

The Enhanced Border Security and Visa Entry Reform Act of 2002, referred to in subsec. (b)(4), is Pub. L. 107-173, May 14, 2002, 116 Stat. 543, as amended, which is classified principally to chapter 15 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, referred to in subsec. (b)(5), was Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272. Pub. L. 107-56 was renamed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act by Pub. L. 109-177, title I, §101(b), Mar. 9, 2006, 120 Stat. 194. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

December 26, 2007, referred to in subsec. (k)(3)(C), (D), was in the original “the date of enactment of this paragraph” and was translated a meaning the date of enactment of Pub. L. 110-161, which amended subsec. (k)(3) of this section generally, to reflect the probable intent of Congress.

#### CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Immigration and Nationality Act which comprises this chapter.

#### AMENDMENTS

2007—Subsec. (k)(3). Pub. L. 110-161 amended heading and text of par. (3) generally. Prior to amendment, text related to development and implementation of a registered traveler program.

### § 1366. Annual report on criminal aliens

Not later than 12 months after September 30, 1996, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report detailing—

- (1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense;
- (2) the number of illegal aliens convicted of felonies in any Federal or State court, but not sentenced to incarceration, in the year before the report was submitted, stating the number convicted for each type of offense;
- (3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal; and
- (4) methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.

(Pub. L. 104-208, div. C, title III, §332, Sept. 30, 1996, 110 Stat. 3009-634.)

#### CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

### § 1367. Penalties for disclosure of information

#### (a) In general

Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,

(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity,<sup>1</sup>

(F) in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)), under section 7105(b)(1)(E)(i)(II)(bb) of title 22, under section 244(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(a)(3)), as in effect prior to March 31, 1999, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(51))<sup>2</sup>, the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 237(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2)]; or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency pur-

<sup>1</sup> So in original. Probably should be followed by “or”.

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

poses) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

**(b) Exceptions**

(1) The Secretary of Homeland Security or the Attorney General may provide, in the Secretary's or the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(2) The Secretary of Homeland Security or the Attorney General may provide in the discretion of the Secretary or the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.

(3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) The Secretary of Homeland Security and the Attorney General are authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(7) Government entities adjudicating applications for relief under subsection (a)(2), and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(i)(1)], may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

**(c) Penalties for violations**

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.

**(d) Guidance**

The Attorney General, Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u)) from harm that could result from the inappropriate disclosure of covered information.

(Pub. L. 104-208, div. C, title III, §§308(g)(8)(D), 384, Sept. 30, 1996, 110 Stat. 3009-624, 3009-652; Pub. L. 105-33, title V, §5572(b), Aug. 5, 1997, 111 Stat. 641; Pub. L. 106-386, div. B, title V, §1513(d), Oct. 28, 2000, 114 Stat. 1536; Pub. L. 109-162, title VIII, §817, Jan. 5, 2006, 119 Stat. 3060; Pub. L. 109-271, §6(h), Aug. 12, 2006, 120 Stat. 763; Pub. L. 113-4, title VIII, §810(a), (b), (d), Mar. 7, 2013, 127 Stat. 117, 118.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 384 of div. C of Pub. L. 104-208. Another subsec. (d) of section 384 of div. C of Pub. L. 104-208 amended sections 1160 and 1255a of this title and enacted provisions set out as a note under section 1160 of this title.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113-4, §810(d), which directed the substitution of “237(a)(2)” for “241(a)(2)” in concluding provisions of section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, was executed to this section, which is section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 113-4, §810(a)(1), inserted “Secretary of Homeland Security or the” before “Attorney General may” and “Secretary’s or the” before “Attorney General’s discretion”.

Subsec. (b)(2). Pub. L. 113-4, §810(a)(2), inserted “Secretary of Homeland Security or the” before “Attorney General may”, “Secretary or the” before “Attorney General for”, and “in a manner that protects the confidentiality of such information” before period at end.

