

title II of Pub. L. 98-473, 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 cited [cited] as the 'Insanity Defense Reform Act of 1984'."

**§ 4242. Determination of the existence of insanity at the time of the offense**

(a) MOTION FOR PRETRIAL PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION.—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find the defendant—

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of insanity.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2059.)

**HISTORICAL AND REVISION NOTES**

Based on title 18, U.S.C., 1940 ed., § 877 (May 13, 1930, ch. 254, § 7, 46 Stat. 272).

Minor change was made in phraseology.

**AMENDMENTS**

1984—Pub. L. 98-473 amended section generally, substituting "Determination of the existence of insanity at the time of the offense" for "Retransfer upon recovery" in section catchline, and substituting provisions relating to motion for pretrial psychiatric or psychological examination, and special verdict, for provisions relating to retransfer to a penal or correctional institution upon recovery of an inmate of the United States hospital for defective delinquents.

**§ 4243. Hospitalization of a person found not guilty only by reason of insanity**

(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

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

(c) HEARING.—A hearing shall be conducted pursuant to the provisions of section 4247(d) and shall take place not later than forty days following the special verdict.

(d) BURDEN OF PROOF.—In a hearing pursuant to subsection (c) of this section, a person found

not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) DETERMINATION AND DISPOSITION.—If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) DISCHARGE.—When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another per-

son or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(g) REVOCATION OF CONDITIONAL DISCHARGE.—The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(h) LIMITATIONS ON FURLOUGHS.—An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only—

(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

(2) in an emergency; or

(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title).

(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this

title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

(2) APPLICATION.—

(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

(D) EFFECT.—Nothing in this paragraph shall be construed to—

(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2059; Pub. L. 100-690, title VII, § 7043, Nov. 18, 1988, 102 Stat. 4400; Pub. L. 104-294, title III, § 301(a), Oct. 11, 1996, 110 Stat. 3494.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 878 (May 13, 1930, ch. 254, § 8, 46 Stat. 272).

Changes were made in translations and phraseology, and unnecessary words omitted.

#### AMENDMENTS

1996—Subsec. (i). Pub. L. 104-294 added subsec. (i).

1988—Subsec. (h). Pub. L. 100-690 added subsec. (h).

1984—Pub. L. 98-473 amended section generally, substituting "Hospitalization of a person found not guilty only by reason of insanity" for "Delivery to state authorities on expiration of sentence" in section catchline, and substituting provisions relating to determination of present mental condition of acquitted person, examination and report, hearing, etc., for provisions relating to duties of the superintendent of the United States hospital for defective delinquents regarding delivery to state authorities on expiration of sentence of any insane person.

#### SEVERABILITY

Pub. L. 104-294, title III, §301(d), Oct. 11, 1996, 110 Stat. 3495, 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

Pub. L. 104-294, title III, §301(b), Oct. 11, 1996, 110 Stat. 3495, 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

Pub. L. 104-294, title III, §301(c), Oct. 11, 1996, 110 Stat. 3495, provided that: "The amendments made by this section [amending this section and enacting provisions set out as notes above] shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section."

### § 4244. Hospitalization of a convicted person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of

the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(b) PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c). In addition to the information required to be included in the psychiatric or psychological report pursuant to the provisions of section 4247(c), if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

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

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.

(e) DISCHARGE.—When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing and may modify the provisional sentence.

(Added Sept. 7, 1949, ch. 535, §1, 63 Stat. 686; amended Pub. L. 98-473, title II, §403(a), Oct. 12, 1984, 98 Stat. 2061.)

#### AMENDMENTS

1984—Pub. L. 98-473 amended section generally, substituting "Hospitalization of a convicted person suffer-