct. 12, 1984, 98 Stat. 2027]

Section 4283, act June 25, 1948, ch. 645, 62 Stat. 856, related to furnishing transportation when placing a defendant on probation.

Section 4284, added May 15, 1952, ch. 289, § 1, 66 Stat. 72; amended Sept. 13, 1982, Pub. L. 97–258, § 3(e)(5), 96 Stat. 1064, related to advances for rehabilitation.

EFFECTIVE DATE OF REPEAL

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

§ 4285. Persons released pending further judicial proceedings

Any judge or magistrate of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United

States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.

(Added Pub. L. 95–503, § 1, Oct. 24, 1978, 92 Stat. 1704; amended Pub. L. 101–647, title XXXV, § 3599E, Nov. 29, 1990, 104 Stat. 4932.)

AMENDMENTS

1990—Pub. L. 101–647 substituted ''exceed'' for ''exced'' after ''not to''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 3 of Pub. L. 95–503 provided that: ''The amendments made by this Act [enacting this section] shall take effect on October 1, 1978.''

CHAPTER 317—INSTITUTIONS FOR WOMEN

Sec.
4321. Board of Advisers.

§ 4321. Board of Advisers

Four citizens of the United States of prominence and distinction, appointed by the President to serve without compensation, for terms of four years, together with the Attorney General of the United States, the Director of the Bureau of Prisons and the warden of the Federal Reformatory for Women, shall constitute a Board of Advisers of said Federal Reformatory for Women, which shall recommend ways and means for the discipline and training of the inmates, to fit them for suitable employment upon their discharge.

Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the citizen whom he shall succeed.

(June 25, 1948, ch. 645, 62 Stat. 856; Oct. 12, 1984, Pub. L. 98–473, title II, § 223(n), 98 Stat. 2030.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 816 (June 7, 1924, ch. 287, § 7, 43 Stat. 474; May 14, 1930, ch. 274, § 1, 46 Stat. 325).

The provisions relating to the appointment of the board in the first instance were omitted as executed.

''Warden'' was substituted for ''superintendent'' and ''Federal Reformatory for Women'' for ''United States Industrial Institution for Women'' to conform to existing administrative usage.

Minor changes were made in translation, phraseology, and arrangement.

AMENDMENTS

1984—Pub. L. 98–473 struck out ''parole or'' before ''discharge'' at end of first par.

EFFECTIVE DATE OF 1984 AMENDMENT

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

CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

Sec.
4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers.[1]
4352. Authority of Institute; time; records of recipients; access; scope of section.[1]
4353. Authorization of appropriations.[1]

AMENDMENTS

1974—Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139, added chapter heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 3769a.

§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers [1]

(a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Director of the Bureau of Justice Assistance or his designee, Chairman of the United States Sentencing Commission or his designee, the Director of the Federal Judicial Center or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention [2] or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

(c) The remaining ten members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole.

(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such

[1] Editorially supplied. Sections 4351 to 4353 added by Pub. L. 93–415 without corresponding enactment of chapter analysis.

[1] Section catchline editorially supplied.

[2] See References in Text note below.

as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the Institute with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

(Added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1139; amended Pub. L. 95–115, § 8(a), Oct. 3, 1977, 91 Stat. 1060; Pub. L. 98–473, title II, § 223(*o*), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 103–322, title XXXIII, § 330001(i), Sept. 13, 1994, 108 Stat. 2140.)

REFERENCES IN TEXT

The Office of Juvenile Justice and Delinquency Prevention, referred to in subsec. (b), was created by section 5611 of Title 42, The Public Health and Welfare, headed by an Associate Administrator. However, section 5611 of Title 42, as amended by Pub. L. 98–473, establishes the Office of Juvenile Justice and Delinquency Prevention and headed by an Administrator.

The civil service laws, referred to in subsecs. (f) and (h), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (h), are classified generally to chapter 51 and subchapter III of chapter 53 of Title 5.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322 substituted ''Director of the Bureau of Justice Assistance'' for ''Administrator of the Law Enforcement Assistance Administration''.

1984—Subsec. (b). Pub. L. 98–473 substituted ''Sentencing Commission'' for ''Parole Board''.

1977—Subsec. (b). Pub. L. 95–115 substituted ''Associate'' for ''Deputy Assistant'' and ''Office of'' for ''National Institute for''.

CHANGE OF NAME

Department of Health, Education, and Welfare redesignated Department of Health and Human Services by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS TO MEMBERSHIP REQUIREMENTS DURING FIVE-YEAR PERIOD

For exceptions to the membership requirements set forth in this section, which exceptions are applicable for five-year period following Nov. 1, 1987, see section 235(b)(5) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

§ 4352. Authority of Institute; time; records of recipients; access; scope of section [1]

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5 of the United States Code.

[(b) Repealed. Pub. L. 97–375, title I, § 109(a), Dec. 21, 1982, 96 Stat. 1820.]

(c) Each recipient of assistance under this chapter shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) The provision of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

(Added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1140; amended Pub. L. 97–375, title I, § 109(a), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 101–647, title XXXV, § 3599F, Nov. 29, 1990, 104 Stat. 4932.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–647 substituted ''this chapter shall'' for ''this shall''.