Subsec. (b)(5). Pub. L. 113-4, §810(a)(3), substituted “Secretary of Homeland Security and the Attorney General are” for “Attorney General is”.

Subsec. (b)(8). Pub. L. 113-4, §810(a)(4), added par. (8).

Subsec. (d). Pub. L. 113-4, §810(b), inserted “, Secretary of State,” after “The Attorney General”, “, Department of State,” after “Department of Justice”, and “and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u))” after “domestic violence”.

2006—Subsec. (a). Pub. L. 109-162, §817(1)(A), substituted “, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)” for “(including any bureau or agency of such Department)” in introductory provisions.

Subsec. (a)(1)(F). Pub. L. 109-162, §817(1)(B), added subpar. (F).

Subsec. (a)(2). Pub. L. 109-271 substituted “paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act or section 240A(b)(2) of such Act” for “clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty”.

Subsec. (b)(6), (7). Pub. L. 109-162, §817(2), added pars. (6) and (7).

Subsec. (c). Pub. L. 109-162, §817(3), inserted “or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act” after “in violation of this section”.

Subsec. (d). Pub. L. 109-162, §817(4), added subsec. (d). 2000—Subsec. (a)(1)(E). Pub. L. 106-386, §1513(d)(1)-(3), added subpar. (E).

Subsec. (a)(2). Pub. L. 106-386, §1513(d)(4), inserted “section 101(a)(15)(U),” after “section 216(c)(4)(C),”.

1997—Subsec. (b)(5). Pub. L. 105-33 added par. (5).

1996—Subsec. (a)(2). Pub. L. 104-208, §308(g)(8)(D), which directed amendment of section 364(a)(2) of div. C of Pub. L. 104-208 by substituting “240A(a)(3)” for “244(a)(3)”, was executed by making the substitution in subsec. (a)(2) of this section to reflect the probable intent of Congress. Div. C of Pub. L. 104-208 does not contain a section 364.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, §5582, Aug. 5, 1997, 111 Stat. 643, provided that: “Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§5561-5582) of subtitle F of title V of Pub. L. 105-33, amending this section, sections 1611 to 1613, 1621, 1622, 1631, 1632, 1641 to 1643, and 1645 of this title, and sections 608, 1383, and 1437y of Title 42, The Public Health and Welfare] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(D) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

#### IMPLEMENTATION

Pub. L. 113-4, title VIII, §810(c), Mar. 7, 2013, 127 Stat. 118, provided that: “Not later than 180 days after the date of the enactment of this Act [Mar. 7, 2013], the Attorney General, the Secretary of State, and Secretary of Homeland Security shall provide the guidance required by section 384(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(d)), consistent with the amendments made by subsections (a) and (b) [amending this section].”

### § 1368. Increase in INS detention facilities; report on detention space

#### (a) Increase in detention facilities

Subject to the availability of appropriations, the Attorney General shall provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.

#### (b) Report on detention space

##### (1) In general

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 1226(c) of this title and section 1231(a) of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 1228 of this title or section 1225(b)(2)(A) or 1229a of this title; and

(C) other inadmissible or deportable aliens in accordance with the priorities established by the Attorney General.

#### (2) Estimate of number of aliens released into the community

##### (A) Criminal aliens

##### (i) In general

The first report submitted under paragraph (1) shall include an estimate of the number of criminal aliens who, in each of the 3 fiscal years concluded prior to the date of the report—

(I) were released from detention facilities of the Immigration and Naturalization Service (whether operated directly by the Service or through contract with other persons or agencies); or

(II) were not taken into custody or detention by the Service upon completion of their incarceration.

##### (ii) Aliens convicted of aggravated felonies

The estimate under clause (i) shall estimate separately, with respect to each year described in such clause, the number of criminal aliens described in such clause who were convicted of an aggravated felony.

##### (B) All inadmissible or deportable aliens

The first report submitted under paragraph (1) shall also estimate the number of