

ing from mental disease or defect" for "Mental incompetency after arrest and before trial" in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of convicted defendant, for provisions relating to motion, examination, etc., to determine the mental competency of a person after arrest and before trial.

SEPARABILITY

Act Sept. 7, 1949, ch. 535, § 4, 63 Stat. 688, provided that: "If any provision of Title 18, United States Code, sections 4244 to 4248, inclusive, or the application thereof to any person or circumstance shall be held invalid, the remainder of the said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

USE OF APPROPRIATIONS

Act Sept. 7, 1949, ch. 535, § 3, 63 Stat. 688, provided that: "The Attorney General may authorize the use of any unexpended balance of the appropriation for 'Support of United States prisoners' for carrying out the purposes of Title 18, United States Code, sections 4244 to 4248, inclusive, or in payment of any expenses incidental thereto and not provided for by other specific appropriations."

§ 4245. Hospitalization of an imprisoned person suffering from mental disease or defect

(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF IMPRISONED PERSON.—If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

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

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

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of the evidence that the person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier.

(e) DISCHARGE.—When the director of the facility in which the person is hospitalized pursuant

to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the person has not expired, the court shall order that the person be re-imprisoned until the expiration of his sentence of imprisonment.

(Added Sept. 7, 1949, ch. 535, § 1, 63 Stat. 687; amended Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2062.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, substituting "Hospitalization of an imprisoned person suffering from mental disease or defect" for "Mental incompetency undisclosed at trial" in section catchline, and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of imprisoned person, for provisions relating to procedures and authorities regarding mental incompetency undisclosed at trial.

§ 4246. Hospitalization of a person due for release but suffering from mental disease or defect

(a) INSTITUTION OF PROCEEDING.—If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

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

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

(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and con-