

1990—Subsec. (a). Pub. L. 101-647, §902(a), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the judicial officer” for “The judicial officer”, and added par. (2).

Subsec. (a)(1). Pub. L. 101-647, §1001(a), substituted “awaiting” for “waiting”.

Subsec. (b). Pub. L. 101-647, §902(b), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the judicial officer” for “The judicial officer”, redesignated former pars. (1) and (2) as subpars. (A) and (B), redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (B), and added par. (2).

1988—Subsec. (b). Pub. L. 100-690, §7091(2), inserted “, except that in the circumstance described in paragraph (b)(2)(D), the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence” before period at end.

Subsec. (b)(2). Pub. L. 100-690, §7091(1), added par. (2) and struck out former par. (2) which read as follows: “that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.”

1986—Subsec. (a). Pub. L. 99-646, §55(d)(1), (2), (4), substituted “under” for “pursuant to” and “such judicial officer” for “he” and struck out “the provisions of” after “in accordance with”.

Subsec. (b). Pub. L. 99-646, §55(d)(1)–(4), in par. (1) substituted “under” for “pursuant to” and inserted “of this title” after “(c)”, and in concluding provision, substituted “such judicial officer” for “he”, struck out “the provisions of” after “in accordance with”, and inserted “of this title” after “(c)”.

Subsec. (b)(2). Pub. L. 99-646, §51(a)(1), substituted “reversal,” for “reversal or” and inserted “, or a sentence that does not include a term of imprisonment”.

Subsec. (c). Pub. L. 99-646, §51(a)(2), inserted provision that, except as provided in subsec. (b), the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, if the person has been sentenced to a term of imprisonment, order that person detained, and in any other circumstance, release or detain the person under section 3142.

Pub. L. 99-646, §55(a), (d)(2), (5), substituted “under section 3731” for “pursuant to the provisions of section 3731” and “with section 3142 of this title” for “with the provisions of section 3142”.

Pub. L. 99-646, §51(b), provided that the amendment of subsec. (c) by section 223(f)(2) of Pub. L. 98-473 shall not take effect. See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98-473, §223(f)(1), inserted provisions relating to applicable guideline under section 994 of title 28.

Subsec. (c). Pub. L. 98-473, §223(f)(2), which would have added a final sentence requiring a judge to treat a defendant in a case in which an appeal had been taken by the United States pursuant to the provisions of section 3742 in accordance with the provisions of (1) subsection (a) if the person had been sentenced to a term of imprisonment; or (2) section 3142 if the person had not been sentenced to a term of imprisonment did not become effective pursuant to section 51(b) of Pub. L. 99-646. See 1986 Amendment note above.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 51(c) of Pub. L. 99-646 provided that: “The amendment made by subsection (a)(2) [amending this section] shall take effect on the date of the taking of effect of section 3742 of title 18, United States Code [Nov. 1, 1987].”

Amendment by section 55(a), (d) of Pub. L. 99-646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99-646, set out as a note under section 3141 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

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

### § 3144. Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 99-646, §55(e), Nov. 10, 1986, 100 Stat. 3609.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

#### PRIOR PROVISIONS

A prior section 3144, act June 25, 1948, ch. 645, 62 Stat. 821, related to cases removed from State courts, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

#### AMENDMENTS

1986—Pub. L. 99-646 substituted “subpoena” for “subpena” and inserted “of this title”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-646 effective 30 days after Nov. 10, 1986, see section 55(j) of Pub. L. 99-646, set out as a note under section 3141 of this title.

### § 3145. Review and appeal of a release or detention order

(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction

over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) **APPEAL FROM A RELEASE OR DETENTION ORDER.**—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 101-647, title IX, §902(c), Nov. 29, 1990, 104 Stat. 4827; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

#### PRIOR PROVISIONS

A prior section 3145, act June 25, 1948, ch. 645, 62 Stat. 821, provided cross references to the Federal Rules of Criminal Procedure for rules covering parties and witnesses, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

#### AMENDMENTS

1990—Subsec. (c). Pub. L. 101-647 inserted at end “A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.”

#### CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in subsecs. (a) and (b) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

### § 3146. Penalty for failure to appear

(a) **OFFENSE.**—Whoever, having been released under this chapter knowingly—

- (1) fails to appear before a court as required by the conditions of release; or
- (2) fails to surrender for service of sentence pursuant to a court order;

shall be punished as provided in subsection (b) of this section.

(b) **PUNISHMENT.**—(1) The punishment for an offense under this section is—

(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for—

- (i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;
- (ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;
- (iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or

(iv) a misdemeanor, a fine under this title or imprisonment for not more than one year, or both; and

(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.

(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.

(c) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(d) **DECLARATION OF FORFEITURE.**—If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142(c)(1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 99-646, §55(f), Nov. 10, 1986, 100 Stat. 3609; Pub. L. 103-322, title XXXIII, §330016(2)(K), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104-294, title VI, §601(a)(4), Oct. 11, 1996, 110 Stat. 3498.)

#### PRIOR PROVISIONS

A prior section 3146, added Pub. L. 89-465, §3(a), June 22, 1966, 80 Stat. 214; amended Pub. L. 97-291, §8, Oct. 12, 1982, 96 Stat. 1257, related to release in noncapital cases prior to trial, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

Another prior section 3146, act Aug. 20, 1954, ch. 772, §1, 68 Stat. 747, which prescribed penalties for jumping bail, was repealed by Pub. L. 89-465, §3(a), June 22, 1966, 80 Stat. 214, and covered by former sections 3150 and 3151 of this title.

#### AMENDMENTS

1996—Subsec. (b)(1)(A)(iv). Pub. L. 104-294 substituted “a fine under this title” for “a fined under this title”.

1994—Subsec. (b)(1)(A)(iv). Pub. L. 103-322 substituted “fined under this title” for “fine under this chapter”.

1986—Subsec. (a). Pub. L. 99-646, §55(f)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “A person commits an offense if, after having been released pursuant to this chapter—

“(1) he knowingly fails to appear before a court as required by the conditions of his release; or

“(2) he knowingly fails to surrender for service of sentence pursuant to a court order.”

Subsec. (b). Pub. L. 99-646, §55(f)(1), added subsec. (b) and struck out former subsec. (b) which was captioned “Grading”, and which read as follows: “If the person was released—

“(1) in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction, for—

“(A) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, he shall be fined not more than \$25,000 or imprisoned for not more than ten years, or both;