

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

#### HISTORICAL AND REVISION NOTES

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

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

Retention of remainder of section is essential to insure authority of Attorney General to require performance of duties of Prison Industries. (See sections 4001 and 4003 of this title.) This is also consistent with 1939 Reorganization Plan No. II, §3(a), transferring the corporation to the Department of Justice "under the general direction and supervision of the Attorney General". (See section 133t of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.)

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

#### § 4129. Authority to borrow and invest

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

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

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

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

#### REFERENCES IN TEXT

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

#### [CHAPTER 309—REPEALED]

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

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

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

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

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

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

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

#### EFFECTIVE DATE OF REPEAL

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

#### [CHAPTER 311—REPEALED]

#### CODIFICATION

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

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

#### EFFECTIVE DATE OF REPEAL; CHAPTER TO REMAIN IN EFFECT FOR TWENTY-SIX YEARS AFTER NOV. 1, 1987

Pub. L. 98-473, title II, §235(a)(1), Oct. 12, 1984, 98 Stat. 2031, set out as an Effective Date note under section 3551 of this title, provided that the repeal of this chapter is effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. Pub. L. 98-473, title II, §235(b)(1)(A), Oct. 12, 1984, 98 Stat. 2032, provided that the provisions of this chapter in effect before Nov. 1, 1987, shall remain in effect for five years after Nov. 1, 1987, as to an individual who committed an offense or an act of juvenile delinquency before Nov. 1, 1987, and as to a term of imprisonment during the period described in section 235(a)(1)(B) of Pub. L. 98-473. Pub. L. 101-650, title III, §316, Dec. 1, 1990, 104 Stat. 5115, extended the period that this chapter remains in effect after Nov. 1, 1987, from five years to ten years. Pub. L. 104-232, §2(a), Oct. 2, 1996, 110 Stat. 3055, extended the period that this chapter remains in effect after Nov. 1, 1987, from ten years to fifteen years. Pub. L. 107-273, div. C, title I, §11017(a), Nov. 2, 2002, 116 Stat. 1824, extended the period that this chapter remains in effect after Nov. 1, 1987, from fifteen years to eighteen years. Pub. L. 109-76, §2, Sept. 29, 2005, 119 Stat. 2035, extended the period that this chapter remains in effect after Nov. 1, 1987, from eighteen years to twenty-one years. Pub. L. 110-312, §2, Aug. 12, 2008, 122 Stat. 3013, extended the period that this chapter remains in effect after Nov. 1, 1987, from twenty-one years to twenty-four years. Pub. L. 112-44, §2, Oct. 21,

2011, 125 Stat. 532, extended the period that this chapter remains in effect after Nov. 1, 1987, from twenty-four years to twenty-six years. The provisions of this chapter as in effect prior to repeal, and as amended subsequent to repeal, read as follows:

§ 4201. Definitions

As used in this chapter—

(1) “Commission” means the United States Parole Commission;

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

(3) “Director” means the Director of the Bureau of Prisons;

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

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

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

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

§ 4202. Parole Commission created

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

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

UNITED STATES PAROLE COMMISSION EXTENSION

Pub. L. 107-273, div. C, title I, § 11017, Nov. 2, 2002, 116 Stat. 1824, provided that:

“(a) EXTENSION OF THE PAROLE COMMISSION.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 [Pub. L. 98-473, set out as a note under section 3551 of this title] (98 Stat. 2032) as such section relates to chapter 311 of title 18, United States Code, and the Parole Commission, each reference in such section to ‘fifteen years’ or ‘fifteen-year period’ shall be deemed to be a reference to ‘eighteen years’ or ‘eighteen-year period’, respectively.

“(b) STUDY BY ATTORNEY GENERAL.—The Attorney General, not later than 60 days after the enactment of this Act [Nov. 2, 2002], should establish a committee within the Department of Justice to evaluate the merits and feasibility of transferring the United States Parole Commission’s functions regarding the supervised release of District of Columbia offenders to another entity or entities outside the Department of Justice. This committee should consult with the District of Columbia Superior Court and the District of Columbia Court Services and Offender Supervision Agency, and should report its findings and recommendations to the Attorney General. The Attorney General, in turn, should submit to Congress, not later than 18 months after the enactment of this Act, a long-term plan for the most effective and cost-efficient assignment of responsibilities relating to the supervised release of District of Columbia offenders.

“(c) SERVICE AS COMMISSIONER.—Notwithstanding subsection (a), the final clause of the fourth sentence of section 4202 of title 18, United States Code, which begins ‘except that’, shall not apply to a person serving as a Commissioner of the United States Parole Commission when this Act takes effect [Nov. 2, 2002].”

PAROLE COMMISSION PHASEOUT

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

“SECTION 1. SHORT TITLE.

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

“SEC. 2. EXTENSION OF PAROLE COMMISSION.

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

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

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

“SEC. 3. REPORTS BY THE ATTORNEY GENERAL.

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

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

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

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

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

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

EXTENSION OF TERM OF COMMISSIONER

Pub. L. 98-473, title II, § 235(b)(2), Oct. 12, 1984, 98 Stat. 2032, 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 case-loads.