1982—Subsec. (b). Pub. L. 97–375 struck out subsec. (b) which directed the Institute to submit an annual report to the President and Congress, including a comprehensive and detailed report of the Institute's operations, activities, financial condition and accomplishments under this title, and which might include such recommendations related to corrections as the Institute deemed appropriate.

INCLUSION OF NATIONAL INSTITUTE OF CORRECTIONS IN FEDERAL PRISON SYSTEM SALARIES AND EXPENSES BUDGET

Pub. L. 104–208, div. A, title I, § 101(a), [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–11, provided in part: ''That

[1] Section catchline editorially supplied.

the National Institute of Corrections hereafter shall be included in the FPS Salaries and Expenses budget, in the Contract Confinement program and shall continue to perform its current functions under 18 U.S.C. 4351, et seq., with the exception of its grant program and shall collect reimbursement for services whenever possible''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

NATIONAL TRAINING CENTER FOR PRISON DRUG REHABILITATION PROGRAM PERSONNEL

Pub. L. 100–690, title VI, § 6292, Nov. 18, 1988, 102 Stat. 4369, provided that:

''(a) IN GENERAL.—The Director of the National Institute of Corrections, in consultation with persons with expertise in the field of community-based drug rehabilitation, shall establish and operate, at any suitable location, a national training center (hereinafter in this section referred to as the 'center') for training Federal, State, and local prison or jail officials to conduct drug rehabilitation programs for criminals convicted of drug-related crimes and for drug-dependent criminals. Programs conducted at the center shall include training for correctional officers, administrative staff, and correctional mental health professionals (including subcontracting agency personnel).

''(b) DESIGN AND CONSTRUCTION OF FACILITIES.—The Director of the National Institute of Corrections shall design and construct facilities for the center.

''(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated with respect to the National Institute of Corrections, there are authorized to be appropriated to the Director of the National Institute of Corrections—

''(1) for establishment and operation of the center, for curriculum development for the center, and for salaries and expenses of personnel at the center, not more than $4,000,000 for each of fiscal years 1989, 1990, and 1991; and

''(2) for design and construction of facilities for the center, not more than $10,000,000 for fiscal years 1989, 1990, and 1991.''

§ 4353. Authorization of appropriations [1]

There is hereby authorized to be appropriated such funds as may be required to carry out the purposes of this chapter.

(Added Pub. L. 93–415, title V, § 521, Sept. 7, 1974, 88 Stat. 1141.)

PART IV—CORRECTION OF YOUTHFUL OFFENDERS

Chap.		Sec.
401.	**General provisions**	**5001**
402.	**Repealed**	
403.	**Juvenile delinquency**	**5031**

AMENDMENTS

1984—Pub. L. 98–473, title II, § 218(g), Oct. 12, 1984, 98 Stat. 2027, in item for chapter 402 substituted ''Repealed'' for ''Federal Youth Corrections Act''.

1950—Act Sept. 30, 1950, ch. 1115, § 5(a), 64 Stat. 1090, added item for chapter 402.

CHAPTER 401—GENERAL PROVISIONS

Sec.
5001. Surrender to State authorities; expenses.
[5002. Repealed.]
5003. Custody of State offenders.

AMENDMENTS

1996—Pub. L. 104–134, title I, § 101[(a)] [title VI, § 614(a)(2)], Apr. 26, 1996, 110 Stat. 1321, 1321–65; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, struck out item 5002 ''Advisory Corrections Council''.

1952—Act May 9, 1952, ch. 253, § 2, 66 Stat. 68, added item 5003.

1950—Act Sept. 30, 1950, ch. 1115, § 5(b), 64 Stat. 1090, added item 5002.

§ 5001. Surrender to State authorities; expenses

Whenever any person under twenty-one years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State or of the District of Columbia, and that it will be to the best interest of the United States and of the juvenile offender, the United States attorney of the district in which such person has been arrested may forego his prosecution and surrender him as herein provided, unless such surrender is precluded under section 5032 of this title.

The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver him into the custody of the proper authority thereof.

Before any person is conveyed from one State to another or from or to the District of Columbia under this section, he shall signify his willingness to be so returned, or there shall be presented to the United States attorney a demand from the executive authority of such State or the District of Columbia, to which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 3182 of this title.

The expense incident to the transportation of any such person, as herein authorized, shall be paid from the appropriation ''Salaries, Fees, and Expenses, United States Marshals.''

(June 25, 1948, ch. 645, 62 Stat. 857; Nov. 18, 1988, Pub. L. 100–690, title VI, § 6467(b), 102 Stat. 4376.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 662a (June 11, 1932, ch. 243, 47 Stat. 301).

Language preceding ''Whenever'' was omitted as unnecessary, and ''the District of Columbia'' was inserted after ''State''.

Changes were made in phraseology and surplusage eliminated.

AMENDMENTS

1988—Pub. L. 100–690 inserted '', unless such surrender is precluded under section 5032 of this title'' before period at end of first par.

CROSS REFERENCES

Fugitives from State or Territory to State, District or Territory, see section 3182 of this title.

[1] Section catchline editorially supplied.