(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 subpoenas 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, co-

operative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

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

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

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

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

(6) publish data concerning the parole process;

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

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

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

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

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

Ex. Ord. No. 11919, June 9, 1976, 41 F.R. 23663, provided:

By virtue of the authority vested in me by section 301 of title 3, United States Code, and section 4204(a)(5) of title 18, United States Code, as enacted by the Parole Commission and Reorganization Act (Public Law 94-233), and as President of the United States of America, it is hereby ordered that the Attorney General shall serve as the President's designee for purposes of concurring in designations of Commissioners of the United States Parole Commission to serve on the National Appeals Board, as vice chairman of the Commission, and as regional Commissioner.

GERALD R. FORD.

§ 4205. Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

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

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the

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

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

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

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

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

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

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

§ 4206. Parole determination criteria

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

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

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

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

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

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

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

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

#### § 4207. Information considered

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

- (1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;
- (2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;
- (3) presentence investigation reports;
- (4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge;
- (5) a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim; and
- (5)[(6)] reports of physical, mental, or psychiatric examination of the offender.

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

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

#### § 4208. Parole determination proceeding; time

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

(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its

determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

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

- (1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;
- (2) any document which reveals sources of information obtained upon a promise of confidentiality; or
- (3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

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

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

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

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

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

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

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

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

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

#### § 4209. Conditions of parole

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime, that the parolee not possess illegal controlled substances.[sic] and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. In every case, the Commission shall impose as a condition of parole for a person required to register under the Sex Offender Registration and Notification Act that the person comply with the requirements of that Act. In every case, the Commission shall impose as a condition of parole that the parolee cooperate in the collection of a DNA sample from the parolee, if the collection of such a sample is authorized pursuant to section 3 or section 4 of the DNA Analysis Backlog Elimination Act of 2000 or section 1565 of title 10. In every case, the Commission shall also impose as a condition

of parole that the parolee pass a drug test prior to release and refrain from any unlawful use of a controlled substance and submit to at least 2 periodic drug tests (as determined by the Commission) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the Commission for any individual parolee if it determines that there is good cause for doing so. The results of a drug test administered in accordance with the provisions of the preceding sentence shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The Commission shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in 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; Pub. L. 106-546, § 7(c), Dec. 19, 2000, 114 Stat. 2734; Pub. L. 109-248, title I, § 141(j), July 27, 2006, 120 Stat. 604.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (a), is title I of Pub. L. 109-248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

Sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (a), are classified to sections 14135a and 14135b, respectively, of Title 42, The Public Health and Welfare.

CODIFICATION

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

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105-119, set out as a note under section 3521 of this title.

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 engage 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 subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a sub-

pena, 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 or to undergo postrelease proceedings. <sup>1</sup>
4242.	Determination of the existence of insanity at the time of the offense.
4243.	Hospitalization of a person found not guilty only by reason of insanity.
4244.	Hospitalization of a convicted person suffering from mental disease or defect.
4245.	Hospitalization of an imprisoned person suffering from mental disease or defect.
4246.	Hospitalization of a person due for release but suffering from mental disease or defect.
4247.	General provisions for chapter.
4248.	Civil commitment of a sexually dangerous person <sup>2</sup>

#### AMENDMENTS

2006—Pub. L. 109-248, title III, § 302(1), July 27, 2006, 120 Stat. 619, inserted "or to undergo postrelease proceedings" after "trial" in item 4241 and added item 4248.

1984—Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057, substituted "OFFENDERS WITH MENTAL DISEASE OR DEFECT" for "MENTAL DEFECTIVES" in chapter heading, "Determination of mental competency to stand trial" for "Examination and transfer to hospital" in item 4241, "Determination of the existence of insanity at the time of the offense" for "Re-transfer upon recovery" in item 4242, "Hospitalization of a person found not guilty only by reason of insanity" for "Delivery to state authorities on expiration of sentence" in item 4243, "Hospitalization of a convicted person suffering from mental disease or defect" for "Mental competency after arrest and before trial" in item 4244, "Hospitalization of an imprisoned person suffering from mental disease or defect" for "Mental incompetency undisclosed at trial" in item 4245, "Hospitalization of a person due for release but suffering from mental disease or defect" for "Procedure upon finding of mental incompetency" in item 4246, and "General provisions for chapter" for "Alternate procedure on expiration of sentence" in item 4247, and struck out item 4248 "Termination of custody by release or transfer".

1951—Act Oct. 31, 1951, ch. 655, § 33, 65 Stat. 723, inserted "on expiration of sentence" in item 4243.

1949—Act Sept. 7, 1949, ch. 535, § 2, 63 Stat. 688, added items 4244 to 4248.

#### § 4241. Determination of mental competency to stand trial to undergo postrelease proceedings<sup>1</sup>

(a) MOTION TO DETERMINE COMPETENCY OF DEFENDANT.—At any time after the commencement

of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) DISCHARGE.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the

<sup>1</sup> So in original. Does not conform to section catchline.

<sup>2</sup> So in original. Probably should be followed by a period.

<sup>1</sup> So in original. Probably should be "stand trial or to undergo postrelease proceedings".